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January 12, 1996

**ORIGINAL
FILE COPY**

HAND DELIVERY

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center
Room 110
Tallahassee, Florida 32399-0850

Re: Docket No. 950495-WS

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Southern States Utilities, Inc. are the following documents:

1. Original and fifteen copies of Southern States Utilities, Inc.'s Objection to Marco Island Civic Association's Document Requests Nos. 18 and 19 and Motion for Protective Order.
2. A disk in Word Perfect 6.0 containing a copy of the document entitled "Objection".

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

ACK

AFA 3

APP Smulh

CAF _____

CMU _____

CTR _____

EAG _____

LEG 1

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OPC _____

RCH _____

SEC _____

WAS Willis

OTH _____

Thank you for your assistance with this filing.

Sincerely,

Bill Willis for
Kenneth A. Hoffman

KAH/rl

cc: All Parties of Record

Trib.3

RECEIVED & FILED
Willis
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
00416 JAN 12 96
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application by Southern)
States Utilities, Inc. for rate)
increase and increase in service)
availability charges for Orange-)
Osceola Utilities, Inc. in)
Osceola County, and in Bradford,)
Brevard, Charlotte, Citrus, Clay,)
Collier, Duval, Hernando, High-)
lands, Hillsborough, Lake, Lee,)
Marion, Martin, Nassau, Orange,)
Osceola, Pasco, Polk, Putnam,)
Seminole, St. Johns, St. Lucie)
Volusia and Washington Counties.)
_____)
)

Docket No. 950495-WS

Filed: January 12, 1996

**SOUTHERN STATES UTILITIES, INC.'S OBJECTION
TO MARCO ISLAND CIVIC ASSOCIATION'S
DOCUMENT REQUESTS NOS. 18 AND 19
AND MOTION FOR PROTECTIVE ORDER**

Southern States Utilities, Inc. ("SSU") by and through its undersigned attorneys, hereby files its objection to Document Request Nos. 18 and 19 propounded by the Marco Island Civic Association ("MICA") and request entry of a Protective Order determining that SSU is not required to respond to these document requests. In support of its objection and Motion for Protective Order, SSU states as follows:

1. On January 5, 1996, MICA served its First Request for Production of Documents (Nos. 1 through 21) upon SSU. Document Request Nos. 18 and 19 state as follows:

18. Please provide a copy of any and all appraisals of the Deltona Corporation Utility System.

19. Please provide a copy of all internal memorandums, consulting reports, purchase contract, payment records and closing statements regarding the purchase of the Deltona Corporation Utility System.

DOCUMENT NUMBER-DATE

00416 JAN 12 8 5175

FPSC-RECORDS/REPORTING

2. SSU and Topeka purchased the Deltona Corporation utility system in 1989.¹ The contract for sale of the Deltona systems, along with other pertinent information relating to that transaction, are part of the Commission's record in Docket No. 881501-WS.

3. The underlying substantive issues pertaining to potential acquisition adjustments for systems purchased by SSU from the Deltona Corporation previously have been litigated in Docket No. 920199-WS. See Order No. PSC-92-1265-PHO-WS issued November 4, 1992 in Docket No. 920199-WS, pages 31 (Issue 34) and 33-34 (Issue 40), copies of which are attached hereto as Exhibit "A". In that docket the Commission denied the Office of Public Counsel's ("OPC") request for a negative acquisition adjustment to the rate base of the Deltona systems purchased by SSU. See Order No. PSC-93-0423-FOF-WS issued March 22, 1993, at page 47.

4. In Docket No. 920655-WS, OPC again requested a negative acquisition adjustment to the rate base of the Deltona systems. The underlying substantive issues pertaining to potential acquisition adjustments for these systems again were litigated, and again the Commission determined that a negative acquisition adjustment was not justified for these systems. See Order No. PSC-93-1070-FOF-WS issued July 23, 1993, at page 24.

5. Rule 25-22.034, Florida Administrative Code, provides that parties to Commission proceedings "may obtain discovery

¹In re: Application of Topeka Group, Inc. to acquire control of Deltona Corporation's utility subsidiaries, 89 F.P.S.C. 12:154 (1989), Docket No. 881501-WS.

through the means and in the manner provided in Rules 1.280 through 1.400, Florida Rules of Civil Procedure." Under Rule 1.280(c), Florida Rules of Civil Procedure, a protective order may be granted "for good cause shown ... to protect a party or person from ... undue burden or expense" In that regard, it is within the discretion of the trial court to alleviate a party from the burden of complying with discovery requests that unreasonably burden the party. See Krypton Broadcasting of Jacksonville, Inc. v. MGM-Pathe Communications Co., 629 So.2d 852 (Fla. 1st DCA 1993).

6. SSU objects to Document Request No. 18 on the grounds that it would be unduly burdensome and expensive for SSU to respond to this inquiry. Document Request No. 18 can only pertain to a potential acquisition adjustment to the rate base of the Deltona systems acquired by SSU, which issue was litigated and resolved on two separate occasions before this Commission in Docket Nos. 920199-WS and 920655-WS. Information regarding the purchase price of the Deltona systems also is part of the public record of Docket No. 881501-WS (the transfer proceeding). In determining whether a party must respond to a discovery request, the Commission must "weigh the relevance of the information sought against the burdensomeness of the request." Id. at 855. Certainly the relevancy of an appraisal is questionable if the actual purchase price has been established. SSU maintains that it should not be required to endure the time and expense of researching records from 1989, assuming that they exist, to produce information regarding the estimated value of the Deltona systems when the actual purchase

price of the systems is available to the public from the Commission's records, and all issues concerning acquisition adjustments have been thoroughly litigated before this Commission.


7. SSU objects to Document Request No. 19 on the grounds that it would be unduly burdensome and expensive for SSU and its customers to respond to and bear the expense of this inquiry. Document Request No. 19 pertains to a potential acquisition adjustment to the rate base of the Deltona systems acquired by SSU, which issue was litigated before this Commission in Docket Nos. 920199-WS and 920655-WS. Many of the documents requested by MICA are included in the record of Docket No. 881501-WS, and are readily available to MICA. The documents included in the record of Docket No. 881501-WS state the amount of consideration provided by SSU and Topeka for the Deltona systems. SSU maintains that it should not be required to bear the burdens of producing documents describing its purchase of the Deltona systems when that issue has been thoroughly litigated before this Commission, and when many of the requested documents are available from the Commission's records.

8. Although *res judicata* does not necessarily apply in rate cases, at some point the integrity of the Commission's previous findings of fact and legal conclusions must be acknowledged and accepted as conclusive. In addition, a party should not be forced to endure repeated litigation and discovery pertaining to the same subject matter. SSU previously has expended time and money to litigate this issue in two separate dockets, the Commission has consistently determined that there should be no acquisition

adjustment for these systems, and any additional time and effort spent by SSU to produce documents pertaining to this issue, and to potentially litigate this issue for a third time, would be fruitless and would create an unnecessary and undue burden and expense for SSU and SSU's customers.

WHEREFORE, SSU respectfully requests that an order be entered that SSU is not required to respond to the Marco Island Civic Association's Document Requests Nos. 18 and 19.

Respectfully submitted,


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and

BRIAN P. ARMSTRONG, ESQ.
MATTHEW FEIL, ESQ.
Southern States Utilities, Inc.
1000 Color Place
Apopka, Florida 32703
(407) 880-0058

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of Southern States Utilities, Inc.'s Objection to Document Request Nos. 18 and 19 from Marco Island Civic Association's First Request for Production of Documents was furnished by U. S. Mail to the following on this 12th day of January, 1996:

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KENNETH A. HOFFMAN, ESQ.

ISSUE 34: Should negative acquisition adjustment(s) be made to rate base?

POSITIONS

SSU: No. (Vierima)

COVA: No position.

OPC: Yes. The Commission can not allow a return on investment which was not actually made in providing utility service to customers.

STAFF: Absent a showing of extraordinary circumstances, acquisition adjustment(s) should not be made to rate base.

ISSUE 35: What are the rate bases?

POSITIONS

SSU: The rate bases are as set forth in the MFRs subject to any adjustments approved by the Commission. (Lewis)

COVA: The final amount is subject to the resolution of other issues.

OPC: The final amount is subject to the resolution of other issues.

STAFF: The rate base sums are summation measures that depend on resolution of other issues.

COST OF CAPITAL

ISSUE 36: Should the cost of debt capital be adjusted to reflect reduced interest rates for variable-cost debt components?

POSITIONS

SSU: The cost of debt capital should be adjusted to reflect either increased or reduced interest rates for variable-cost debt components as they exist at a reasonable time before the evidentiary hearings in this proceeding. (Vierima)

ISSUE 39: Should short-term debt be included in the capital structure?

POSITIONS

SSU: No. The average capital structure for the test period ended 12/31/91 did not include a short-term debt component. Therefore, the capital structure per the MFRs is appropriate. The application of projected capital costs and structure without concurrent adjustments for plant additions and expense escalation conflicts with the Commission's acceptance of a historic test year for this filing. (Vierima)

COVA: No position.

OPC: No position.

STAFF: Yes, consistent with the utility's proposal in the recently filed rate application for the Marco Island utility system.

ISSUE 40: Should the cost of debt capital be adjusted to reflect a reduced interest rate for the 15.95% fixed rate on the Company's \$22,500,000 of long-term mortgage bonds?

POSITIONS

SSU: No. This issue was decided by the court in Marco Island Utilities v. Public Service Commission, 566 So.2d 1325 (Fla. 1st DCA 1990). (Vierima)

COVA: Agree with OPC.

OPC: Yes. This fixed rate is excessive and the Company's inability to refinance the debt was the result of Deltona Utilities, Inc.'s acceptance of a contractual restriction which only allowed refinancing at the option of the bondholders. When SSU purchased the Deltona system it was either aware of this restriction or it should have been aware of this restriction. As such, the purchase price of the Deltona system should have reflected this excessive rate and worked toward the advantage of SSU in reducing the negotiated purchase price. Unless the Commission

recognizes a negative acquisition adjustment resulting in part from this excessive cost of debt, the rates set for the Deltona system will be excessive. In addition, since the Company has proposed using one capital structure and overall cost of capital for all of the systems filed, it is unfair and unreasonable to pass this unreasonable cost of debt onto all of the SSU filed FPSC systems. Accordingly, the cost of debt associated with these first mortgage bonds should be reduced to a level that would have been reasonable had the bonds been refinanced by SSU after the purchase of the Deltona system--9.50% to 10.50%. In addition, this debt will be retired in December of 1994 and on a going forward basis the this high cost debt will not be incurred in the future.

STAFF: No position pending development of the record.

ISSUE 41: What is the appropriate overall cost of capital including the proper components, amounts, and cost rates?

POSITIONS

SSU: Per the MFRs as modified by the Company's response to Issue No. 36. (Vierima)

COVA: No position.

OPC: The final amount is subject to the resolution of other issues.

STAFF: This is essentially a fall-out issue based on an appropriate capital structure and cost rates.

NET OPERATING INCOME

GENERIC AND A&G EXPENSE ISSUES

ISSUE 42: Should the Company's revenues be weather normalized, and, if so, what adjustments are appropriate?

POSITIONS

SSU: No weather normalized study has been presented by any party to this proceeding. With the diversity of systems located throughout the State, weather normalization is