

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, Highlands, Lake, Lee, Marion, Martin, Nassau, Orange, Osceola, Pasco, Polk, Putnam, Seminole, St. Johns, St. Lucie, Volusia and Washington Counties.

Docket No. 950495-1

Filed: April 18, 1996

RESPONSE OF SOUTHERN STATES UTILITIES, INC. IN OPPOSITION TO PUBLIC COUNSEL'S MOTION TO STRIKE REBUTTAL TESTIMONY OF BRIAN S. BROVERMAN

SOUTHERN STATES UTILITIES, INC. ("SSU"), by and through its undersigned attorneys, responds in opposition to the Motion to Strike Rebuttal Testimony of Brian S. Broverman filed by the Office of Public Counsel ("OPC") and states as follows:

1. OPC wishes to be the sole arbiter of what portions of customer or intervenor testimony SSU may rebut and how "bulky" the rebuttal exhibits may be. OPC also apparently believes that OPC may rely upon customer testimony to file frivolous motions to dismiss but SSU may not be permitted to address and rebut other portions of customer testimony which addresses substantive issues.

2. SSU has never witnessed an objection to testimony based on the fact that associated exhibits are "bulky."

3. Repeated assertions were made by customers and their counsel during customer service hearings suggesting that SSU had inflated costs for the projected test year. Mr. Broverman's testimony rebuts these suggestions by presenting a clear example of

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how SSU's cost projections in the MFRs were conservative. SSU has the absolute right under Commission rules to file rebuttal testimony responding to statements made by customers who appear as witnesses at customer service hearings. Fla. Admin. Code R. 25-22.046(2).

4. Mr. Broverman's testimony also demonstrates measures taken by SSU which establish SSU as a leader in FAS 106 cost control further rebutting customer comments designed to cast doubt on whether SSU management had or has taken steps to control costs.

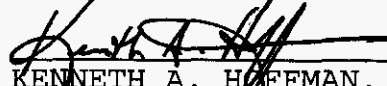
5. Mr. Broverman's testimony presents the actual 1995 SSU actuarial valuations for FAS 106 costs, testimony which SSU witness Dale Lock indicated would be forthcoming in her direct testimony filed with the MFRs in June of 1995. The Godwins, Booke & Dickenson actuarial report for 1995 provided as an exhibit to Mr. Broverman's testimony also was provided to OPC and all parties as a late-filed deposition exhibit for Ms. Dale Lock on January 23, 1996. Therefore, OPC has been on notice that this information would be filed by SSU and actual 1995 FAS 106 costs requested (as set-off against any reductions which the Commission might make to requested revenue) since this case began and has had the underlying data for 3 months. No due process rights have been infringed.

6. OPC's motion to strike is simply another in a long line of frivolous motions filed by OPC in an unabashed effort to deflect the Commission's attention away from the substantive issues in this

proceeding.<sup>1</sup>

For the foregoing reason, SSU requests that the Prehearing Officer deny OPC's motion to strike the rebuttal testimony of SSU witness Brian S. Broverman.

Respectfully submitted,

  
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<sup>1</sup>It should be noted that the rules of evidence that apply in a civil case are more stringent than the evidentiary rules that govern a section 120.57(1), F.S. proceeding. See, e.g., Bass v. Florida Department of Law Enforcement, 627 So.2d 1321 (Fla. 3rd DCA 1993). Section 120.58(1)(a)1, Florida Statutes, states that "[i]rrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of Florida." (Emphasis added). One of the differences between civil and administrative proceedings was demonstrated in Collier Development Corporation v. State, D.E.P., 592 So.2d 1107, 1108 (Fla. 2nd DCA 1991), in which the appellate court determined that the hearing officer must consider a second marina flushing study presented during rebuttal, even though the party had presented an initial marina flushing study in its case in chief, as "the opposing parties had sufficient notice and opportunity to rebut the evidence of the second study." Certainly, if OPC viewed itself to be prejudiced by Mr. Broverman's rebuttal testimony, it could have filed a Motion for Leave to File Supplemental Testimony as it has on two occasions for Ms. Dismukes' supplemental and second supplemental testimony.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of SSU's Response in Opposition to Public Counsel's Motion to Strike Rebuttal Testimony of Brian S. Broverman was furnished by U.S. Mail to the following this 18th day of April, 1996:

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