

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

POWER & TELEPHONE SUPPLY)	
COMPANY, INC.,)	
)	
Plaintiff,)	
)	
vs.)	No. 03-CV-2217 M1/V
)	
SUNTRUST BANKS, INC., SUNTRUST)	
BANK, SUNTRUST BANK - ATLANTA,)	
SUNTRUST BANK - NASHVILLE,)	
N.A., SUNTRUST EQUITABLE)	
SECURITIES CORPORATION, and)	
SUNTRUST CAPITAL MARKETS, INC.,)	
)	
Defendants.)	

ORDER DENYING MOTION TO COMPEL

Before the court is the November 17, 2004 motion of the defendant, SunTrust Bank, pursuant to Rules 7(b) and 33 of the Federal Rules of Civil Procedure to compel the plaintiff, Power & Telephone Supply Company ("PTSC"), to provide full and complete responses to interrogatories 10, 11, 13, 16, 17 and 23 of its second set of interrogatories. SunTrust also seeks an award of attorneys fees and expenses incurred in connection with this motion. This motion was referred to the United States Magistrate Judge for determination. For the reasons that follow, the motion is denied.

SunTrust has failed to file a certificate of consultation with

counsel for the opposing party as required by Local Rule 7.2(a)(1)(B). All non-dispositive motions must be accompanied by a certificate of counsel affirming that "after consultation between the parties to the controversy, they are unable to reach an accord as to all issues or that all other parties are in agreement with the action requested by the motion." *Id.* Local Rule 7.2(a)(1)(B) further provides that failure to file the certificate "may be deemed good grounds for denying the motion." The dispute presented here in this motion is particularly suitable for resolution through the consultation process before seeking court-ordered relief.

In its response to this motion to compel, PTSC asserts that there has been ongoing correspondence between the parties regarding supplemental responses to certain interrogatories propounded by SunTrust. According to PTSC, it received a letter dated October 7, 2004, requesting more specific information regarding the "industry standard" as set forth in Interrogatories Nos. 10, 11, 13, 16,17, 23. In a response letter dated October 18, 2004, PTSC agreed to supplement its responses to these interrogatories. At that time, no date was set, nor was any date requested by SunTrust for which the supplemental responses were to be produced. No correspondence took place between the parties regarding this issue until PTSC was served with SunTrust's motion to compel responses. Accordingly, SunTrust's motion to compel is denied, without prejudice, for

failure to file a certificate of consultation as required Local Rule 7.2(a)(1)(B).

Furthermore, PTSC alleges that they are currently in the process of supplementing its responses and claims that it will produce them by December 10, 2004. Therefore, it appears to the court that SunTrust's motion to compel may be moot.

IT IS SO ORDERED this 21st day of December, 2004.

DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE