

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for rate) DOCKET NO. 950495-WS
increase and increase in service) ORDER NO. PSC-96-0113-CFO-WS
availability charges by Southern) ISSUED: January 19, 1996
States Utilities, Inc. 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, Putnam, Seminole, St.)
Johns, St. Lucie, Volusia, and)
Washington Counties.)

ORDER DENYING REQUEST FOR CONFIDENTIAL CLASSIFICATION OF
COMMISSION DOCUMENT NO. 11175-95

On November 8, 1995, Southern States Utilities, Inc., (SSU or utility) filed its Ninth Motion for Temporary Protective Order in response to Commission Staff's Interrogatory 40, served on October 11, 1995. By letter dated November 9, 1995, SSU requested that its Ninth Motion be treated as a Notice of Intent to Request Confidential Treatment. On November 29, 1995, SSU filed its Second Request for Confidential Classification. On December 4, 1995, the Office of Public Counsel (OPC) filed an Opposition to SSU's Second Request for Confidential Classification. This Order addresses SSU's request for confidential classification.

The document in issue, Commission Document No. 11175-5, consists of Appendices 40-A, 1991-YTD1995 Payroll Analysis by Position Title With Pay Increase and Pay Type; 40-B, SSU, Inc., Analysis of Payroll Adjustments and Southern States Utilities, Inc., Total Monthly Spread by RC and Position Year 1996 and Year 1995; and 40-C, Personnel Actions History 1992-1995.

Section 367.156(2), Florida Statutes, provides that proprietary confidential business information shall be exempt from disclosure under Section 119.07(1), Florida Statutes. Section 367.156(3), Florida Statutes, provides that proprietary confidential business information is:

information . . . which is owned or controlled by the . . . company, is intended to be and is treated by . . . the company as private in that the disclosure of the information would

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cause harm to the ratepayers . . . or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public.

Section 367.156(3) provides further that proprietary business information includes, but is not limited to:

- (e) Information relating to competitive interests, the disclosure of which would impair the competitive businesses of the provider of the information.
- (f) Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities.

SSU contends that the payroll and pay increase information contained in Document 11175-95 is confidential as proprietary confidential business information pursuant to Section 367.156(3)(e), Florida Statutes. Recognizing that subpart (f) does not serve to protect employee compensation information, SSU asserts that the Commission nevertheless possesses the authority to determine in its discretion that subpart (e) serves to protect the information in question from public disclosure. *Florida Public Service Commission v. Bryson*, 569 So.2d 1253 (Fla. 1990).

OPC argues that SSU seeks an exception to Section 119.07, Florida Statutes, and that any such exception must be narrowly construed. *Southern Bell Telephone and Telegraph Co. v. Beard*, 597 So.2d 873 (Fla. 1st DCA 1992). OPC further argues that SSU has failed to establish a basis for confidential classification of the information provided.

In Order No. PSC-92-1073-CFO-WS, issued September 28, 1992, in Docket No. 920199-WS, the Prehearing Officer denied SSU's request for confidential status of information concerning officers' and other employees' compensation. The utility had argued that the information sought was a "trade secret," and that disclosure would cause harm to its business operations and competitive interests in adversely impacting its ability to retain qualified employees at reasonable salary levels. The Prehearing Officer said:

The confidentiality provision of the statute is designed to protect against a competitor's obtaining, through the public disclosure of

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information, an unfair advantage in a competitive market for goods or services. This is not the sort of competitive interest which SSU seeks to protect.

Order at 5. In this case, assuming that SSU indeed seeks to protect its interests vis-a-vis its competitors--the competition for competent employees--Section 367.156(3)(e), Florida Statutes, cannot be invoked to protect the employee compensation information SSU seeks, under the Public Records Act, to protect from disclosure, in view of the compelling clarity of the language of subpart (f). While the utility may be found to prevail upon an argument that, absent a pertinent Section 367.156(3) exemption, disclosure of such information to the public nonetheless will result in a perceived harm to the utility's customers or its business operations, SSU has not advanced persuasive evidence that such harm is likely to materialize. Accordingly, SSU's request for confidential classification of employee compensation information in Commission Document 11175-95 is denied.

Pursuant to Rule 25-22.006(9), Florida Administrative Code, Commission Document 11175-95 shall be kept confidential until the time for filing an appeal has expired, and, upon request, through completion of judicial review.

Based on the foregoing, it is

ORDERED by Commissioner Diane K. Kiesling, as Prehearing Officer, that Southern States Utilities, Inc.'s, Second Request for Confidential Classification is denied. It is further

ORDERED that Commission Document 11175-95 shall be kept confidential until the time for filing an appeal of this Order has expired, and, upon request, through completion of judicial review.

By ORDER of Commissioner Diane K. Kiesling, as Prehearing Officer, this 19th day of January, 1996.


DIANE K. KIESLING, Commissioner and
Prehearing Officer

(S E A L)
CJP

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.