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November 29, 1995

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

HAND DELIVERY

Re: Docket No. 950495-WS

Dear Ms. Bayo:

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

1. Original and fifteen copies of SSU's Second Request for Confidential Classification;
2. One copy of Attachment "A", which is an unedited version of the documents for which confidential classification is requested, on which the information asserted to be confidential has been highlighted in yellow; and
3. A disk in Word Perfect 6.0 containing a copy of the document entitled "Confiden.2"

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

Thank you for your assistance with this filing.

Sincerely,


William B. Willingham

WBW/rl

cc: All Parties of Record
Trib.3

RECEIVED & FILED


FPSC-BUREAU OF RECORDS

Conf. Info
DOCUMENT NUMBER-DATE

11950 NOV 29 1995

FPSC-RECORDS/REPORTING

Reg.
DOCUMENT NUMBER-DATE

11949 NOV 29 1995

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: November 29, 1995

**SSU'S SECOND REQUEST FOR
CONFIDENTIAL CLASSIFICATION**

Southern States Utilities, Inc. ("SSU"), by and through its undersigned counsel, and pursuant to Rule 25-22.006(4), Florida Administrative Code, hereby files its Second Request for Confidential Classification with respect to documents produced in response to the Commission Staff's ("Staff") Interrogatory No. 40 in the above-referenced docket. In support of its Second Request for Confidential Classification, SSU states as follows:

1. On November 8, 1995, SSU produced documents responsive to Staff's Interrogatory No. 40, which included Appendices 40-A, 40-B, and 40-C. Appendix 40-A contains the year-to-date pay increases for each SSU employee since 1991 along with the type of increase, categorized by position title and employee number. Appendix 40-B

DOCUMENT NUMBER-DATE

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contains the projected monthly and yearly salaries for each SSU employee for calendar year 1996 (pages 2-46), the pay level at which new employees were hired between January 1, 1991 and October 31, 1995 (pages 47-84), and the projected and year-to-date actual monthly and yearly salaries for each SSU employee for calendar year 1995 (pages 85-131). Appendix 40-C contains the pay level at which new employees were hired between January 1, 1991 and October 31, 1995. At the time these documents were produced, SSU notified Staff and the parties of its intent to seek confidential classification of these documents. Due to the voluminous nature of the attached documents, and the fact that SSU is requesting confidential classification of virtually all of the data on each document, pursuant to Rule 25-22.006(3)(b), Florida Administrative Code, SSU has not provided redacted copies of the documents to any of the parties but instead has set forth the above summary of the nature of the material provided. SSU will provide edited copies to any party upon request.

2. SSU requests that the documents attached hereto and submitted only to the Division of Records and Reporting as Attachment "A" be classified as "proprietary confidential business information" within the meaning of Section 367.156, Florida Statutes (1993). Attachment "A" is an unedited version of the

documents described above on which the information asserted to be confidential has been highlighted in yellow.

3. Section 367.156(3), Florida Statutes, provides that "proprietary confidential business information" includes information

[W]hich 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 cause harm to the ... 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.

Included within the Section 367.156(3) definition of "proprietary confidential business information" is the following:

(e) Information relating to competitive interests, the disclosure of which would impair the competitive businesses of the provider of the information.

4. The salary and wage expense information for SSU's employees is intended to be and is treated by SSU as proprietary and confidential. For the reasons stated below, the public disclosure of such information would impair the competitive business operations of SSU. This information has been disclosed only to the Commission Staff pursuant to SSU's notice of intent to request confidential classification and some of the same

information is available to the Office of Public Counsel ("OPC") pursuant to SSU's Eighth Motion for a Temporary Protective Order.

5. In Docket No. 920199-WS, the Prehearing Officer denied a similar request for confidential classification filed by SSU; however, in doing so, the Prehearing Officer concluded:

The confidentiality provision of the statute is designed to protect against a competitor's obtaining, through the public disclosure of information, an unfair advantage in a competitive market for goods or services.¹

SSU maintains that the facts now clearly demonstrate that SSU and its ratepayers stand to suffer a continued adverse impact in competing for and attempting to retain high quality, reasonably compensated employees if this Request for Confidential Classification is denied.

6. As indicated above, SSU does in fact compete with other utilities and businesses on a local, statewide and national level in attempting to attract and retain high quality, reasonably compensated employees in virtually every aspect of SSU's operations. As confirmed by the prefiled direct testimony of SSU witness Dale G. Lock in this proceeding, SSU's employee turnover ratios in 1992, 1993, 1994 (excluding Venice Gardens) and

¹Order No. PSC-92-1073-CFO-WS, at 5, issued September 28, 1992 in Docket No. 920199-WS.

annualized 1995 were 13.2%, 13.5%, 11.54% and (projected) 11.0%, respectively. Approximately 65% of the turnovers in 1993 and 1994 were employees who had less than three years of service with SSU. These percentages are dismal when compared with other utilities such as the Orlando Utilities Commission (4.8% in 1993) and Florida Cities (3.96% in 1993).²

7. Ms. Lock's testimony highlights the fact that SSU's wage and salary levels are not competitive in the water and wastewater industry and that SSU has experienced difficulties in recruiting and retaining employees as a result of its salary levels. The public availability of this information will impair SSU's efforts to contract for employee services on favorable terms to the detriment of SSU and its ratepayers. As stated by Ms. Lock, "[h]igh turnover contributes to higher recruitment costs as well as lowered employee productivity and added retraining costs."³

8. It is well recognized that the Commission is afforded ample discretion in the interpretation and application of its statutory authority. See, e.g., Florida Public Service Commission v. Bryson, 569 So.2d 1253, 1255 (Fla. 1990). In this case, the

²See Prefiled direct testimony of Dale G. Lock, CCP, at 14-15.

³Id., at 15.


salary and wage expense information relates to and affects SSU's competitive interests, and public disclosure of the information will continue to impair SSU's ability to attract and retain quality employees at reasonable compensation levels while minimizing costs associated with recruitment and turnover. See §367.156(3)(e), Fla. Stat. (1993). SSU is mindful, however, that Section 367.156(3)(f) implies that employee compensation information should not be treated as proprietary and confidential.⁴ Indeed, some of the information at issue is available to SSU's ratepayers on a confidential need to know basis through OPC. Requiring SSU to make the information publicly available to its competitors in the industry and other businesses will only serve to harm SSU and its ratepayers. Accordingly, the Commission should exercise its discretion to resolve the apparent conflict raised by the applicability of Section 367.156(3)(e) to the wage and salary expense information and the implied non-applicability of Section 367.156(3)(f) to such information by determining that the

⁴This conclusion is implied but not expressly stated under Section 367.156(3)(f), Florida Statutes. The provision clearly states that employee personnel information unrelated to compensation constitutes proprietary confidential business information. The implication is that employee personnel information related to compensation may not constitute proprietary confidential business information although the statute does not expressly state as such.

information constitutes "proprietary confidential business information." Such a determination will serve to protect the competitive interests of SSU, maximize the quality of service provided by SSU to its ratepayers, and minimize the costs ultimately borne by SSU's ratepayers associated with the potential loss of SSU's employees to competing interests and the associated employee recruitment, education and turnover costs.

WHEREFORE, for the foregoing reasons, SSU respectfully requests that its Second Request for Confidential Classification be granted.

Respectfully submitted,


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and

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing SSU's Second Request for Confidential Classification was furnished by hand delivery(*) and/or U. S. Mail to the following on this 29th day of November, 1995:

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