

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for rate) DOCKET NO. 950495-WS
increase and increase in service) ORDER NO. PSC-96-0396-CFO-WS
availability charges by Southern) ISSUED: March 20, 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 ON REQUEST FOR
CONFIDENTIAL CLASSIFICATION OF COMMISSION DOCUMENT NO. 12931-95

On November 30, 1995, Southern States Utilities, Inc., (SSU or utility) filed its Second Notice of Intent to Request Confidential Classification of Commission Staff's Interrogatories Nos. 114 and 115, served on October 30, 1995. On December 21, 1995, SSU filed its Third Request for Confidential Classification. No parties filed responses to SSU's request. This Order addresses SSU's request for confidential classification.

The documents at issue are Appendices 14-A, 14-C and 74-A contained in Commission Document No. 12931-95 (cross-reference Commission Document 12000-95). Appendix 14-A contains SSU's year-to-date accumulated acquisition related costs for 1995 through June 1995. Appendix 14-C contains the amounts of bonus compensation that officers of SSU and Topeka received for activities related to acquisitions and mergers in the years 1987 through 1995. Appendix 74-A contains the costs incurred by SSU for the years 1992 through 1995 associated with potential acquisitions.

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:

[I]nformation . . . 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 cause harm to the ratepayers

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. . . 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), Florida Statutes, provides further that proprietary business information includes, but is not limited to:

(a) Trade secrets.

* * *

- (d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the utility or its affiliates to contract for goods or services on favorable terms.
- (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 states that the information at issue is intended to be and is treated by SSU as proprietary and confidential; that the public disclosure of such information would impair the competitive business operations of SSU; and that this information has been disclosed only to the Commission staff pursuant to SSU's notice of intent to request confidential classification and to OPC pursuant to a motion for protective order, granted in Order No. PSC-95-1207-PCO-WS.

Potential Acquisitions

SSU contends that the information in Appendices 14-A and 74-A, if publicly disclosed, would benefit those competing with SSU for acquisitions, threatening SSU's acquisition pursuits by harming SSU's attempts to acquire acquisition candidates at the least cost and even causing acquisition costs to be lost in some instances. These effects of public disclosure, SSU contends, would also be a detriment to the interests of its ratepayers. Thus, SSU argues that this information must be classified as proprietary confidential business information pursuant to Sections 367.156(3)(a) and (e), Florida Statutes.

Pursuant to Sections 367.156(3)(a) and (e), Florida Statutes, SSU's request for confidential classification of Appendix 14-A in Commission Document No. 12931-95 is granted in its entirety. However, confidential classification of Appendix 74-A in Commission Document No. 12931-95 is granted only to the information contained therein relating to acquisition activity not yet consummated.

Acquisition-related Compensation

SSU contends that the information in Appendix 14-C relating to bonus compensation for acquisition and merger activities, if publicly disclosed, will be harmful to the utility's efforts to attract and retain competent employees, and that, in consequence, its ratepayers will be adversely impacted by higher rates. Recognizing that subpart (f) of Section 367.156(3), Florida Statutes, 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).

Other requests by SSU for confidential classification of employee compensation information in this Docket have been denied as not being the type of information intended to be protected by the Public Records Act. This request is similarly denied.

Pursuant to Rule 25-22.006(9), Florida Administrative Code, Commission Documents Nos. 12145-95 and 12146-95 shall be kept confidential until the time for filing a notice of appeal has expired. Upon the expiration of the time for filing a notice of appeal, if no notice is filed, the documents will no longer be afforded confidential treatment.


Based on the foregoing, it is

ORDERED by Commissioner Diane K. Kiesling, as Prehearing Officer, that Southern States Utilities, Inc.'s, Third Request for Confidential Classification is granted as to Appendices 14-A and 74-A of Commission Document No. 12931-95 and denied as to Appendix 14-C of the same document. It is further

ORDERED that Appendix 14-C of Commission Document No. 12931-95 shall be kept confidential until the time for filing an appeal of this Order has expired. If, upon expiration of the time for filing a notice of appeal, no notice is filed, Commission Document No. 12931-95 shall no longer be kept confidential.

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By ORDER of Commissioner Diane K. Kiesling, as Prehearing Officer, this 20th day of March, 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.