

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Office of Public) DOCKET NO. 900023-TL
Counsel regarding tariff filing by)
Southern Bell Telephone and Telegraph)
Company to adjust existing custom) ORDER NO. 22777
calling services within authorized)
rate bands.)
_____) ISSUED: 4-4-90

ORDER GRANTING PUBLIC COUNSEL'S MOTIONS
TO COMPEL SOUTHERN BELL TELEPHONE AND
TELEGRAPH COMPANY TO PRODUCE DOCUMENTS

On August 1, 1989, Southern Bell Telephone and Telegraph Company (Southern Bell) filed a tariff proposal to adjust existing custom calling services rates within their approved rate bands. Docket No. 891039-TL was established to process that tariff filing. On August 16, 1989, the Public Counsel filed a Request for Hearing and its First Request for Production of Documents. In its First Request for Production of Documents, Public Counsel requested that Southern Bell produce its commitment view and planning view of its earnings for 1989 and 1990, each document relating to the effect on its earnings of any rate increases it is planning for 1989 or 1990, and each document related to the price elasticity of demand for custom calling services. Southern Bell responded to Public Counsel's First Request for Production of Documents on September 20, 1989. In its Response, Southern Bell objected to providing the 1989 and 1990 commitment and planning views on the basis that these are irrelevant to this proceeding. Southern Bell also objected to providing information regarding contemplated rate increases on the same grounds. Southern Bell did produce two studies entitled "Custom Calling Services Residence Demand Study Users and Nonusers" and "Custom Calling Service Business Demand Study Users and Nonusers," although it objected to providing the confidential portions of those studies and to providing information in the studies related to states other than Florida. Southern Bell, therefore, removed the confidential information and information regarding states other than Florida from the studies and provided the balance of the requested information to Public Counsel.

On September 1, 1989, Public Counsel filed its Second Request for Production of Documents requesting that Southern Bell produce documents relating to its reasons for filing this tariff and documents relating to the effect of this tariff filing on Southern Bell's projected earnings, its commitment

DOCUMENT NUMBER-DATE

02969 APR -4 1990

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and planning views, its current best view and any updates, revisions or evaluations of any of its views. On October 6, 1989, Southern Bell filed its Response and Objections to Public Counsel's Second Request for Production of Documents stating that it would produce those items requested in Item No. 1, specifically those documents relating to its reasons for filing this tariff. However, Southern Bell stated that it would not produce documents responsive to Item No. 2 which involved the effect of this tariff filing on its projected earnings and its various commitment and planning views because, Southern Bell believes, these are irrelevant to this proceeding.

On October 10, 1989, Public Counsel filed a Motion to Compel production of the documents it had requested August 16, 1989. On October 11, 1989, Public Counsel filed another Motion to Compel regarding the documents it had requested September 1, 1989. On January 16, 1990, Public Counsel reiterated, for this Docket No. 900023-TL, the document requests it had made August 16, 1989, and September 1, 1989. On February 20, 1990, Southern Bell responded to these reiterated requests by reiterating its response filed September 20, 1989. On March 2, 1990, the Public Counsel filed, in this docket, a Motion to Compel production reiterating its previous Motions to Compel of October 10, 1989, and October 11, 1989. In its October 10, 1989, Motion to Compel and Request for In Camera Inspection of Documents, Public Counsel requested that this Commission perform an in camera inspection of the documents that Southern Bell has not yet produced on the basis of their irrelevance to this proceeding.

By Order No. 21912, issued September 19, 1989, we approved this tariff filing and stated that we would treat Public Counsel's Request for Hearing as a Complaint to be dealt with in a separate docket. This docket, Docket No. 900023-TL, was subsequently established for that purpose. In Order No. 21912, the Commission found the tariff filing to be appropriate, at least in part, based on Southern Bell's assertion of what it expected its earnings to be in 1989 and 1990.

Based upon my review of the pleadings that have been filed, an in camera inspection is not necessary to make the determination that the requested documents may lead to admissible evidence in this proceeding and, therefore, that they are relevant. Information regarding the 1989 and 1990 commitment and planning views, as well as information regarding

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other states, may very well shed light on the analysis Southern Bell did in its preparation of this tariff filing. Public Counsel's Complaint seems to be based on its view that the rate increases requested in this tariff filing are unreasonable and inappropriate because Southern Bell is and will be earning within its authorized return without such an increase. It is evident, then, that information regarding what Southern Bell earned in 1989 and what it plans to be earning in 1990 is relevant to this proceeding. The information Southern Bell deleted from the two demand studies it has produced in response to Public Counsel's First Request for Production of Documents is potentially relevant because it may reflect on the revenue and demand effect of rate increases Southern Bell has obtained in the other states in which it offers custom calling services. Therefore, Southern Bell shall produce all of the documents requested by Public Counsel in these Requests for Production within 20 days of the issuance of this Order. The request for specified confidential classification of certain portions of the information contained in the two demand studies, identified as Document No. 9484-89, will be addressed in another order.

Based on the foregoing, it is, therefore,

ORDERED by Commissioner John T. Herndon, as Prehearing Officer, that the Motions to Compel filed by the Office of Public Counsel on October 10, 1989, and October 11, 1989, regarding the Requests for Production filed August 16, 1989, and September 1, 1989, and subsequently reiterated January 16, 1990, are hereby granted. It is further

ORDERED that Southern Bell Telephone and Telegraph Company shall produce the documents requested within 20 days of the issuance of this Order.

Based on the foregoing, it is, therefore,

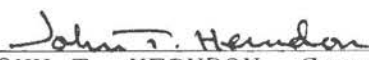
ORDERED by John T. Herndon, as Prehearing Officer, that Southern Bell Telephone and Telegraph Company shall produce within 20 days of the issuance of this Order the documents requested by the Office of Public Counsel in its Requests for Production of Documents dated August 16, 1989, September 1, 1989, and January 16, 1990. It is further

ORDERED that, by implication, the Motions to Compel filed

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by the Office of Public Counsel dated October 10, 1989, October 11, 1989, and March 2, 1990, are granted.

By ORDER of Commissioner John T. Herndon, as Prehearing Officer, this 4th day of APRIL, 1990.



JOHN T. HERNDON, Commissioner
and Prehearing Officer

(S E A L)

SFS

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 sewer 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.