

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Citizens of the State)	DOCKET NO. 890190-TL
of Florida to investigate SOUTHERN BELL)	
TELEPHONE AND TELEGRAPH COMPANY'S cost)	ORDER NO. 24429
allocation procedures)	
_____)	ISSUED: 4/25/91

ORDER DENYING REQUEST FOR CONFIDENTIAL TREATMENT
OF DOCUMENT NUMBER 2902-91

On March 22, 1991, Southern Bell Telephone and Telegraph Company (the Company) filed a Request for Confidential Classification and Motion for a Permanent Protective Order of Information Requested by the Audit Staff on March 1, 1991. The information in question has been assigned Document Number 2902-91 by this Commission. In its abbreviated Request, the Company asserts that the material at issue is entitled to confidential treatment because it "relates to auditing controls and reports of auditors and includes information consisting of, or which incorporates, materials from audits and/or work papers of auditors." The Request relies on Section 364.183, Florida Statutes, as interpreted by Commission Orders Nos. 22461 at 3, and 23634 at 5.

The Company then notes that "a portion of the . . . materials consist of the reports and work papers of Southern Bell's external auditors for which Southern Bell has, on February 19, 1990, previously requested confidential treatment." (emphasis added). The Company did not ask that the argument propounded in the unspecified February 19, 1990, Request be incorporated into its instant Request. However, we note that in a Request styled "Southern Bell Telephone and Telegraph Company's Motion for Protective Order and Its Response and Objection to Public Counsel's February 5, 1990 Request for Production of Documents," which was filed with this Commission on the date in question, the Company argues that the Coopers and Lybrand (C&L) 1988 attestation audit work papers for its Cost Allocation Manual for the FCC should be considered an internal audit within the meaning of Section 364.183, Florida Statutes. In that Request, it was the Company's position that simply hiring an outside auditor to perform an audit of internal Company operations, as opposed to having the same audit conducted by the Company's employees, should not turn an otherwise statutorily protected internal audit into an unprotected external audit.

On April 3, 1991, the Office of Public Counsel (OPC) filed its Opposition to Southern Bell's Request for Confidential Classification and Motion for a Permanent Protective Order.

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Therein, OPC argues that it is unclear, from the Company's description of the materials, to what extent, if any, the information at issue relates to internal auditing controls and reports of internal auditors. OPC notes that Section 364.183(3) (b) specifies only that internal auditing controls and reports of internal auditors are proprietary. Thus, OPC asserts that the Company's Request does not satisfy the requirements of Rule 25-22.006, Florida Administrative Code. Additionally, OPC notes that the Company has not attempted to demonstrate how disclosure of the material would harm the ratepayers or the Company's business operations. Thus, OPC concludes that the Company's Request should be denied in full.

There is a presumption in the law of the State of Florida that documents submitted to governmental agencies shall be public records. The only exceptions to this presumption are the specific statutory exemptions provided in the law and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. This presumption is based on the concept that government should operate in the "sunshine." In the instant matter, the value of the examination and utilization by all parties of the information contained in these documents must be weighed against the legitimate concerns of the Company regarding the disclosure of business information that it considers proprietary. It is this Commission's view that the burden to be met by one requesting specified confidential classification of documents submitted during a proceeding before us is very high.

There has been considerable debate at this Commission recently as to whether something can be similar enough to an internal audit to be treated as such under Section 364.183. While the Commission has never encountered such a circumstance, we have allowed that, in the abstract, such a circumstance is possible. Such a case cannot be made for the C&L materials at issue in this Request because the C&L audit is an external audit required by the FCC and done in preparation for the Company's Cost Allocation Manual certification for the FCC. As such, the associated work papers were created by an outside auditor for presentation to an outside entity, namely the FCC. Thus, it is difficult to rationally characterize the materials at issue as "internal."

We note that some latitude is afforded to internal audits in the confidentiality process. Requests for the confidentiality of

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internal audits need not go through the "winnowing process" as discussed in Order Number 22461 at 3, which was cited by the Company. However, that Order continues to warn that, "a finding that . . . materials do not constitute an internal audit will result in the documents being a public record." *id.* As there is clearly material in the C&S audit which is not an internal audit, it would be appropriate for this Commission to deny the Company's Request under the authority cited by the Company. A related issue is the Company's generalized request for confidential treatment of unspecified second generation documents based upon the inclusion of internal audit material in the documents. In such cases, the internal audit material must be specifically identified. The mere assertion that a document contains internal audit material is insufficient to support a claim of confidentiality for the entire document.

As noted above, OPC argues that the Company's Request should be denied in full for failure to comply with the strict requirements of Rule 25-22.006, Florida Administrative Code. Subsection (4) (a) of that Rule provides, in part, that "The utility . . . shall identify the page(s) and line(s) at which the confidential material is found and shall correlate the page(s) and line(s) identified with the specific justification proffered in support of the classification of such material" (emphasis added). The Company has not countered OPC's Motion. Upon review, we find OPC's position to be persuasive. We reject the entire pleading as inadequate under Rule 25-22.006(4) (a), and hold the material at issue to be not confidential.

The Company's position in its instant Request was impaired by the general inadequacy of its pleading. We note that the Company's assertion that the referenced Orders support the confidentiality of the materials at issue is totally undeveloped. Indeed, the Company has not developed any of its arguments. While we recognize that a certain amount of abbreviation of concepts is useful, the instant pleading has put our staff in the position of filling in the missing pieces of the Company's arguments and guessing what the Company's arguments might have been. The Company's Request does not differentiate which portions of the contested materials are internal audits and which are external audits that are, arguably, like internal audits. Upon review of the materials at issue, it appears that some could be entitled to protection under our Rules. Had the Company more adequately tied its arguments to the

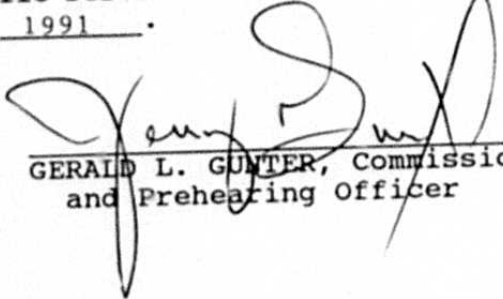
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materials, it might have been possible for us to grant this Request in part.

Based on the foregoing, it is

ORDERED by Commissioner Gerald L. Gunter, as Prehearing Officer, that the Company's Request for specified confidential treatment of Document No. 2902-91 is denied.

By ORDER of the Florida Public Service Commission, this 25th
 day of APRIL, 1991.



 GERALD L. GUNTER, Commissioner
 and Prehearing Officer

(S E A L)

CWM/ABG

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),

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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.