

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. 24602
allocation procedures)
_____) ISSUED: 5/30/91

ORDER GRANTING CONFIDENTIAL TREATMENT
OF DOCUMENT NUMBER 4164-91

On April 30, 1991, Southern Bell Telephone and Telegraph Company (Southern Bell or the Company) filed its Request for Confidential Classification and Motion for Permanent Protective Order of Information Requested by the Audit Staff on March 1, 1991. We have received no response from Public Counsel to this Request. The material at issue is this Commission Staff's draft audit as it pertains to an April 25, 1991, audit exit conference. On that date the Company filed a Notice of Intent to Request Specified Confidential Classification. Due to time constraints resulting from a, then imminent, hearing in this Docket, the Company requested confidential treatment for the Staff's draft audit and not for the audit workpapers attached to the audit. The Company intends to request the confidential treatment of certain information contained in the audit workpapers within the time frame permitted by Rule 25-22.006, Florida Administrative Code.

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 parties regarding the disclosure of business information that they consider 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.

Pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, it is the party's burden to show that any material submitted to this Commission is qualified for specified confidential classification. Rule 25-22.006 provides that the Company may fulfill its burden by demonstrating that the documents fall into one of the statutory examples set out in Section 364.183, Florida Statutes, or by demonstrating that the information is

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proprietary confidential information, the disclosure of which will cause the party or its ratepayers harm.

Southern Bell asserts that the material at page 31, lines 7, 8, 28 and 29, and page 32, lines 5, 6, 17 and 18 contained in the draft audit should be held confidential. The Company argues that, pursuant to Section 364.183, Florida Statutes, information derived from internal audits is entitled to confidential treatment. The Company asserts that the external audits are like internal audits and are entitled to protection under that Statute's provisions for protection of internal audits. The Company notes that, in Order No. 19778, at p.2, issued in Docket No. 880069-TL, the Prehearing Officer held that staff audit notes which were derived from a Coopers and Lybrand external audit workpaper were afforded confidential treatment. Finally, the Company argues that, in the instant case, the Coopers and Lybrand material was derived from internal audits and thus, the specified lines are entitled to protection based upon the material containing information derived from internal audits.

After a review of the material and the Company's arguments, we reject the Company's argument that the Coopers and Lybrand external audit material is entitled to protection based upon its similarity to an internal audit. Upon review of Order No. 19778, which was referenced by the Company, we note that the decision to grant confidential treatment was based upon the general proprietary nature of the material under Section 364.183, Florida Statutes, and because the documents dealt with deregulated inside wire accounts. The referenced Order did allow that protection of material, which is otherwise entitled to confidential treatment, may flow through an external audit to our staff's notes. Beyond that, the Order has little precedential value as it was based upon the content of the specific external audit material, and because it does not specify under which subsection of the referenced statute the material qualifies as confidential. id. We accept the argument that all of the specifically enumerated material is derived from internal audit information directly, or through Coopers and Lybrand's review of internal audit materials.

While second, and in this case third, generation internal audit material may be entitled to protection, it must be specifically identified in the Company's pleading. Bulk requests for confidential treatment of derivative documents will be denied absent a line by line justification which allows this Commission


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to meaningfully differentiate among claimed material based upon the arguments propounded by the Company. The material at issue in this case has been identified by the Company on a line by line basis.

Therefore, based upon the foregoing, it is

ORDERED by Commissioner Gerald L. Gunter, as Prehearing Officer, that Southern Bell Telephone and Telegraph Company's Request for the confidential treatment of specifically enumerated portions of Document No. 4164-91 is Granted in full.

By ORDER of Commissioner Gerald L. Gunter, as Prehearing Officer, this 30th day of MAY, 1991.



GERALD L. GUNTER, Commissioner
and Prehearing Officer

(S E A L)

CWM

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)

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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.