

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition on behalf of Citizens)	DOCKET NO. 910163-TL
of the State of Florida to initiate)	
investigation into integrity of SOUTHERN)	ORDER NO. 25483
BELL TELEPHONE AND TELEPHONE COMPANY'S)	
repair service activities and reports.)	ISSUED: 12/17/91
)	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 SUSAN F. CLARK
 J. TERRY DEASON
 BETTY EASLEY
 MICHAEL MCK. WILSON

FINAL ORDER DENYING SOUTHERN BELL
 TELEPHONE AND TELEGRAPH COMPANY'S
 MOTION FOR RECONSIDERATION OF ORDER
 NO. 25054 AND FOR ORAL ARGUMENT

BY THE COMMISSION:

Order No. 25054, issued by the prehearing officer on September 23, 1991, granted Public Counsel's Motions to Compel Southern Bell to respond to Items Nos. 1 through 21 of Public Counsel's Third Set of Interrogatories and Items Nos. 1 and 2 of its Fifth Set of Interrogatories. Southern Bell filed a Motion for Reconsideration of this Order and Request for Oral Argument on September 23, 1991, to which Public Counsel filed an Opposition on September 30, 1991. Southern Bell subsequently filed a Reply to Public Counsel's Opposition on October 11, 1991.

The first matter to be determined is whether Southern Bell's Motion for Oral Argument should be granted. We find that oral argument will not assist us in our decision on this matter. The pleadings filed by the parties are fully adequate. Therefore, we deny Southern Bell's Motion for Oral Argument on its Motion for Reconsideration of Order No. 25054.

The second matter for our decision is the standard which this Commission will apply to Southern Bell's Motion for Reconsideration of Order No. 25054. The Company argues that Rule 25-22.038(2), Florida Administrative Code, provides for full Commission review of a prehearing officer's discovery order. Southern Bell argues that

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a different standard applies to full Commission review of a prehearing officer's discovery order than applies to full Commission reconsideration of a full Commission order. The Company asserts that Rule 25-22.060, Florida Administrative Code, applies to full Commission reconsideration of a full Commission order. Therefore, the Company states it is entitled to a "de novo" review of the prehearing officer's order.

The standard argued for by Southern Bell is inappropriate because it impinges on the prehearing officer's authority to resolve discovery disputes and to dispose of the procedural matters involved in any particular docket. Therefore, we find that the appropriate standard to be applied is the legal standard for a motion for reconsideration. The Company must establish, therefore, that the prehearing officer made an error in fact or law in his decision that requires that the full Commission reconsider his decision. Diamond Cab Co. of Miami v. King, 146 So.2d 889 (Fla. 1962); Pingree v. Quaintence, 394 So.2d 161 (Fla. 1st DCA 1981). This standard has not been met in Southern Bell's Motion for Reconsideration of Order No. 25054.

The third matter to be determined is the substantive question of whether the Commission should reconsider the prehearing officer's Order No. 25054, of whether the Company has established that the prehearing officer has, indeed, made an error in fact or law. Southern Bell states:

[Order No. 25054] contains no rationale for its holding that the mental processes of counsel for Southern Bell in evaluating the privileged statements are not attorney work product. The Order ignores the differences between the interrogatories propounded by Public Counsel to which Southern Bell objects and the holding of Surf Drugs that a party may request the identities of persons having relevant information. 236 So.2d 113.

This is simply not the case. Order No. 25054 discusses the significance of the holding in Surf Drugs, Inc. v. Vermette, 236 So.2d 108 (Fla. 1970) and the arguments presented by Public Counsel and Southern Bell and then goes on to grant the Public Counsel's Motions to Compel. That, in and of itself, provides a rationale for the Company.

Southern Bell argues that the interrogatories propounded by Public Counsel are not permitted by Surf Drugs because they ask for

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the Company's attorneys' "mental processes" in evaluating the statements provided by the employees that have been interviewed during the Company's investigation. The Company is more than willing to provide Public Counsel a list of persons having some knowledge of general topics, but not the list of persons that have indicated knowledge that is relevant to this investigation.

The prehearing officer's holding indicates that, in his opinion, the limited "mental processes" involved in Southern Bell's attorneys' identification of persons having certain general types of knowledge do not constitute attorney work product. We agree and find that the interrogatories propounded by Public Counsel to Southern Bell are completely within the scope of the Surf Drugs' holding. This was the holding of the prehearing officer in Order No. 25054 and, therefore, because the Company has not established that Order No. 25054 contains any error in fact or law, this Commission will not reconsider that Order.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Southern Bell Telephone and Telegraph Company's Motion for Reconsideration of Order No. 25054 is hereby denied. It is further

ORDERED that Southern Bell Telephone and Telegraph Company's Motion for Oral Argument on its Motion for Reconsideration is hereby denied.

By ORDER of the Florida Public Service Commission, this 17th day of DECEMBER, 1991.



STEVE TRIBBLE, Director
Division of Records and Reporting

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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.