

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for rate)
increase in Brevard, Charlotte/)
Lee, Citrus, Clay, Duval,)
Highlands, Lake, Marion,)
Martin, Nassau, Orange,)
Osceola, Pasco, Putnam,)
Seminole, Volusia, and)
Washington Counties by SOUTHERN)
STATES UTILITIES, INC.; Collier)
County by MARCO SHORES)
UTILITIES (Deltona); Hernando)
County by SPRING HILL UTILITIES)
(Deltona); and Volusia County)
by DELTONA LAKES UTILITIES)
(Deltona))

DOCKET NO. 920199-WS
ORDER NO. PSC-92-1073-CFO-WS
ISSUED: 09/28/92

ORDER DENYING REQUEST FOR CONFIDENTIAL TREATMENT OF DOCUMENTS
NOS. 10000-92, 10003-92, 10001-92, 10002-92, 10004-92, 10005-92,
AND 10006-92 AND GRANTING REQUEST FOR CONFIDENTIAL TREATMENT FOR
ANY TAX RETURNS AND RELATED CORRESPONDENCE PROVIDED IN RESPONSE
TO PUBLIC COUNSEL'S DOCUMENT REQUESTS NOS. 29 AND 30

On August 7, 1992, Southern States Utilities, Inc., and Deltona Utilities, Inc., (collectively referred to as SSU or the utility) filed a Motion for Temporary Protective Order For Confidential Information. On August 13, 1992, SSU amended that motion and filed a Notice of Intent to Request Confidential Classification. SSU's motion for temporary protective order was not ruled on by this Commission. On September 2, 1992, SSU filed its Request for Confidential Classification and Motion for Protective Order. No parties filed responses to either of SSU's motions. This Order disposes of SSU's claims to confidentiality.

SSU requests confidential treatment for documents and information produced in response to the following portions of Office of Public Counsel (OPC) discovery requests:

OPC's First Set of Interrogatories

(6) e. Identify which, if any, officers of the company received any remuneration for activity related to acquisitions and mergers, and if so, the dollar amount.

(42) Please provide the following information for the test year and two preceding years:

a. a list of the company's officers and their salaries.

DOCUMENT NUMBER-DATE

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b. a list of salaries for administrative and general.

(132) Public Relations:

a. Provide the name and title of all management employees (including those employed by subsidiaries or affiliates, including parent companies) who engage in public relations on behalf of the company.

b. State the salary and associated benefits amounts for each employee listed in response to (a) for the year 1991.

OPC's Third Set of Interrogatories

(206) j. Please explain the Company's rationale for making the adjustment "Add Allocation of Labor Adjustment Due to Sale of Deltona Gas" [from MFR Schedule B-1].

k. Please provide any workpapers and calculations used to develop this adjustment.

OPC's First Set of Requests for Production of Documents

(28) Provide a copy of each bonus and incentive compensation plan in use at the Company and the annual cost to the Company under each such plan for the years 1989, 1990 and 1991 and state the annual budgeted cost expected to be incurred by the Company under each such bonus or incentive plan for the current year and the next three years.

(29) Provide a complete copy of any and all revenue rulings, private letter rulings, tax regulations, court decisions, and IRS correspondence which the company has received since 1/1/89.

(30) Provide a copy of all Federal and state income tax returns for the years 1988, 1989, 1990 and 1991, including a complete copy of any and all consolidating schedules, workpapers and Schedule M.

(41) Taxes, other than income taxes. Provide full supporting documentation, workpapers and correspondence associated with any and all taxes other than income taxes paid in the years 1989, 1990 and 1991. Also provide full

supporting documentation, workpapers and correspondence associated with any refunds of taxes other than income taxes received in the past two years. Indicate which accounts were affected and the associated dollar amounts. Also describe how the Company intends to treat this item for rate case purposes.

(53) Provide workpapers and salary listings supporting the FICA wage base used by the Company to compute FICA expense for 1989, 1990 and 1991.

In response to the above discovery requests, SSU provided to OPC and filed with the Commission the following written materials for which it requests confidential treatment: Appendix 6-A to Interrogatory No. 6; the response to Interrogatory No. 42 and Appendices 42-A and 42-B; the response to Interrogatory No. 132 and Appendix 132-A; Appendix 206-C to Interrogatory No. 206; the response to Document Request No. 28 and Appendices 28-A and 28-B; the response to Document Request No. 41 and Appendices 41-A through 41-J; and the response to Document Request No. 53 and Appendices 53-A through 53-C. SSU indicated in its Motion for Temporary Protective Order For Confidential Information that it provided OPC access to the tax information solicited in Document Requests Nos. 29 and 30, but it makes no specific mention in any of its pleadings that OPC made copies of any of the pertinent documents.

Florida law provides, in Section 119.01, Florida Statutes, that documents submitted to governmental agencies shall be public records. The only exceptions to this law are specific statutory exemptions, and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. This law derives from the concept that government should operate in the "sunshine." In the instant matter, the value that all parties would receive by examining and utilizing the information contained in the subject documents must be weighed against the legitimate concerns of SSU regarding disclosure of business information which it considers proprietary.

Pursuant to Section 367.156, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, SSU has the burden to show that the material submitted qualifies for confidential classification. SSU's claims to confidentiality can be divided into three categories: officers and employee compensation, income taxes, and property taxes.

With regard to the officers and employee compensation information provided in Appendix 6-A to Interrogatory No. 6, the

response to Interrogatory No. 42 and Appendices 42-A and 42-B, the response to Interrogatory No. 132 and Appendix 132-A, Appendix 206-C to Interrogatory No. 206, the response to Document Request No. 28 and Appendices 28-A and 28-B, and the response to Document Request No. 53 and Appendices 53-A through 53-C*, the utility asserts that under Section 367.156(3), Florida Statutes, "proprietary confidential business information" includes "trade secrets." SSU then quotes from Section 688.002(4), Florida Statutes, which states that trade secrets include information that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

In its motion, SSU argues, that the salary and benefits requested by OPC is a "trade secret" as defined by statute. SSU continues,

The information also relates to Southern States' competitive interests such that the public disclosure of such information would cause harm to Southern States' business operations and competitive interests. The water and wastewater industry is a highly competitive industry. Water and wastewater utilities compete for qualified and experienced personnel. Maintaining quality employees at reasonable and justified salary levels is a key ingredient to the provision of quality service at reasonable rates. The salary and benefits information and documents requested by Public Counsel clearly relates to Southern States' competitive interests and the public disclosure of such information may ultimately serve to adversely impact Southern States' ability to retain qualified employees at reasonable salary levels.

*SSU's motion does not specify whether it seeks confidential treatment for the FICA expenses and wage base information in its response to Document Request No. 53 and Appendices 53-A through 53-C because the information pertains to taxes or to compensation. As FICA expenses are not "taxes," I have considered the information as falling within the compensation category.

The utility's request for confidential status of the above information concerning officers and employee compensation is denied. Section 367.156(3), Florida Statutes, states,

Proprietary confidential business information means information . . . which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations Proprietary business information includes, but is not limited to: . . . (f) Employee personnel information **unrelated** to compensation, duties, qualifications, or responsibilities." (Emphasis supplied.)

Even assuming the quoted language does not exclude employee compensation from being considered confidential--an assumption which I find difficult to overcome and which the utility does not even attempt to gainsay--I do not find the utility's arguments persuasive, and I do not find that the subject information is a trade secret. The confidentiality provision of the statute is designed to protect against a competitor's obtaining, through the public disclosure of information, an unfair advantage in a competitive market for goods or services. This is not the sort of competitive interest which SSU seeks to protect. Besides, SSU has offered nothing persuasive to convince me that disclosure of the subject information would have the effect which the utility fears. Finally, SSU cites no judicial or administrative precedent which supports its view, and it cites no prior decision of this Commission where it was held that employee compensation of a rate base regulated utility was found to be confidential.

It appears SSU's arguments supporting confidential treatment for tax information extends to income tax and property tax information equally. In its motion, SSU states

The various items of tax information and documents requested by Public Counsel also constitute proprietary confidential business information as defined by Section 367.156(3), Florida Statutes, as previously recognized by the Commission on a number of occasions. See, e.g., Docket No. 900239-WS, Order No. 23838 issued December 7, 1990.

In its response to Document Request No. 29, SSU stated that it had not received any revenue rulings, private letter rulings, tax

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regulations, or court decisions as OPC requested. It also stated that any correspondence with the Internal Revenue Service (IRS) is confidential "as it is part of the return filing and audit process." The response then offers OPC access to its state and federal income tax returns and any related correspondence.

I agree that income tax returns are appropriate for confidential treatment. Federal income tax returns are generally kept confidential by the IRS, 26 U.S.C. Section 6103(a), and the same is true with state income tax returns and the Florida Department of Revenue, Section 213.053(2), Florida Statutes. This Commission has traditionally afforded a utility's income tax returns the same confidential treatment. I also agree that any related correspondence should also be treated as confidential.

However, the utility offers no support for its claim that property tax information and property tax returns should be afforded similar treatment, and I do not believe that Florida Counties and other taxing districts keep such information confidential.

Based on the foregoing, I find it appropriate, pursuant to this Commission's authority under Section 367.156, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, to grant in part and deny in part SSU's Request for Confidential Classification and Motion for Protective Order, as set forth above.

The confidential information discussed in the body of this Order shall be classified as proprietary confidential business information for a period not longer than 18 months, as is specified in Section 367.156(4), Florida Statutes, and in Rule 25-22.006(8), Florida Administrative Code. The confidential information shall be returned according to the procedures found in Rule 25-22.006, Florida Administrative Code, and in Section 367.156, Florida Statutes.

It is, therefore,

ORDERED by Commissioner Betty Easley, as Prehearing Officer, that the Request for Confidential Classification and Motion for Protective Order filed by Southern States Utilities, Inc., and Deltona Utilities, Inc., is hereby granted in part and denied in part, as set forth above. It is further

ORDERED that any tax returns and related correspondence received by the Office of Public Counsel or by the Commission from Southern States Utilities, Inc., and Deltona Utilities, Inc., in

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response to Public Counsel's Document Requests Nos. 29 and 30 shall be treated as proprietary confidential business information within the meaning of Section 367.156, Florida Statutes, and protected from public disclosure as required therein. It is further

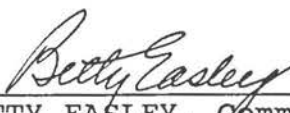
ORDERED that the following are not proprietary confidential information pursuant to Section 367.156, Florida Statutes, and Rule 25-22.006, Florida Administrative Code: Appendix 6-A to Interrogatory No. 6, filed as Document No. 10000-92; the response to Interrogatory No. 42 and Appendices 42-A and 42-B, filed as Document No. 10003-92; the response to Interrogatory No. 132 and Appendix 132-A, filed as Document No. 10001-92; Appendix 206-C to Interrogatory No. 206, filed as Document No. 10002-92; the response to Document Request No. 28 and Appendices 28-A and 28-B, filed as Document No. 10004-92; the response to Document Request No. 41 and Appendices 41-A through 41-J, filed as Document No. 10005-92; and the response to Document Request No. 53 and Appendices 53-A through 53-C, filed as Document No. 10006-92. It is further

ORDERED that the confidential information discussed in the body of this Order shall be classified as proprietary confidential business information for a period not longer than 18 months, as is specified in Section 367.156(4), Florida Statutes, and in Rule 25-22.006(8), Florida Administrative Code, and the confidential information shall be returned according to the procedures found in Rule 25-22.006, Florida Administrative Code, and in Section 367.156, Florida Statutes. It is further

ORDERED that stringent measures shall be taken to preserve the confidentiality of the documents protected by this Order. No disclosure of the documents protected by this Order shall be made or permitted. It is further

ORDERED that this Order will be the only notification by the Commission to the parties concerning the expiration of the confidentiality time period.

By ORDER of Commissioner Betty Easley, as Prehearing Officer,
this 29th day of September, 1992.



BETTY EASLEY, Commissioner
and Prehearing Officer

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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.