

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: PETITION ON BEHALF OF) DOCKET NO. 910163-TL
CITIZENS OF THE STATE OF FLORIDA)
TO INITIATE INVESTIGATION INTO)
THE INTEGRITY OF SOUTHERN BELL)
TELEPHONE AND TELEGRAPH)
COMPANY'S REPAIR SERVICE)
ACTIVITIES AND REPORTS)
_____)
In Re: COMPREHENSIVE REVIEW OF) DOCKET NO. 920260-TL
THE REVENUE REQUIREMENTS AND) ORDER NO. PSC-94-1290-FOF-TL
RATE STABILIZATION PLAN OF) ISSUED: October 17, 1994
SOUTHERN BELL TELEPHONE AND)
TELEGRAPH COMPANY)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

**ORDER DENYING SOUTHERN BELL TELEPHONE AND TELEGRAPH
COMPANY'S MOTION FOR REVIEW**

BY THE COMMISSION:

BACKGROUND

Order No. PSC-93-0977-PCO-TL (Order) issued by the Prehearing Officer on June 30, 1993, in the above-consolidated dockets, granted Public Counsel's Fifteenth Motion To Compel and Request for In-Camera Inspection of documents.

On July 12, 1993, Southern Bell filed a Motion For Review of that Order.

The documents at issue in the aforementioned pleadings respond to request Nos. 1, 2, and 5 of Public Counsel's Thirty-Sixth Request for Production.

- A. Notes made during preparation for administering discipline by Dave Mower.
- B. Network Operational Review re-audit - January 1993.
- C. Customer Adjustment to MOOSA re-audit - January 1993.
- D. Notes made concerning discipline appeals of employees by Charles Cuthbertson.

DOCUMENT NUMBER-DATE

10564 OCT 17 1994

FPSC-RECORDS/REPORTING

Staff's outstanding requests for production are also inclusive of these. Attachment I.

DISCUSSION

Ordinarily, the appropriate standard to be applied is the legal standard for a Motion For Reconsideration. Order No. 25483 (December 7, 1991). In the usual case, Southern Bell would have to establish that the Prehearing Officer made an error of fact or law in her decision. Diamond Cab Co. of Miami v. King, 146 So. 2d 889 (Fla. 1962); Pingree v. Quaintence, 394 So. 2d 16 (Fla. 1st DCA 1981).

However, during the pendency of Southern Bell's Motion For Review of the Order in question, the Florida Supreme Court published its opinion in Southern Bell Telephone and Telegraph Company v. J. Terry Deason, et al., 632 So. 2d 1377 (Fla. 1994) (Southern Bell).

In addressing Case Nos. 81,487 and 81,716, the Court's opinion in Southern Bell authoritatively addressed the issues raised by Southern Bell's Motion For Review and Public Counsel's response with respect to the discovery status of both internal audits and worknotes on employee discipline in the context of Southern Bell's internal investigation. Southern Bell's Motion For Review in turn establishes that the re-audits and worknotes in question were part of the same internal investigation addressed by the Court:

These documents were created as part of an internal investigation that Southern Bell's attorneys conducted in order to render legal opinions to the company on matters at issue in Dockets Nos. 910163-TL and 910727-TL.

Motion for Review, page 2¹. Therefore, we apply the Florida Supreme Court's holdings to these categories of documents as set out in the Southern Bell opinion. To the extent the Order required results identical to the Court's opinion in Southern Bell, the Motion For Review is moot.

I. NETWORK OPERATIONAL REVIEW AND MOOSA RE-AUDITS.

In Southern Bell, 632 So. 2d at 1385, the Court directed Southern Bell to "produce the five internal audits", including the Network Operational Review and MOOSA Audits. Since the Court held such documents to be discoverable, the result is consistent with denial of the Motion For Review of the Order, because that Order also held that these updated internal audits were discoverable.

II. CUTHBERTSON AND MOWER WORKNOTES ON EMPLOYEE DISCIPLINE.

An analogous, but somewhat more complicated question is raised by the worknotes on employee discipline. The question posed is whether the reasoning of Case No. 81,487 or Case No. 81,716 of the Southern Bell opinion is the applicable holding. If Case No. 81,487 applies, the worknotes would be discoverable and the Motion For Review should be denied. If Case No. 81,716 applies, the worknotes would be privileged, and Southern Bell's Motion For Review should be granted.

The Southern Bell opinion indicates that the discovery status of disciplinary notes by management personnel depends on the status of the employee statement from which they derive. As set out in Order No. PSC-94-0672-PCO-TL, p. 4-7, the employee statements have been determined to be neither privileged nor immune, based on the application of the Southern Bell opinion. Accordingly, it is clear that Case No. 81,487 applies and the worknotes are neither privileged nor immune from discovery.²

Therefore, the Motion For Review is denied, since the Order for which review is sought also concluded that the worknotes were discoverable.

In view of the above it is

ORDERED by the Florida Public Service Commission that Southern Bell Telephone and Telegraph Company's Motion for Review of Order No. PSC-93-0977-PCO-TL is denied. It is further

ORDERED that Dockets Nos. 910163-TL and 920260-TL are to remain open. It is further

ORDERED that the effect of this Order is stayed pending appeal, if an appeal is taken.

BY ORDER of the Florida Public Service Commission, this 17th day of October, 1994.

BLANCA BAYÓ, Director
Division of Records and Reporting

by: Kay J. [Signature]
Chief, Bureau of Records

ORDER NO. PSC-94-1290-FOF-TL
DOCKETS NOS. 910163-TL & 920260-TL
PAGE 4

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 the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.

RCB

OR910163.MRD

ATTACHMENT

**LIST OF ITEMS REQUESTED BY COMMISSION STAFF
FOR REPAIR INVESTIGATION**

1. Staff's 1st POD Item 2 - SBT Internal Investigation
 2. Staff's 2nd POD Item 6 - SBT Internal Investigation
 3. Staff's 15th POD Item 2 - MOOSA Audit
 4. Staff's 16th POD - All Documents related to disciplinary actions
 5. Staff's 17th POD Items 7, 8, 9, and 28 - KSRI, LMOS, Schedule 11 Audits
 6. Staff's 17th POD Item 21 - Provide all reviews
 7. Staff's 22nd POD Item 1 - All Employee Statements
 8. Staff's 23rd POD Item 2 - 1991 Operation Review Audit mentioned by Shirley Johnson
 9. Staff's 23rd POD Items 4 and 5 - Notes for Ward and Geer's responsibilities for disciplining individual employees
 10. Staff's 25th POD Item 1 - Report on completed audits
1. Docket No. 910727-TL, now closed, was consolidated with current Dockets 920260-TL and 910163-TL.
 2. Discovery of such documents is, however, subject to redaction by Southern Bell of counsel's notes, thoughts and impressions. The redaction process is that which is set out at p. 7 of Order No. PSC-94-0672-PCO-TL.