

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for rate) DOCKET NO. 950495-WS
increase and increase in service) ORDER NO. PSC-96-0407-CFO-WS
availability charges by Southern) ISSUED: March 21, 1996
States Utilities, Inc. for)
Orange-Osceola Utilities, Inc.)
in Osceola County, and in)
Bradford, Brevard, Charlotte,)
Citrus, Clay, Collier, Duval,)
Highlands, Lake, Lee, Marion,)
Martin, Nassau, Orange, Osceola,)
Pasco, Putnam, Seminole, St.)
Johns, St. Lucie, Volusia, and)
Washington Counties.)

ORDER DENYING CONFIDENTIAL CLASSIFICATION OF
COMMISSION DOCUMENTS NOS. 12145-95 and 12146-95

On December 5, 1995, Southern States Utilities, Inc., (SSU or utility) filed its Fourth Notice of Intent to Request Confidential Classification and on January 2, 1996, SSU filed its Fifth Request for Confidential Classification of Commission Documents Nos. 12145-95 and 12146-95 (cross-reference Commission Document No. 00042-96). On January 5, 1996, the Office of Public Counsel (OPC) filed its Opposition to SSU's Fifth Request for Confidential Classification. This Order addresses SSU's Request for Confidential Classification.

SSU's Request for Confidential Classification was filed twenty eight days after the filing of its Notice of Intent to Request Confidential Classification. Rule 25-22.006 (3)(a), Florida Administrative Code, requires a request for confidential classification be filed within twenty one days of the filing of a notice of intent to request confidential classification. SSU states that the late filing of its request was the result of an inadvertent clerical error and should be excused. I agree. Accordingly, I find that SSU's untimely filing of its request for confidential classification does not constitute a waiver of confidentiality of the subject documents.

The first document in issue, Commission Document No. 12145-95, which was provided in response to Staff Document Request No. 29, consists of SSU's incentive compensation plans for the years 1992, 1993, 1994, and budgeted for the year 1995. The second document in issue, Commission Document No. 12146-95, which was provided in response to Staff Interrogatory No. 117, consists of the annual salary and benefit information for employees of Topeka Group, Inc., for the years 1993 through 1995.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

Section 367.156(2), Florida Statutes, provides that proprietary confidential business information shall be exempt from disclosure under Section 119.07(1), Florida Statutes. Section 367.156(3), Florida Statutes, provides that proprietary confidential business information is:

[I]nformation . . . which is owned or controlled by the . . . company, is intended to be and is treated by . . . the company as private in that the disclosure of the information would cause harm to the ratepayers . . . or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public.

Section 367.156(3), Florida Statutes, provides further that proprietary business information includes, but is not limited to:

- (e) Information relating to competitive interests, the disclosure of which would impair the competitive businesses of the provider of the information.
- (f) Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities.

SSU contends that the salary and benefit expense information for Topeka employees and the SSU employee incentive compensation plan information contained in Commission Documents Nos. 12145-95 and 12146-95 are confidential as proprietary confidential business information pursuant to Section 367.156(3)(e), Florida Statutes. Recognizing that subpart (f) does not serve to protect employee compensation information, SSU asserts that the Commission nevertheless possesses the authority to determine in its discretion that subpart (e) serves to protect the information in question from public disclosure. *Florida Public Service Commission v. Bryson*, 569 So.2d 1253 (Fla. 1990).

OPC argues that SSU seeks an exception to Section 119.07, Florida Statutes, and that any such exception must be narrowly construed. *Southern Bell Telephone and Telegraph Co. v. Beard*, 597 So.2d 873 (Fla. 1st DCA 1992). OPC further argues that SSU has failed to establish a basis for confidential classification of the information provided.

ORDER NO. PSC-96-0407-CFO-WS
DOCKET NO. 950495-WS
PAGE 3

In Order No. PSC-92-1073-CFO-WS, issued September 28, 1992, in Docket No. 920199-WS, the Prehearing Officer denied SSU's request for confidential status of information concerning officers' and other employees' compensation. The utility had argued that the information sought was a "trade secret," and that disclosure would cause harm to its business operations and competitive interests by adversely impacting its ability to retain qualified employees at reasonable salary levels. The Prehearing Officer said:

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.

Order at 5. Furthermore, Section 367.156(3)(e), Florida Statutes, cannot be invoked to protect from disclosure the employee compensation information at issue in view of the compelling clarity of the language of subpart (f). SSU's reliance on *Bryson, supra*, to this end is misplaced. Accordingly, SSU's request for confidential classification of employee compensation information in Commission Documents Nos. 12145-95 and 12146-95 is denied. See also, Order No. PSC-96-0113-CFO-WS, issued January 19, 1996 (confidential classification of employee compensation information denied in this Docket).

Pursuant to Rule 25-22.006(9), Florida Administrative Code, Commission Documents Nos. 12145-95 and 12146-95 shall be kept confidential until the time for filing a notice of appeal has expired. Upon the expiration of the time for filing a notice of appeal, if no notice is filed, the documents will no longer be afforded confidential treatment.

Based on the foregoing, it is

ORDERED by Commissioner Diane K. Kiesling, as Prehearing Officer, that Southern States Utilities, Inc.'s, Fifth Request for Confidential Classification is denied. It is further

ORDERED that Commission Documents Nos. 12145-95 and 12146-95 shall be kept confidential until the time for filing a notice of appeal of this Order has expired. If, upon expiration of the time for filing a notice of appeal, no notice is filed, Commission Documents Nos. 12145-95 and 12146-95 shall no longer be kept confidential.

ORDER NO. PSC-96-0407-CFO-WS
DOCKET NO. 950495-WS
PAGE 4

By ORDER of Commissioner Diane K. Kiesling, as Prehearing
Officer, this 21st day of March, 1996.



DIANE K. KIESLING, Commissioner and
Prehearing Officer



(S E A L)
CJP

ORDER NO. PSC-96-0407-CFO-WS
DOCKET NO. 950495-WS
PAGE 5

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.