

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the	)	DOCKET NO. 910163-TL
Integrity of Southern Bell's	)	ORDER NO. 25054
Repair Service Activities and	)	ISSUED: 9/12/91
Reports	)	
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ORDER GRANTING PUBLIC COUNSEL'S MOTIONS TO COMPEL  
ANSWERS TO INTERROGATORIES

By Motion to Compel filed July 11, 1991, the Public Counsel has requested that we compel Southern Bell Telephone and Telegraph Company (Southern Bell or the Company) to fully answer Interrogatories Nos. 1 through 21 of Public Counsel's Third Set of Interrogatories dated June 6, 1991. Southern Bell filed an Opposition to Public Counsel's Motion to Compel on July 18, 1991. Subsequently, on July 18, 1991, Public Counsel filed a second Motion to Compel Southern Bell to fully answer Interrogatories Nos. 1 and 2 of the Citizens' Fifth Set of Interrogatories dated June 11, 1991. On July 30, 1991, Southern Bell filed its second Opposition to Public Counsel's Motion to Compel.

These Motions to Compel filed by Public Counsel are related to each other. The first Motion to Compel requests the Commission to compel the Company to fully answer interrogatories dated June 6, 1991. The second Motion to Compel requests the Commission to compel the Company to fully answer two interrogatories dated June 11, 1991. The June 11, 1991, interrogatories request information about each person the Company was asked to identify in the June 6, 1991, interrogatories. The Company's objections to responding to the later interrogatories simply refer back to the objections it had filed earlier to the Public Counsel's Third Set of Interrogatories dated June 6, 1991. Therefore, we find it appropriate to deal with both Motions to Compel here.

Interrogatories Nos. 1 through 10 of the Public Counsel's Third Set of Interrogatories dated June 6, 1991, ask the Company to identify names, addresses and phone numbers of persons having knowledge regarding specific types of incidents such as the falsification of completion times on repair service forms, reports or records. Public Counsel's Interrogatory No. 11 asks the Company to identify documents discussing, describing, implementing or evaluating any of the ten specific incidents listed in Interrogatories Nos. 1 through 10.

Interrogatories Nos. 12 through 21 ask the Company to provide the names, addresses and phone numbers of customers affected by

DOCUMENT NUMBER-DATE

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each of the ten types of incidents cited in Interrogatories Nos. 1 through 10. As noted above, Interrogatories Nos. 1 and 2 of the Public Counsel's Fifth Set of Interrogatories dated June 11, 1991, ask the Company to give specific information about each of the persons to be identified in response to the June 6, 1991, Interrogatories.

Southern Bell filed its Response and Objections to the Interrogatories dated June 6, 1991, on July 8, 1991. To each of the first ten interrogatories, the Company objected on the following grounds:

- a) That the Company is conducting an internal investigation that is not yet complete;
- b) That the information requested is privileged; and
- c) That the interrogatories are not within the parameters of proper discovery because they require the Company to evaluate the statements of persons interviewed in the Company's internal investigation.

As Public Counsel's Motion to Compel notes, the Company did provide ". . . an incomplete list of documents providing some names of some persons having some knowledge of the specific types of incidents."

Southern Bell objected to Public Counsel's Interrogatory No. 11 on the grounds that it was too burdensome and that, to the extent that the information related to its internal investigation, it is privileged as attorney work product. Southern Bell objected to answering Interrogatories Nos. 12 through 21 on the basis, again, that the information is privileged because it is attorney work product.

In its Motion to Compel, Public Counsel argues that the Company has no right to refuse to respond to these interrogatories on the basis of attorney work product privilege. Public Counsel cites Surf Drugs, Inc. v. Vermette, 236 So.2d 108 (Fla. 1970), as support for the appropriateness of its interrogatories. On the other hand, Southern Bell cites Surf Drugs to support its right to object to these interrogatories. The Company points out that the definition of attorney work product set out in that case is as follows:

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Personal views of the attorney as to how and when to present evidence, his evaluation of its relative importance, his knowledge of which witness will give certain testimony, [and] personal notes and records as to witnesses. . . .

Southern Bell asserts that the information requested by Public Counsel will require an evaluation of the statements of its employees taken during the course of its internal investigation. The Company points out that Surf Drugs provides:

A party may not be required to set out the contents of statements, absent rare and exceptional circumstances, or to divulge his or his attorneys' evaluation of the substance of statements taken in preparation for trial.

In order to answer Public Counsel's requests for it to identify witnesses "who have any knowledge about falsifying completion times or repair service forms, reports, or records," Southern Bell states that it will have to evaluate and analyze the statements provided by its employees. This requirement to analyze or evaluate makes the responses requested by Public Counsel privileged as work product, the Company contends.

Southern Bell states that it has identified the documents requested in Public Counsel's Interrogatory No. 11 except for the statements, memoranda, notes and other documents which are a part of its internal investigation. These documents, the Company contends are attorney work product and are, therefore, privileged. The Company belatedly asserts in its Opposition to Public Counsel's Motion to Compel that these documents are also protected by the attorney-client privilege, although it did not assert this privilege in its Responses and Objections to the interrogatories.

In Surf Drugs, the Florida Supreme Court overturned the decision of the Third District Court of Appeal that the plaintiff in a suit for the wrongful death of his wife did not have to respond to certain interrogatories propounded by the defendant drug store because they were privileged as attorney work product. The Court stated that these interrogatories, which requested the identification of persons having knowledge of various aspects of the case were appropriate and the responses thereto were not protected by the attorney work product privilege. Specifically, the Court stated:

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Appellee and the District Court apparently consider that anything known to an attorney for a litigant constitutes "work product" immune from discovery procedures. This view is clearly contrary to the Hickman case, supra, wherein the United States Supreme Court stated flatly:

A party clearly cannot refuse to answer interrogatories on the ground that the information sought is solely within the knowledge of his attorney. Hickman v. Taylor, 329 U.S. 495, at 504 (1947)

\* \* \* \* \*

We hold, therefore, that a party may be required to respond on behalf of himself, his attorney, agent, or employee and to divulge names and addresses of any person having relevant information as well as to indicate generally the type of information held by the person listed.

Southern Bell has tried to distinguish the interrogatories propounded by Public Counsel from the interrogatories in Surf Drugs by characterizing these interrogatories as requiring extensive analysis and evaluation on the Company's part. As the above quoted pronouncement by the Florida Supreme Court illustrates, the legitimacy of the interrogatories propounded by Public Counsel is soundly supported by established case law. We are not persuaded by Southern Bell's argument that it must contemplate extensively the statements it has taken in order to identify persons who may have knowledge of the various activities at the heart of this Commission investigation.

We are also not persuaded by the Company's argument that the responses required by Interrogatory No. 11, the simple identification of documents regarding certain relevant topics, are protected by either a work product privilege or an attorney-client privilege. The mere acknowledgement that a document with a specific title exists does not fit the description of anything covered by the work product or the attorney-client privilege. In addition, Southern Bell is the only possible source for this information. Therefore, we hereby grant both of Public Counsel's Motions to Compel. Southern Bell shall fully respond to all of Public Counsel's Interrogatories within 15 days of the date of this Order.


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Based on the foregoing, it is, therefore,

ORDERED by Chairman Thomas M. Beard, Prehearing Officer, that Public Counsel's Motions to Compel dated July 11, 1991, and July 18, 1991, are hereby granted. It is further

ORDERED that Southern Bell Telephone and Telegraph Company shall fully respond to Public Counsel's Interrogatories within 15 days of the issuance of this Order.

By ORDER of Chairman Thomas M. Beard, Prehearing Officer, this  
12th day of SEPTEMBER, 1991.

  
THOMAS M. BEARD, Chairman and  
Prehearing Officer

( S E A L )

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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)

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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.