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ORIGINAL
FILE COPY

June 2, 1992

Steve Tribble, Director
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, FL 32399-0850

Re: Docket No. 910163-TL

Dear Mr. Tribble:

Enclosed for filing in the above-captioned proceeding on behalf of the Citizens of the State of Florida are the original and 15 copies of Citizens' Response and Opposition to Southern Bell's Motion for Stay.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

- ACK
- AFA _____
- APP _____
- CAF _____
- CMU
- CTR _____
- EAG _____
- LEG 1 w/m
- LIN 6
- GPC _____
- RCH _____
- SEC 1
- WAS _____
- OTH _____

Sincerely,

Charles J. Beck
Charles J. Beck
Deputy Public Counsel

Enclosure

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Scw
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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the)
Integrity of Southern Bell's)
Repair Service Activities and)
Reports)
_____)

Docket No. 910163-TL
Filed: June 2, 1992

**CITIZENS' RESPONSE AND OPPOSITION
TO SOUTHERN BELL'S MOTION FOR STAY**

The Citizens of Florida ("Citizens"), by and through Jack Shreve, Public Counsel, file this response and opposition to the motion for stay pending judicial review filed by Southern Bell Telephone and Telegraph Company ("Southern Bell") on May 22, 1992.

1. It has now been essentially one full year since the Citizens served a set of interrogatories on Southern Bell seeking the identities of persons with knowledge about the underlying facts in this case. The interrogatories were served June 6, 1991, and the Citizens moved to compel on July 11, 1991 after Southern Bell refused to answer any of the interrogatories. The prehearing officer granted the Citizens' motion to compel by an order issued September 12, 1991; the entire Commission denied Southern Bell's motion for reconsideration by an order issued December 17, 1992; and the entire Commission, by an order issued May 13, 1992, denied a motion by Southern Bell to reconsider the Commission's order denying the previous motion for reconsideration.

2. Now Southern Bell moves for a stay of the Commission's latest order. If the Commission grants the stay, it is likely that Southern Bell will have achieved yet another delay in answering these interrogatories, ranging from an additional six months to another entire year.

3. Southern Bell's motion for stay correctly points out that the Commission's rules contain three criteria, among others, to be considered when determining whether or not to grant a stay. These three criteria are:

- a. Whether the petitioner is likely to prevail on appeal;
- b. Whether the petitioner has demonstrated that he is likely to suffer irreparable harm if the stay is not granted;
and
- c. Whether the delay will cause substantial harm or be contrary to the public interest.

The Citizens will respond to each of these criteria.

**The delay sought by the stay would cause substantial harm and
would be contrary to the public interest**

4. The harm here is the continued, unwarranted delay in the Commission's investigation of the facts underlying charges of serious misconduct by Southern Bell. It has already been one year since the interrogatories were served on Southern Bell, and the grant of a stay would prolong that delay to a total of one and one half years to perhaps two years. The public interest demands that this investigation go forward without further delay and that the Commission make findings about alleged wrongdoing by a utility it regulates.

5. The interrogatories at issue here seek the most basic information: the names of persons known by Southern Bell to have knowledge of the underlying facts at issue. If the Commission grants a stay, there is little chance the hearing will be able to go forward as presently scheduled. The hearings are set for April, 1993, more than two years after the Citizens filed a petition to initiate an investigation. It would be against the public interest to delay this hearing even more, yet the grant of a stay to Southern Bell would almost certainly result in another delay.

The petitioner is unlikely to prevail on appeal

6. Southern Bell continues to advocate that not only is an investigation conducted by Southern Bell privileged, but that any facts or knowledge unearthed by the investigation are also privileged. This tenet was squarely rejected by the Florida Supreme Court in the case of Surf Drugs, Inc., v. Vermette, 236 So.2d 108 (Fla. 1970). The Florida Supreme Court rejected the notion that all things known to an attorney for a litigant constitute work product immune from discovery procedures. Surf Drugs at 113. The court held 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 indicate generally the type of information held by the person listed. Surf Drugs at 113. Thus, while an investigation conducted by a party's attorney may be work product, the actual identification of each person having relevant information to the case cannot be concealed based upon a claim of work product or privilege.

7. Southern Bell claims that we should only ask for the names of all persons with knowledge about the preparation of repair service reports¹ -- literally hundreds, and probably thousands, of persons. By analogy to a negligence case involving an automobile accident, Southern Bell's position amounts to a suggestion that it would be

¹Southern Bell motion at 4.

improper to ask Southern Bell for the name of the driver, whose name was unearthed by Southern Bell's investigation; instead, according to Southern Bell, we should only ask for the names of all Southern Bell employees with drivers licenses, and we could then find out who drove the car by deposing each of these thousands of Southern Bell employees.

8. Surf Drugs requires Southern Bell to divulge the names and addresses of any person having relevant information, as well as indicate generally the type of information held by the person listed, even if that information were obtained as a result of their attorneys' investigation. Surf Drugs at 113. Southern Bell is unlikely to prevail on an appeal contending that it may conceal the names of persons it knows to have knowledge about the underlying facts in this case.


Southern Bell has not demonstrated that it is likely to suffer
irreparable harm if the stay is not granted

9. Although admittedly once the names are revealed, they cannot later be hidden, irreparable harm can only occur if Southern Bell is required to disclose something it has a right to conceal. Southern Bell has no right to conceal this information, so it can not be irreparably harmed by the disclosure.

WHEREFORE, the Citizens respectfully request the Florida Public Service Commission to deny Southern Bell's motion for stay pending judicial review.

Respectfully submitted,

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Attorneys for the Citizens
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**CERTIFICATE OF SERVICE
DOCKET NO. 910163-TL**

I HEREBY CERTIFY that a correct copy of the foregoing has been furnished by U.S. Mail or hand-delivery to the following persons on this 2nd day of June, 1992.

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& Telegraph Co.)
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/s/
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