

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for rate) DOCKET NO. 920199-WS
increase in Brevard, Charlotte/) ORDER NO. PSC-92-1266-CFO-WS
Lee, Citrus, Clay, Duval,) ISSUED: 11/04/92
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))
_____)

ORDER GRANTING REQUEST FOR CONFIDENTIAL TREATMENT
FOR INFORMATION RELATED TO GAS OPERATIONS PROVIDED
IN RESPONSE TO PUBLIC COUNSEL'S DOCUMENT REQUEST NO. 172
AS CONTAINED IN DOCUMENT NO. 10975-92

On September 2, 1992, Southern States Utilities, Inc., and Deltona Utilities, Inc., (collectively referred to as SSU or the utility) filed a Third Motion for Temporary Protective Order for Confidential Information and Notice of Intent to Request Confidential Classification. On October 12, 1992, SSU filed its Third Request for Confidential Classification and Motion for Protective Order. In its motion, SSU seeks confidential classification for information and documents provided in response to the Office of Public Counsel's (OPC) Document Request No. 172. No parties filed responses to either of SSU's motions.

In the original motion filed September 2, 1992, SSU sought confidential classification for salary information in response to OPC Interrogatories Nos. 312 and 313. However, on October 12, 1992, SSU filed a Withdrawal of Third Motion for Temporary Protective Order for Confidential Information and Notice of Intent to Request Confidential Classification as such pertain to salary information. Therefore, this order will only address the utility's final request for confidential classification as it pertains to the utility's gas operations and the utility's response to OPC's Document Request No. 172.

In Document Request No. 172, OPC requested that the utility:

Provide a copy of all internal memorandum, reports, studies, and all documents between or by employees of the

DOCUMENT NUMBER-DATE

12955 NOV-4 1992

FSCC RECORDS / DEPARTMENT

Company, Topeka, MPL, between or by consultants of the Company, Topeka, and MPL, and all memorandum to files which address the Company's discontinuance of the remainder of its gas operations.

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. In support of its motion, the utility cites Section 367.156(3)(d) and (e), Florida Statutes, and asserts that information related to the utility's gas operations is proprietary confidential business information.

Section 367.156(3), Florida Statutes, provides that:

Proprietary confidential business information means information, regardless of form or characteristics, 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, 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. Proprietary business information includes, but is not limited to:

- (d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the utility or its affiliates to contract for goods or services on favorable terms.

- (e) Information relating to competitive interests, the disclosure of which would impair the competitive businesses of the provider of the information.

SSU maintains that its response to Document Request No. 172 contains confidential information relevant to proposed sales and internal valuation of the remainder of SSU's gas operations. According to the utility, the information in response to Document Request No. 172 constitutes "proprietary confidential business information" under Section 367.156(3), Florida Statutes, because: 1) the information is intended to be and is treated by the utility as proprietary and confidential; 2) the public disclosure of such information would cause harm to the business operations of Minnesota Power, Topeka and/or SSU; 3) has not been disclosed and would not otherwise be disclosed except pursuant to an agreement to maintain its confidential status and that the information not be release to the public; and 4) the disclosure of such information could adversely affect the consummation of a sale on the sales price of said gas operations.

I agree that the utility's response with regard to the remainder of its gas operations should receive confidential treatment pursuant to Section 367.156(3)(d), Florida Statutes. It is my belief that such information, if disclosed, could affect the sales price of the utility's gas operations. Therefore, in keeping with the statutory authority of Section 367.156(3)(d), Florida Statutes, and Rule 25-27.006, Florida Administrative Code, I find it appropriate to grant 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.

Based on the foregoing, 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 as set forth above. It is further

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ORDERED that any information relating to the utility's gas operations, in response to Public Counsel's Document Request No. 172, filed as Document No. 10975-92, 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 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 4th day of November, 19 92.



BETTY EASLEY, Commissioner
and Prehearing Officer

(S E A L)

LAJ

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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.