

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Comprehensive review of revenue requirements and rate stabilization plan of SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY.)	DOCKET NO. 920260-TL
)	
)	
)	
)	
)	
In re: Investigation into the integrity of SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY's repair service activities and reports.)	DOCKET NO. 910163-TL
)	
)	
)	
)	
)	
In re: Investigation into SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY's compliance with Rule 25-4.110(2), F.A.C., Rebates)	DOCKET NO. 910727-TL
)	
)	
)	
)	
)	
In re: Show cause proceeding against SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY for misbilling customers.)	DOCKET NO. 900960-TL
)	ORDER NO. PSC-93-1045-CFO-TL
)	ISSUED: July 19, 1993
)	

ORDER DENYING SOUTHERN BELL'S REQUEST FOR CONFIDENTIAL CLASSIFICATION FOR PORTIONS OF DOCUMENT NOS. 2485-93 AND 3339-93 (DOCKET NO. 910163-TL)

On March 4, 1993, BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company (Southern Bell or the Company) filed a copy of its supplemental response to the request of Public Counsel for late-filed exhibits 3, 4, 6, 7, 8 and 9 to the panel deposition of C. J. Sanders and C. L. Cuthbertson (Southern Bell's motion) and a Notice of Intent to request confidential classification for the documents with the Division of Records and Reporting. The supplemental late-filed exhibits were assigned Document No. 2485-93. On March 25, 1993, Southern Bell

¹ Staff requested that Southern Bell provide it with a copy of the late-filed exhibits requested by Public Counsel. The late-filed exhibits were filed with a copy of a pleading previously filed with the Commission on August 19, 1992, entitled "Southern Bell Telephone and Telegraph Company's Supplemental Response to Request of Public Counsel for Late-Filed Exhibits and Motion for Temporary Protective Order."

DOCUMENT NUMBER-DATE

07671 JUL 19 93

PSC-RECORDS/REPORTING

filed a Request for Confidential Classification for portions of late-filed exhibits 3, 7, 8 and 9. Southern Bell filed a highlighted copy of late-filed exhibits 3 and 7 as Attachment "C" to its motion, which was assigned Document No. 3339-93. Southern Bell explained in its motion that late-filed exhibits 8 and 9 are documents previously filed with the Commission which were provided in response to Staff's Sixteenth Request for Production and for which Southern Bell previously sought confidential classification in its motion filed on June 26, 1992. In the instant motion, Southern Bell incorporates by reference its justification for confidential classification for the documents provided in response to Staff's Sixteenth Request for Production as its justification for confidential classification for late-filed exhibits 8 and 9.²

Documents filed with the Commission are public records subject to public disclosure under section 119.07(1), Fla. Stat. (1991). Section 119.07(3), however, exempts from public disclosure those public records that are provided by statutory law to be confidential or which are expressly exempted by general or special law. In the absence of a specific statutory exemption, the Commission may not deny disclosure based upon a judicially created privilege of confidentiality³ or based upon public policy considerations which attempt to weigh the benefits to be derived from public disclosure against the detriment to an individual institution resulting from such disclosure.⁴

² Southern Bell filed documents responsive to that production request on June 8, 1992, and documents which supplemented its response on June 16, 1992, which were assigned Document Nos. 5929-92 and 6273-92 respectively. The Company filed a Request for Confidential Classification for portions of the documents comprising its initial response and supplemental response to Staff's Sixteenth Request for Production on June 26, 1992. Southern Bell filed a highlighted copy of the documents responsive to Staff's Sixteenth Request for Production as Attachment "A" to its motion, which was assigned Document No. 6896-92.

³ Wait v. Florida Power & Light Co., 372 So.2d 420 (Fla. 1979).

⁴ Id.; News-Press Publishing Co., Inc. v. Gadd, 388 So.2d 276 (Fla. 2d DCA 1980); Gadd v. News-Press Publishing Co., 412 So.2d 894, 895 (Fla. 2d DCA 1982); Douglas v. Michel, 410 So.2d 936 (Fla. 5th DCA 1982); State ex rel. Veale v. City of Boca Raton, 353 So.2d

Section 364.183, Fla. Stat. (1991) defines "proprietary confidential business information" as information which is one of the statutory examples set forth therein or information the disclosure of which will cause harm to Southern Bell or its ratepayers. Pursuant to section 364.183 and Fla. Admin. Code Rule 25-22.006, Southern Bell has the burden of demonstrating that information is qualified for confidential classification under section 364.183.

The information for which Southern Bell is seeking confidential classification is the identities of employees who were disciplined by Southern Bell. Specifically, Southern Bell requests confidential classification for the names of employees which appear on documents entitled "Southeast/South Florida Areas, Special Study, Sales Related Discipline," "Personnel Record Current Entry Sheet (B-Form)" and "Record of Grievance between Communications Workers of America and Southern Bell Telephone and Telegraph Company."

Southern Bell relies on subsection (f) of section 364.183, Fla. Stat., which states that "proprietary confidential business information" includes "[e]mployee personnel information unrelated to compensation, duties, qualifications or responsibilities." The Company contends that the identities of employees who were disciplined by the Company is "employee personnel information unrelated to compensation, duties, qualifications or responsibilities." Section 364.183(3)(f), Fla. Stat.

Moreover, Southern Bell contends that the information is "proprietary confidential business information . . . in that the disclosure of the information would cause harm to the ratepayers . . . or company's business operations." Section 364.183(3), Fla. Stat. Southern Bell argues that public disclosure of the identities of disciplined employees will be highly damaging to the reputation of the employees in the community and will result in public ridicule, which will cause embarrassment to the employees. This situation will lower employee morale and will result in a lack of employee cooperation in future efforts of the Company to monitor its operations, which will have a chilling effect on managers' willingness to discipline employees in the future and on the Company's analysis of its operations. Southern Bell contends that

section 364.183 was not intended to require disclosure under these circumstances.

In prior rulings by the Prehearing Officer in this docket, it was held that the identities of employees who were disciplined by Southern Bell is information related to performance of the employees' jobs and, therefore, it is employee personnel information which is related to duties or responsibilities.⁵ As such, it was determined that this information is not "proprietary confidential business information" as defined by the legislature in section 364.183(3)(f) and, hence, it is information not exempt from public disclosure by that provision.⁶ In this instance, the late-filed exhibits which disclose the identities of Southern Bell employees who were disciplined by the Company are not "proprietary confidential business information" exempt from public disclosure by section 364.183(3)(f).

Having concluded that the fact that an employee has been disciplined is employee personnel information related to duties or responsibilities, it appears that the information is subject to public disclosure under section 364.183(3). Section 364.183(3) provides that "proprietary confidential business information" includes "employee personnel information unrelated to compensation, duties, qualifications or responsibilities." It follows that employee personnel information related to compensation, duties, qualifications or responsibilities is not "proprietary confidential business information" and, therefore, not exempt from public disclosure under section 364.183(3). Nonetheless, with regard to Southern Bell's contention that disclosure will cause harm to the

⁵ Order No. PSC-93-0978-CFO-TL; Order No. PSC-93-0905-CFO-TL (extensively discusses the issue); In re Investigation into the Integrity of Southern Bell Telephone and Telegraph Company's Repair Service Activities and Reports, 92 F.P.S.C. 9:470 (1992); See Order No. PSC-93-0979-CFO-TL.

⁶ Id.

⁷ There is support for this interpretation of the statute in Southern Bell's motion at p. 3 wherein the Company states: "The four areas of employee personnel information that are not, per se, confidential pursuant to section 364.183(3)(f), Florida Statutes, are compensation, duties, qualifications and responsibilities of an employee."

Company's business operations, the Prehearing Officer has rejected embarrassment of employees and the potential impact on Company operations as the type of harm contemplated by section 364.183(3).⁸

Southern Bell urges the Prehearing Officer to apply a balancing test which weighs the benefits to be derived from public disclosure against the detriment to the Company and its employees. However, in the absence of a specific statutory exemption, the Prehearing Officer may not deny disclosure based upon public policy considerations that attempt to weigh the relative significance of the public's interest in disclosure with the damage to the Company and its employees resulting from such disclosure.

Accordingly, Southern Bell's Request for Confidential Classification for portions of late-filed exhibits 3, 7, 8 and 9, which comprise Document Nos. 2485-93 and 3339-93, is denied.

Based on the foregoing, it is, therefore,

⁸ Order No. PSC-93-0905-CFO-TL; Order No. PSC-93-0979-CFO-TL; Southern Bell Telephone and Telegraph Company v. Beard, 597 So.2d 873 (Fla. 1st DCA 1992) (held that the Commission did not abuse its discretion by declining to afford proprietary confidential business status for Southern Bell documents despite Company's contention that disclosure might result in embarrassment to Company's managers); In re Investigation into the Integrity of Southern Bell Telephone and Telegraph Company's Repair Service Activities and Reports, 92 F.P.S.C. 9:470 (1992) (Prehearing Officer's prior ruling in this docket rejects embarrassment of employees and its potential impact on Company operations as the type of harm contemplated by section 364.183(3), Fla. Stat., with regard to internal self-critical reports of Company operations); Cf. News-Press v. Wisher, 345 So.2d 646, 648 (Fla. 1977) ("No policy of the state protects a public employee from the embarrassment which results from his or her public employer's discussion or action on the employee's failure to perform his or her duties properly.").

⁹ Order No. PSC-93-0905-CFO-TL; see sources cited supra note 4.

ORDER NO. PSC-93-1045-CFO-TL
DOCKETS NOS. 920260-TL, 910163-TL, 910727-TL, 900960-TL
PAGE 6

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that Southern Bell's Request for Confidential Classification for portions of late-filed exhibits 3, 7, 8 and 9, which comprise Document Nos. 2485-93 and 3339-93, is denied.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 19th day of July, 1993.



SUSAN F. CLARK, Commissioner and
Prehearing Officer

(S E A L)
JRW

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by section 120.59(4), Fla. Stat. (1991) to notify parties of any administrative hearing or judicial review of Commission orders that is available under sections 120.57 or 120.68, Fla. Stat. (1991 & 1992 Supp.) 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 Fla. Admin. Code Rule 25-22.038(2), if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Fla. Admin. Code Rule 25-22.060, 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 Fla. Admin. Code Rule 25-22.060. 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 Fla. R. App. P. 9.100.