

8/29/94
2:40pm

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ORIGINAL
FILE COPY

August 26, 1994

Mrs. Blanca S. Bayo
Director, Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32301

RE: Docket No. 920260-TL

Dear Mrs. Bayo:

Enclosed are an original and fifteen copies of Southern Bell Telephone and Telegraph Company's Motion to Strike Portions of the CWA's Response in Opposition to Southern Bell's Renewal of its Motion to Dismiss. Please file these documents in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served on the parties shown on the attached Certificate of Service.

Sincerely,

Nancy B. White (PW)
Nancy B. White

- ACK
- AFA Lohe
- APP _____
- CAF _____
- CAF Enclosures
- Norton
- CTR _____
- EAG _____
- LEG Hatch
- LIN 6
- OPC _____
- RCH Vinson
- SEC 1
- WAS _____
- OTH _____

cc: All Parties of Record
A. M. Lombardo
R. G. Beatty
R. D. Lackey

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Comprehensive review of)
revenue requirements and rate) Docket No. 920260-TL
stabilization plan of Southern)
Bell Telephone and Telegraph) Filed: August 26, 1994
Company)
_____)

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S
MOTION TO STRIKE PORTIONS OF THE CWA'S RESPONSE IN
OPPOSITION TO SOUTHERN BELL'S RENEWAL OF ITS MOTION TO DISMISS

BellSouth Telecommunications, Inc., d/b/a Southern Bell Telephone and Telegraph Company ("Southern Bell"), moves the Prehearing Officer, pursuant to Rule 25-22.037 of the Rules of the Florida Public Service Commission ("Commission") and Rule 1.140(f) of the Florida Rules of Civil Procedure, to strike portions of the Response in Opposition to Southern Bell's Renewal of its Motion to Dismiss filed by the Communication Workers of America ("CWA") for the reasons set forth below.

1. On August 10, 1994, Southern Bell filed a Renewal of Its Motion to Dismiss the CWA's Petition on Proposed Agency Action for Formal Hearing. The renewal of Southern Bell's Motion to Dismiss was based on the direct testimony filed by the CWA witness, Robert Kruckles, and the failure of Mr. Kruckles to address the fundamental issue of the Commission's authority to enact the proposal made by the CWA. Southern Bell also noted that the CWA had untimely filed their direct testimony but did not bare its motion on that fact.

2. On August 16, 1994, the CWA filed a Response in Opposition to Southern Bell's Renewal of Its Motion to Dismiss. The major basis for this Opposition was the CWA's erroneous belief that Southern Bell's Motion to Dismiss was predicated on the

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untimely filing of CWA's direct testimony. A cursory review of Southern Bell's Motion easily dispels this belief. In the course of the CWA's argument, however, the CWA made accusations that Southern Bell and Staff employees had engaged in inappropriate behavior. Specifically, the CWA accused Southern Bell of calling counsel for CWA and claiming that this Commission had already decided the proceeding in Southern Bell's favor. Further, the CWA accused Southern Bell of colluding with the Staff to somehow "sabotage" the proceeding.

3. Southern Bell has queried the very few persons who have had telephone contact with counsel for the CWA and all have absolutely repudiated the allegations as unfounded and untrue. Therefore, pursuant to Rule 1.140(f) of the Florida Rules of Civil Procedure, Southern Bell moves to strike this portion of the CWA's Response in Opposition as scandalous matter. Trawick's Florida Practice and Procedure (1993 Edition) defines scandalous as "unnecessary allegations censuring or accusing a party." Citing Burke v. Mesta Machinery Co., 5.F.R.D. 134 (Pa. 1946). Other courts have further defined scandalous as "any unnecessary allegation which reflects cruelly upon the moral character of an individual, or states anything in repulsive language which detracts from the dignity of the court." See Martin v. Hunt, 28 F.R.D. 35 (D.C. Mass. 1961). There can be no question that, in the instant case, Southern Bell and Staff have been accused of wrongdoing by the CWA, which accusation has absolutely no foundation in fact. The accusation merely serves to wrongfully impugn the character of

the persons involved and unnecessarily taint these proceedings.

4. In Ropes v. Stewart, 45 So. 31 (Fla. 1907), the Florida Supreme Court was faced with a very similar situation. In pleadings, the plaintiff accused the defendant of using "perjury and evil influence on the judge and jury" in order to procure a verdict against the plaintiff. Id. The Florida Supreme Court upheld the granting of defendant's motion to strike the allegations as scandalous matter. For these reasons, the improper allegations contained in the CWA's Response in Opposition should also be stricken as scandalous.

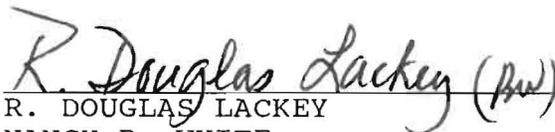
WHEREFORE, Southern Bell moves the Prehearing Officer to grant Southern Bell's Motion to Strike Portions of the CWA's Response in Opposition to Southern Bell's Renewal of Its Motion to Dismiss for the reasons set forth herein.

Respectfully submitted this 26th day of August, 1994.

SOUTHERN BELL TELEPHONE
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CERTIFICATE OF SERVICE

Docket No. 920260-TL

Docket No. 900960-TL

Docket No. 910163-TL

Docket No. 910727-TL

I HEREBY CERTIFY that a copy of the foregoing has been furnished by United States Mail this 26th day of August, 1994 to:

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