

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for rate) DOCKET NO. 950495-WS
increase and increase in service) ORDER NO. PSC-96-0211-CFO-WS
availability charges by Southern) ISSUED: February 14, 1996
States Utilities, Inc. for)
Orange-Osceola Utilities, Inc.)
in Osceola County, and in)
Bradford, Brevard, Charlotte,)
Citrus, Clay, Collier, Duval,)
Highlands, Lake, Lee, Marion,)
Martin, Nassau, Orange, Osceola,)
Pasco, Putnam, Seminole, St.)
Johns, St. Lucie, Volusia, and)
Washington Counties.)

ORDER DENYING REQUEST FOR CONFIDENTIAL CLASSIFICATION OF
COMMISSION DOCUMENT NO. 11719-95 AND FINDING ON WAIVER OF
CONFIDENTIALITY OF AUDIT WORKING PAPERS

Pursuant to Rule 25-22.006(3)(a), Florida Administrative Code, at the October 26, 1995, audit exit conference, Southern States Utilities, Inc., (SSU or utility) noticed its intent to seek confidential classification of portions of the staff audit report and certain staff working papers prepared during the audit which contain information regarding employee compensation.

On November 21, 1995, SSU filed its First Request for Confidential Classification. This request addresses Commission Document No. 11719-95, a portion of the staff audit report which contains interim 1995 and projected 1996 salary and wage expenses for SSU's Executive Division. This request does not address the other documents referenced above which also contain information regarding employee compensation. On November 27, 1995, the Office of Public Counsel (OPC) filed an Opposition to SSU's First Request for Confidential Classification. This Order addresses SSU's request.

SSU contends that the salary and wage expense information for its President contained in Commission Document No. 11719-95 is confidential as proprietary confidential business information pursuant to Section 367.156(3)(e), Florida Statutes. According to SSU, the public disclosure of this information would cause harm to its competitive business operations by impairing its efforts to contract for employee services on favorable terms. Recognizing that Section 367.156(3)(f), Florida Statutes, does not serve to protect employee compensation information, SSU asserts that the Commission nevertheless possesses the authority to determine in its

DOCUMENT NUMBER-DATE

01747 FEB 14 88

FPSC-RECORDS/REPORTING

discretion that Section 367.156(3)(e), Florida Statutes, serves to protect the information in question from public disclosure. Florida Public Service Commission v. Bryson, 569 So. 2d 1253 (Fla. 1990).

In response, OPC argues that SSU seeks an exception to Section 119.07, Florida Statutes, and that any such exception must be narrowly construed. Southern Bell Telephone and Telegraph Co. v. Beard, 597 So. 2d 873 (Fla. 1st DCA 1992). OPC argues that potential embarrassment to a company's managers does not warrant such an exception.

Both SSU and OPC are silent on whether SSU's First Request for Confidential Classification was timely filed. It was not. SSU filed its request on November 21, 1995, beyond the 21-day filing deadline for such requests, as required by Rule 25-22.006(3)(a), Florida Administrative Code. It is also noted that SSU has not shown cause as to why its request should not be deemed waived. Therefore, in accordance with Rule 25-22.006(3)(a), Florida Administrative Code, SSU has waived its request for confidential classification of Commission Document No. 11719-95. The request is therefore denied.

It is further noted that had SSU not waived its request for confidential classification of this information, its request would nonetheless be denied on the merits. Section 367.156(2), Florida Statutes, provides that proprietary confidential business information shall be exempt from disclosure under Section 119.07(1), Florida Statutes. However, Commission Document No. 11719-95 does not constitute proprietary confidential business information, as defined by Section 367.156(3), Florida Statutes. That section provides that proprietary confidential business information includes, but is not limited to:

- (e) Information relating to competitive interests, the disclosure of which would impair the competitive businesses of the provider of the information.
- (f) Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities.

As recently noted in Order No. PSC-96-0113-CFO-WS, issued January 19, 1996, in this docket, the Prehearing Officer denied SSU's request for confidential status of information concerning officers' and other employees' compensation during the utility's last rate case. By Order No. PSC-92-1073-CFO-WS, issued September 28, 1992, in Docket No. 920199-WS, the Prehearing Officer

ORDER NO. PSC-96-0211-CFO-WS
DOCKET NO. 950495-WS
PAGE 3

stated that "[t]he confidentiality provision of the statute is designed to protect against a competitor's obtaining, through the public disclosure of information, an unfair advantage in a competitive market for goods or services. This is not the sort of competitive interest which SSU seeks to protect." In view of the compelling clarity of the language of Section 367.156(3)(f), Florida Statutes, Section 367.156(3)(e), Florida Statutes, may not be invoked to protect employee compensation information from disclosure under the Public Records Act.

Moreover, since the October 26, 1995, audit exit conference, SSU has not filed a request for confidentiality of the audit working papers which were temporarily protected within Commission Document No. 10684-95, nor has it shown cause as to why its failure to file such request should not constitute a waiver of confidentiality. Pursuant to Rule 25-22.006(3)(a), Florida Administrative Code, its failure to file the request within 21 days constituted a waiver of confidentiality with respect to those audit working papers. Therefore, those audit working papers, which contain the same salary and wage expense information for SSU's President as is contained in Document No. 11719-95, are now public records under Section 119.01, Florida Statutes. And Section 367.156(3), Florida Statutes, defines proprietary confidential business information as, in pertinent part, information which "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."

Pursuant to Rule 25-22.006(9), Florida Administrative Code, Commission Document No. 11719-95 shall be kept confidential until the time for filing an appeal has expired, and, upon request, through completion of judicial review.

Based on the foregoing, it is

ORDERED by Commissioner Diane K. Kiesling, as Prehearing Officer, that Southern States Utilities, Inc.'s, First Request for Confidential Classification is hereby denied. It is further

ORDERED that Commission Document No. 11719-95 shall be kept confidential until the time for filing an appeal of this Order has expired, and, upon request, through completion of judicial review.

ORDER NO. PSC-96-0211-CFO-WS
DOCKET NO. 950495-WS
PAGE 4

By ORDER of Commissioner Diane K. Kiesling, as Prehearing Officer, this 14th day of February, 1996.


DIANE K. KIESLING, Commissioner and
Prehearing Officer

(S E A L)
RGC

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.