

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of the Citizens of the )	DOCKET NO. 890190-TL
State of Florida to investigate SOUTHERN )	
BELL TELEPHONE AND TELEGRAPH COMPANY'S )	ORDER NO. 24255
cost allocation procedures )	
_____ )	ISSUED: 3/18/91

ORDER DENYING MOTION TO REQUIRE  
STAFF TESTIMONY

On February 22, 1991, the Office of Public Counsel (OPC) filed a Motion to Require Testimony by Mr. Rick Wright (Motion) (Commission Document No. 91-1814), along with what is styled as "Direct Testimony by Mr. Rick Wright on Behalf of the Citizens of the State of Florida" (Commission Document No. 91-1815). On March 6, 1991, Southern Bell Telephone and Telegraph Company (Southern Bell) filed its Motion to Strike the Testimony of Mr. Rick Wright and Response to Public Counsel's Motion to Require Testimony by Mr. Rick Wright (Response). On March 14, 1991, OPC filed its Response and Opposition to Southern Bell's Motion to Strike the Testimony of Mr. Rick Wright. Mr. Rick Wright is a member of the Commission staff, employed as a regulatory analyst in the Commission's Division of Communications.

Initially, it must be noted that the so-called "direct testimony" of Mr. Wright is not in fact his testimony, but rather "proposed" testimony prepared solely by OPC. Given this fact, it is not necessary to reach the merits of either OPC's Motion or Southern Bell's Response because there is no legal foundation for the approach employed by OPC.

Under the Florida Rules of Civil Procedure, the proper method for procuring the testimony of third parties is through the use of a subpoena. See, Rule 1.410, Florida Rules of Civil Procedure. In the alternative, such testimony could be procured through deposition. See, Rules 1.320 and 1.330, Florida Rules of Civil Procedure. Since the methodology utilized by OPC is procedurally improper, OPC's Motion shall be denied and the proposed testimony for Mr. Wright shall be stricken in its entirety.

Based on the foregoing, it is

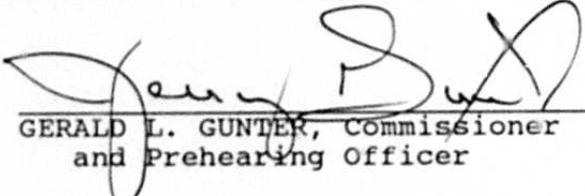
ORDERED by Commissioner Gerald L. Gunter, as Prehearing Officer, that the Motion to Require Testimony by Mr. Rick Wright filed on February 22, 1991, by the Office of Public Counsel is hereby denied for the reasons set forth herein. It is further

DOCUMENT NUMBER-DATE  
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PSC-RECORDS/REPORTING

ORDER NO. 24255  
DOCKET NO. 890190-TL  
PAGE 2

ORDERED that the document entitled "Direct Testimony by Mr. Rick Wright on Behalf of the Citizens of the State of Florida," filed on February 22, 1991, by the Office of Public Counsel shall be stricken in its entirety.

By ORDER of Commissioner Gerald L. Gunter, as Prehearing Officer, this 18th day of MARCH, 1991.

  
GERALD L. GUNTER, Commissioner  
and Prehearing Officer

( S E A L )

ABG

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

ORDER NO. 24255  
DOCKET NO. 890190-TL  
PAGE 3

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 sewer 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.