

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petitions of SOUTHERN BELL) TELEPHONE AND TELEGRAPH COMPANY for) rate stabilization and implementation) orders and other relief) <hr/>	DOCKET NO. 880069-TL ORDER NO. 25541 ISSUED: 12/26/91
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The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 SUSAN F. CLARK
 J. TERRY DEASON
 BETTY EASLEY

ORDER SETTING CERTAIN ISSUES FOR HEARING
AND
NOTICE OF PROPOSED AGENCY ACTION
ORDER REQUESTS FOR IMMEDIATE RATE REDUCTION,
FILING OF MFRS AND REINSTITUTION OF
FULL RATE BASE REGULATION

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. BACKGROUND

By Order No. 20162, the Commission ruled on Southern Bell Telephone and Telegraph Company's petitions for rate stabilization and other relief. As a result of implementing a rate stabilization plan, the Commission expanded the authorized range of return on equity to a minimum of 11.5% and a maximum of 16%. Within the expanded range the Commission also implemented an earnings sharing plan. Any earnings in excess of 14% are to be shared with 60% being given to Southern Bell's ratepayers and the other 40% retained by the company. All earnings in excess of 16% after sharing are returned to the ratepayers. In addition, earnings stemming from certain exogenous factors and the net of rate increases (except regrouping) and rate decreases, were excluded from the sharing process.

By Order 24066, we extended Southern Bell's rate stabilization plan until December 31, 1992. We also set aside for subsequent disposition \$18,420,620 for 1991 and an additional \$21,868,551 for

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1992. By Order No. 24861, we determined the final amounts available for disposition.

On October 3, 1991, the Office of Public Counsel (Public Counsel), the Attorney General of the State of Florida (AG), and the American Association of Retired Persons (AARP) filed a Joint Petition requesting certain relief with respect to Southern Bell Telephone and Telegraph Company (Southern Bell). The petition requested: the immediate, across-the-board refund of more than \$80 million of accumulated overcharges; the immediate reduction of Southern Bell's current rates by approximately \$18 million annually now and by \$39.8 million effective January 1, 1992; a permanent reduction of Southern Bell's approved rates of, at a minimum, \$105.6 now and \$127.4 million effective January 1, 1992; the immediate placement of an additional \$87.6 million of annual revenues subject to refund pending the establishment of permanent rates; the filing of Minimum Filing Requirements (MFRs) by Southern Bell; and, the reinstatement of full rate base regulation under Section 364.036(5), Florida Statutes. The United States Department of Defense on behalf of and All Other Federal Executive Agencies (DOD) filed a motion on October 15, 1991, in support of the Joint Petition.

On October 23, 1991, Southern Bell filed a Motion to Dismiss the Joint Petition filed by Public Counsel, the Attorney General, and the AARP. On November 4, 1991, Public Counsel and the Attorney General filed a response to Southern Bell's Motion to Dismiss.

II. JOINT PETITION

The Petition seeks six separate substantive actions from the Commission. Each of the six are addressed separately below.

A. Request for Refund of Excess Revenues

Joint Petitioners argue that the Commission should require the immediate refund of more than \$80 million based on 1989, 1990, and 1991 amounts held for disposition. By Order No. 25367, we ordered Southern Bell to refund approximately \$100.8 million including interest through the end of February, 1992. The \$100.8 million refund was based on amounts held for disposition for 1988 through the end of 1991. The Order renders the Joint Petitioners' request for refund moot.

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B. Request For Immediate Rate Reduction

Joint Petitioners argue that Southern Bell's rates should be immediately reduced to prevent further accrual of excess revenues in 1992. In conjunction with our decision on this matter, we have also determined to eliminate the further accrual of excess revenues by requiring Southern Bell to implement a credit on customers bills to flow through the accrual of the excess revenues to customers. The credit is specifically addressed in a separate order. The credit conveys essentially the same benefit to customers as a permanent rate reduction. The question of permanent reductions will be addressed in the rate case currently scheduled for Southern Bell later this year. Having implemented the credit, we find it appropriate to deny the request for an immediate rate reduction and defer the issue of specific rates to be reduced to the impending Southern Bell rate case.

C. Request for Reduction of Rates Based on Reduced ROE and To Hold Revenues Subject to Refund

The Joint Petitioners request that Southern Bell's rates be reduced by an annual revenue amount of \$105.6 million for 1991 and \$127.4 million for 1992. Joint Petitioners also ask that \$87.6 million be held subject to refund pending a final determination of the appropriate level of rates and earnings. The request for reduction of ROE and a concomitant reduction in rates is premised and Petitioners belief that Southern Bell current authorized earnings range is too high and must be reduced. Petitioners argue that the appropriate return on equity for Southern Bell is 11 percent.

The \$105.6 million includes \$87.6 million which represents a difference between revenue requirements based on an 11.0% ROE and revenue requirements based on an achieved ROE of 13.6% that Southern Bell earned for the twelve month period ending June 30, 1991. The remaining \$18 million (\$105.6 - \$87.6) for 1991 is a result of a 1991 amortization schedule amount that is ending and has been identified in previous orders. The additional \$21.8 million for 1992 (\$127.4 - \$105.6) represents the 1992 amortization schedule that is ending and also has been identified in previous orders.

In response to the Petition, Southern Bell argues that the Joint Petitioners request have either already been resolved by the

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Commissions prior actions in this case or that the Petitioners have not alleged sufficiently changed circumstances to warrant any changes in the current rate stabilization parameters. Southern Bell further argues that it would be fundamentally unfair to alter any of the rate stabilization plans. According to the Company, any action to reset the rate stabilization parameters or to set revenues subject to refund would do damage to the rate stabilization plan now in effect.

Upon consideration, we find that an expedited hearing should be held to address the issues of whether Southern Bell's cost of capital has significantly changed beyond what was contemplated by rate stabilization such that a new ROE should be set; if so, whether any revenues should be placed subject to refund pending the outcome of Southern Bell's impending rate case; and if so, the amount to be placed subject to refund. Our decisions to hold this limited proceeding should not be construed to be any kind of comment on the efficacy or success of Southern Bell's rate stabilization plan. That issue will be addressed in the rate proceeding. The hearing will allow us an opportunity to review whether circumstances have charges sufficient to require that some measure of protection of the rate payers be imposed pending a full review of the the rate stabilization experiment. The schedule for this hearing will be established by separate order.

D. Request for MFRS

The Petitioners request that Southern Bell be required to file minimum filing requirements (MFRS) by January 1, 1992. According to Southern Bell approximately two and one-half months will be necessary to compile a full set of MFRS. In addition, the separations data needed for the MFRS will not be available until mid February. As a result, it appears that it is not possible to file an adequate set of MFRS by January 1, 1992. Therefore, we find it appropriate to deny this portion of the petition. We note that in Docket No. 911109-TL, we have ordered Southern Bell to file a full set of MFRS by May 1, 1992.

E. Request for Reinstitution of Full Rate Base Regulation

The Joint Petitioners argue that the incentive rate plan was only intended to be effective until the end of 1990, and the Commission should have taken into consideration Section 364.036(5), Florida Statutes (1990 Supp.), before extending the plan. The

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Joint Petitioners state that Section 364.036(5) provides that the Commission may review any decision adopting any alternative method of regulation and impose additional regulatory safeguards including full rate base regulation. Southern Bell argues in response that in the Commission has previously concluded that the Rate Stabilization Plan was no more than a variation on rate base regulation and thus permitted by the law at the time the plan was instituted and that the provisions of Section 364.036(5) do not apply.

It is and has been our opinion that the rate stabilization experiment was clearly within the Commission's authority at the time it was adopted. Due to the savings clause in Section 364.385, Florida Statutes (1990 Supp.), the new requirements of Section 364.036 did not apply to our decision to extend the rate stabilization plan. Moreover, we note that Section 364.036(5) broadened the Commission's authority to adopt regulatory alternatives; it did not limit it. We also note that the Rate Stabilization Plan appears consistent with the new requirements of Section 364.036(5).

Beyond the Petitioners complaint of our failure to take into consideration statutory criteria that did not apply at the time, Petitioners argument is simply that Southern Bell's rates are too high. Based on the allegations in the Petition, we are unpersuaded that a return to full rate base regulation is needed. Therefore, we find that the request to reinstate traditional rate base regulation should be denied.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the portions of the Joint Petition filed by the Office of Public Counsel, the Attorney General of the State of Florida, the American Association of Retired Persons requesting that excess accrued revenues of Southern Bell Telephone and Telegraph Company be refunded is moot as set forth in the body of this Order. It is further

ORDERED that the portion of the Joint Petition requesting an immediate reduction in Southern Bell's rates equal to the amounts set for further disposition is denied as set forth in the body of this Order. It is further

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ORDERED that the portion of the petition regarding the issue of whether Southern Bell's cost of capital has sufficiently changed to warrant holding revenues subject to refund until the outcome of the impending Southern Bell rate proceeding will be addressed in an expedited hearing as set forth in the body of this Order. It is further

ORDERED that the portion of the petition requesting the filing of full Minimum Filing Requirements by Southern Bell is denied as set forth in the body of this Order. It is further

ORDERED that the portion of the petition requesting reinstatement of full rate base regulation for Southern Bell is denied as set forth in the body of this Order.

By ORDER of the Florida Public Service Commission, this 26th
day of DECEMBER, 1991.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

by: Kay Helgen
Chief, Bureau of Records

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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

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hearing or judicial review will be granted or result in the relief sought.

As identified in the body of this order, our actions in Section II, Paragraphs B, D and E are preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on 1/16/92. In the absence of such a petition, this order shall become effective on the date subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If the relevant portion of this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

Any party adversely affected by the Commission's final action in Section II, Paragraph C of this Order may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of

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an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.