

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for rate) DOCKET NO. 950495-WS
increase and increase in service) ORDER NO. PSC-96-0397-CFO-WS
availability charges by Southern) ISSUED: March 21, 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. 12929-95

On December 21, 1995, Southern States Utilities, Inc., (SSU or utility) filed its Fourth Request for Confidential Classification. This request addresses Commission Document No. 12929-95 (cross-reference Commission Document No. 12026-95) which consists of SSU's response to Commission Staff's Interrogatory No. 116. The response contains a list of salaries for SSU's officers, managers, and administrative personnel for 1992, 1993, 1994, and 1995 through August 1, 1995. The response is identical to SSU's response to Interrogatory No. 26 filed by the Office of Public Counsel, for which SSU sought and obtained a temporary protective order.

SSU contends that the salary information for its employees is confidential as proprietary confidential business information pursuant to Section 367.156(3)(e), Florida Statutes. According to SSU, the information is intended to be and is treated by the utility as proprietary and confidential. SSU contends that public disclosure of this information would cause harm to its competitive business operations. SSU states that it competes with other utilities and businesses to attract and retain employees, and that its testimony indicates a high employee turnover. A public disclosure of this information, the utility contends, would impair SSU's ability 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 discretion that Section 367.156(3)(e), Florida Statutes, serves to protect the information in question from public disclosure. In support of its argument, SSU cites Florida Public

DOCUMENT NUMBER-DATE

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Service Commission v. Bryson, 569 So. 2d 1253 (Fla. 1990), which addresses the Commission's general authority to interpret its own statutes.

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. 12929-95 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.

By Order No. PSC-92-1073-CFO-WS, issued September 28, 1992, in Docket No. 920199-WS, this Commission stated that salary and compensation information would not be granted confidentiality pursuant to the competitive interest provision set forth in Section 367.156(3)(e), Florida Statutes. That order found that Section 367.156(3)(e) is intended to protect against a competitor's obtaining an unfair advantage in a competitive market for goods or services because of a public disclosure. That interest is different from the competitive interest which SSU sought to protect. Moreover, by Order No. PSC-96-0113-CFO-WS, issued January 19, 1996, and Order No. PSC-96-0211-CFO-WS, issued February 14, 1996, SSU's request for confidential status of information concerning officers' and other employees' compensation has been similarly denied in this docket.

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. Therefore, SSU's request for confidential classification of Document No. 12929-95 is denied. Pursuant to Rule 25-22.006(9), Florida Administrative Code, Commission Document No. 12929-95 shall be kept confidential until the time for filing an appeal has expired, and, upon request, through completion of judicial review.

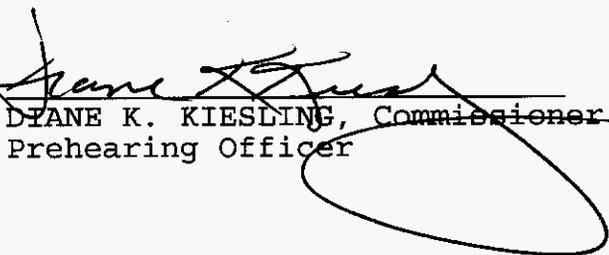
Based on the foregoing, it is

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

ORDERED that Commission Document No. 12929-95 shall be kept confidential until the time for filing an appeal of this Order has expired, and, upon request, through completion of judicial review.

By ORDER of Commissioner Diane K. Kiesling, as Prehearing Officer, this 21st day of March, 1996.


DIANE K. KIESLING, Commissioner and
Prehearing Officer

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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 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.