

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for approval of transfer of Certificate No. 116-W from Holiday Gardens Utilities, Inc. to Holiday Gardens Utilities, LLC, in Pasco County.

DOCKET NO. 140176-WU
ORDER NO. PSC-15-0241-CFO-WU
ISSUED: June 9, 2015

ORDER GRANTING IN PART AND DENYING IN PART
MICHAEL SMALLRIDGE'S REQUESTS FOR CONFIDENTIAL
CLASSIFICATION (DOCUMENT NOS. 00505-15, 03074-15,
02608-15, 02723-15 AND 03072-15)

On January 23, 2015, Michael Smallridge (Smallridge) filed portions of his personal financial statement for the period ending December 31, 2014, produced in response to Data Request No. 5 of Commission staff's deficiency letter dated October 7, 2014 (Document No. 00505-15).¹ Smallridge also provided two pages of Florida Utility Services 1, LLC's December 31, 2014 bank statement. At that time Smallridge asked that "this information be kept confidential and not made part of the public record." No justification compliant with Section 367.156, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), supporting this request for confidentiality was filed at that time.

On May 6, 2015, Smallridge, did file a request for specified confidential classification of "Document No. 00505-15" compliant with Section 367.156, F.S., and Rule 25-22.006, F.A.C. However, the document attached to the May 6, 2015 request was not a redacted version of Document No. 00505-15, but a redacted version of a personal financial statement for the period ending March 1, 2015 (Document No. 02608-15).

On May 11, 2015, Smallridge filed his response to Staff's Fourth Data Request No. 1, portions of his joint Internal Revenue Service Tax Returns for the years 2011, 2012 and 2013 (Document No. 02723-15) accompanied by a request for confidential classification of this material pursuant to Section 367.156, F.S., and Rule 25-22.006, F.A.C.

On May 21, 2015, Smallridge filed requests for confidential classification of: a) the March 1, 2015 personal financial statement (Document No. 02608-15); b) the 2011, 2012 and 2013 individual tax returns (Document No. 02723-15); c) the December 31, 2014 financial statement and Florida Utility Services 1, LLC's December 31, 2014 bank statement (Document No. 00505-15, 03074-15). On May 22, 2015, Smallridge filed a request for confidential classification of his individual 2014 tax return (Document No. 03072-15).

This order addresses the requests for confidential classification of: a) the March 1, 2015 personal financial statement (Document No. 02608-15); b) the 2011, 2012 and 2013 individual

¹ "(5) Public Interest. . . . However, Exhibit 1 does not contain a showing of the buyer's financial ability to provide service. Please provide a showing of the buyer's ability to provide service, such as a recent personal financial statement showing the buyer's assets and liabilities."

tax returns (Document No. 02723-15); c) the December 31, 2014 financial statement and Florida Utility Services 1, LLC's December 31, 2014 bank statement (Document No. 00505-15, 03074-15); and d) the 2014 individual tax return (Document No. 03072-15).

Request for Confidential Classification

In his May 6th, May 11th, May 21st and May 22nd confidentiality requests, Smallridge argues that portions of his personal financial statements² and the 2011, 2012, 2013 and 2014 tax returns constitute proprietary confidential business information entitled to protection under Section 367.156, F.S., and Rule 25-22.006, F.A.C. Smallridge further states that all of the information contained in this material for which he has requested confidential classification has not been disclosed to the public and is treated by him as confidential.

Smallridge contends that the information is "personal financial information of the owner unrelated to his compensation from the utility" and that its disclosure "would impair the owner's competitive interests as he moves to acquire other systems in the future." Smallridge also states that requiring disclosure of this information would "violate the owner's right to privacy under Article I, Section 23 of the Florida Constitution." Smallridge has not requested a specific period of time for these materials to be classified as confidential. Smallridge also argues that the material requested is irrelevant as it is "not related to any ratemaking function with regard to the Utility" nor is it "information of the Utility."

Ruling

With regard to Document Nos. 00505-15/03074-15 and 02608-15, the personal financial statements, Smallridge seeks confidentiality for all of the dollar amounts contained in Sections 3-5 which list personal assets, liabilities, income and expenses, as well as Schedules A-H, which are the details of various line items making up the amounts found in Sections 3-5. Smallridge also requests confidentiality for other types of financial information commonly used to evaluate financial status, e.g., other businesses owned by him, estate planning documents, bankruptcy filings, judgments, disability insurance, income taxes, alimony and child support obligations.

With regard to Document Nos. 02723-15 and 03072-15, the 2011, 2012, 2013 and 2014 personal income tax returns, Smallridge requests confidentiality for: a) Social Security numbers; b) all dollar amounts contained in the 1040s and attached Schedules A, C, E, and EIC; and c) all dollar amounts in the attached Forms 6251, 4562, 8582, 8812, 8880, and 8867.

Social Security numbers are exempt from the provisions of Chapter 119, F.S., pursuant to Section 119.071(5)(a)5, F.S., and are not "public records." Their exempt status protects them from disclosure to the general public pursuant to Chapter 119, F.S., or section 24, Article I of the Florida Constitution. Sections 119.011(8) and (12), F.S. Therefore, no ruling on this portion of the request is necessary.

² The arguments made by Smallridge with regard to his March 1, 2015 personal financial statement and December 31, 2014 financial statement are identical.

The financial statements and tax returns meet the definition of “public record” as stated in Section 119.011(12), F.S., “documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Smallridge’s claim of a Florida Constitutional privacy right for these public records based on article I, section 23 of the Florida Constitution, however, is misplaced. Florida courts have consistently held that article I, section 23’s right of privacy does not to apply to public records. Michel v. Douglas, 464 So. 2d 545, 546 (Fla. 1985)(“By its specific wording, article I, section 23 of the state constitution does not provide a right of privacy in public records.”); Board of County Commissioners of Palm Beach County v. D.B., 784 So. 2d 585, 591 (Fla. 4th DCA 2001)(“[I]n Florida the right to privacy is expressly subservient to the Public Records Act. [Citations omitted.] Florida’s right to privacy provision states that the right to privacy ‘shall not be construed to limit the public’s right of access to public records.’ Art. I, section 23, Fla. Const. Courts cannot judicially create any exceptions, or exclusions to Florida’s Public Records Act.”); Williams v. City of Minneola, 575 So. 2d 683, 687 (Fla. 5th DCA), rev. den., 589 So.2d 289 (Fla. 1991)(“We concur with the opinions which have held that neither a custodian of records nor a person who is the subject of a record can claim a constitutional right of privacy as a bar to requested inspection of a public record which is in the hands of a government agency.” In sum, article I, section 23 of the Florida Constitution does not exempt disclosure of the financial statements and tax returns to the public.

Our analysis then must turn to whether these public records satisfy the criteria set forth in Section 367.156, F.S., for classification as proprietary confidential business information. Section 367.156(1), F.S., provides that records the Florida Public Service Commission (Commission) has found to contain proprietary confidential business information shall be kept confidential and shall be exempt from Chapter 119, F.S. Section 367.156(3), F.S., defines proprietary confidential business information as information that is intended to be and is treated by the company as private, in that disclosure of the information would cause harm to the company’s ratepayers or business operations, and that has not been voluntarily disclosed to the public. Section 367.156(3), F.S., provides that proprietary confidential business information includes, but is not limited to:

- (d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the utility or its affiliates to contract for goods or services on favorable terms.
- (e) Information relating to competitive interests, the disclosure of which would impair the competitive businesses of the provider of the information.

Federal income tax returns are confidential under federal law, specifically, 26 U.S.C. Section 6103(a). That being the case, it is the Commission’s policy to afford confidential treatment to federal income tax returns under the sections cited above.³

³ Order No. PSC-02-1249-PCO-WU, issued on September 10, 2002, in Docket No. 992015-WU, In re: Application for limited proceeding to recover costs of water system improvements in Marion County by Sunshine Utilities of Central Florida, Inc.; Order No. PSC-08-0394-CFO-SU, issued on June 12, 2008, in Docket No. 070293-SU, In re: Application for increase in wastewater rates in Munroe County by K.W. Resort Utilities, Corp.

With regard to Smallridge's personal financial statements, it is first necessary to address his argument that this information is immaterial and irrelevant to this certificate transfer case. I do not find this argument to be persuasive. Section 367.071(1), F.S., requires that the Commission make a finding that the transfer of a certificate of authorization, facilities or control be "in the public interest and that the buyer, assignee, or transferee will fulfill the commitments, obligations, and representations of the utility." Operating under the name of Holiday Gardens Utilities, LLC, Smallridge is the sole owner of all of the assets, facilities, receivables and liabilities of Holiday Gardens Utilities, Inc. (Holiday Gardens) and is presently managing operations at Holiday Gardens. The means to meet Holiday Garden's financial operational and capital obligations must be provided either from the operations of the utility itself or from Smallridge's personal finances. Simultaneous with the instant transfer docket, Smallridge filed a request for staff assisted rate case (SARC) for Holiday Gardens⁴ in which he indicated that significant capital improvements were necessary in the near future.⁵ Given the fact that the Staff Audit for the period ending September 30, 2014, indicates an annual profit of \$2,320, it is apparent that these funds will have to be initially personally provided by Smallridge. Thus, in this instance, a thorough review of Smallridge's financial status is required to properly evaluate the statutory requirements for certificate transfer.⁶

Having found that the financial statements requested are relevant, the next question is whether they fall within the provisions of 367.156(3)(d) or (e), F.S. The information found on the financial statements is not duplicative of the information found on the 2011, 2012, 2013 and 2014 tax returns. This is especially true of the financial information found on the forms, i.e., businesses owned by Smallridge, estate planning documents, bankruptcy filings, judgments, disability insurance, income taxes, alimony and child support obligations. Some of this type of information is already available from other public sources: bankruptcy filings, judgments, alimony, businesses and real estate owned by Smallridge, and alimony/child support obligations. The fact that the information is conveniently organized into one document, if available in other public sources, does not make it confidential business information. Nor does the fact that such public information could well affect the ability of Smallridge to purchase or sell utilities at the lowest or highest possible price. Therefore, I find that only the information contained in Document Nos. 00505-15/03074-15, 02608-15 and 03072-15 listed on Attachment A meet the requirements of Section 367.156(e), F.S., as proprietary confidential business information.

Pursuant to Section 367.156(4), F.S., the information for which confidential classification is granted herein shall remain protected from disclosure for a period of up to 18 months from the


⁴ Docket No. 140177-WU, Application for staff- assisted rate case in Pasco County by Holiday Gardens Utilities, LLC.


⁵ The Remedial Action Program submitted to South West Florida Water Management District in September 2014 identifies the following capital improvements that need to be made over the next 12-36 months: customer meter replacement; replacement of galvanized steel customer service lines; rehabilitation of Well No. 1; purchasing new fire hydrant meter; partial rehabilitation of Well No. 2; replacement of piping from Well No. 2 to tank; repair of well building; replacement of isolation valves; development of billing system; and system survey.

⁶ See: Order No. PSC-02-1249-PCO-WU, issued on September 10, 2002, in Docket No. 992015-WU, In re: Application for limited proceeding to recover costs of water system improvements in Marion County by Sunshine Utilities of Central Florida, Inc. (Prehearing Officer ordered the production of the personal tax returns of the president and vice-president of utility who were also its owners.)

date of the issuance of this Order. At the conclusion of this period, the confidential information will no longer be exempt from Section 119.07(1), F.S., unless Smallridge or another affected person shows, and the Commission finds, that the records continue to contain proprietary confidential business information.

Based on the foregoing, it is hereby

ORDERED by Commissioner Ronald A. Brisé as Prehearing Officer, that the requests for specified confidential classification of the materials contained in Document Nos. 00505-15, 03074-15, 02608-15, ~~002723-15~~⁵⁰⁷⁰, and 03072-15 are granted in part and denied in part as set forth herein. It is further 

ORDERED that the information in Document Nos. 00505-15, 03074-15, 02608-15, 02723-15 and 03072-15, as modified above, for which confidential classification has been granted, shall remain protected from disclosure for a period of up to 18 months from the date of issuance of this Order. It is further 

ORDERED that this Order shall be the only notification by the Commission to the parties of the date of declassification of the materials discussed herein.

By ORDER of Commissioner Ronald A. Brisé, as Prehearing Officer, this 9th day of June, 2015.



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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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 25-22.0376, Florida Administrative Code; or (2) 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 Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, 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.

ATTACHMENT A
CONFIDENTIAL INFORMATION

Document Nos. 00505-15/03072-15 and 02608-15

Section 3 - Balance Sheet

Assets: dollar amounts

Liabilities: dollar amounts

Section 4 - Income Statement

Annual Income: dollar amounts for all categories except Alimony, Separate Maintenance, Child Support

Annual Expenses: dollar amounts for all categories except Royal Oaks HOA and Moonrise HOA

Section 5 - Contingent Liabilities

All lines and dollar amounts except “Current or pending suits or other litigation” and “Other (Partnership, etc.) explain”

Schedule A - Cash & Short-term Investments

All categories and dollar amounts

Schedules B-D – Listed Stocks & Bonds, Unlisted Securities, Life Insurance Carried

All information.

Schedule F: Real Estate (personal residences)

Information in “Present Loan Balance” and “Monthly Payment” columns.

Schedule G: Real Estate Investments

Information in “Present Loan Balance”, “Total Annual Rental Income”, “Monthly Loan Payment” and “Other Expenses” columns

Schedule H: Notes & Accounts Payable

All information.

Gross Revenues

All information.

Personal Information

Information concerning wills, dependents, pledged assets, disability insurance, income taxes.