



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: February 5, 2003
TO: Office of General Counsel (Moore) *W*
FROM: Division of Auditing and Safety (Vandiver, Freeman) *F JMA*
RE: Docket 021173-WS, Utilities, Inc., of Florida (Utilities, Inc.) request for confidential classification for documents prepared during "Utilities, Inc., Affiliate Transactions Audit for the Year Ended December 31, 2001, Audit Control No. 02-122-3-1 Documents 12084-02, 12636-02 and 13972-02

RECEIVED
 DIVISION OF
 CLERK
 FEB 11 2003

On October 31, 2002, when copies of certain portions of staff's working papers prepared during "Utilities, Inc., Affiliate Transactions Audit for the Year Ended December 31, 2001", were delivered to the utility at the audit exit conference, the utility requested that these materials be temporarily exempted from public access in accordance with the provisions of Rule 25-22.006(3)(a)(2), Florida Administrative Code (FAC).

On November 4, 2002, staff filed these materials (document 12084-02).

On November 19, 2002, Utilities, Inc., filed a request pursuant to Rule 25-22.006, FAC, and Section 367.156, Florida Statutes (F.S.), that certain portions of the audit working papers prepared by the staff receive a confidential classification. The utility request includes an incomplete copy of staff's working papers with the sensitive information highlighted (document 12636-02).

On December 23, 2002, after discussions with the staff, the utility filed a revised request including a complete copy of all staff working papers containing sensitive information (document 13972-02).

On January 29, 2002, after additional discussions with the staff, Utilities, Inc., filed a second revised request reducing the amount of material subject to a potential confidential classification. This second revised request includes a final listing of information requested to be confidential and the final public copy of the material with the sensitive information redacted (document 00932-03).

AUS _____
 CAF _____
 CMP _____
 COM _____
 CTR _____
 ECR _____
 GOL _____
 OPO _____
 WMS _____
 SEC _____
 OTH _____

Harjanto

Note: Document 00932-03 is titled "Application of Lake Utility Services, Inc., second amended request for confidential classification" and "IN RE: UTILITIES, INC. OF FLORIDA for a rate case in Marion, Orange, Pasco, Pinellas and Seminole Counties." This document is concerning "Utilities, Inc. second amended request for confidential classification for certain work papers provided in connection with affiliate transaction audit (Audit control No. 02-122-3-1)."

Documents 12084-02, 12636-02 and 13972-02 are currently held by the Division of Commission Clerk and Administrative Services in a temporary confidential classification pending resolution of the utility's request.

DOCUMENT NUMBER-DATE

01352 FEB 10 8

FPSC-COMMISSION CLERK

In accordance with Section 119.07, F.S., documents submitted to this Commission are public records. The only exceptions to this law are specific statutory exceptions and exemptions granted by Governmental agencies pursuant to the terms of a statutory provision. Subsections 367.156(3)(d) and (e) and provide the following exceptions:

“Proprietary confidential business information means information, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person’s or company’s business operations, and 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. 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 affiliate to contract for goods or services on favorable terms.

(e) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information....”

According to Section 367.156, F.S., and Rule 25-22.006, FAC, the utility has the burden of demonstrating the materials qualify for confidential classification. According to Rule 25-22.006, FAC, the utility must meet this burden by demonstrating that the information is proprietary confidential business information, the disclosure of which will cause the utility, the provider of the information or the ratepayer harm.

Staff Analysis of the Request

Reading the Utility, Inc., filing reveals the sensitive material consists of business strategies and acquisition planning information reported in notes taken from Board of Director’s minutes.

Utilities, Inc., reports disclosure of a schedule of utility acquisitions would impair negotiations for the purchase of utility systems in the future. The utility claims a prospective purchaser of a utility system could utilize this information to determine how much Utilities, Inc., would be willing to pay for the system, and thus impair the objective of purchasing utility systems at the lowest possible price. The utility reports a number of proposed acquisitions are still pending or have been temporarily tabled for a number of business reasons, and to disclose these matters prematurely could negatively affect the way these plans and business strategies are carried out.

Utilities, Inc., reports it is not requesting confidential classification for information relating to completed acquisitions which have already been disclosed in the relevant applications for approval or for applications already on file with the Commission, unless the Commission has already granted confidential classification on other grounds.

We note costs of planning and efforts to purchase utility systems are not directly recoverable through current rates and charges; therefore, the costs of utility purchases affect the operations and contractual ability of the competitive part of this company. Since release of planned purchases and purchasing strategies would cause harm to the competitive contractual and competitive business of Utilities, Inc., this information qualifies for a confidential classification based on the provisions set out by Subsections 367.156(3)(d) and (e), F.S.

Length of the Classification Period

Audit reports and related audit working papers of this nature are retained by the Commission for 25 years.

Section 367.156(4), F.S., limits the length of any confidential classification to 18 months unless cause is shown for allowing a longer period of protection. Since cause has not been shown for a longer period of protection within this filing, we recommend any confidential classification be limited to 18 months. If the utility finds additional confidential protection is needed, an extension may be filed before any granted protection period tolls.

STAFF RECOMMENDATION

Utilities, Inc., operates many utilities in Florida and around the country. It is very likely that this utility will be acquiring additional utility systems. Reading the sensitive materials discloses a confidential classification is requested for information concerning the planning and acquisition strategies used to purchase utility systems. Release of this information would impair the competitive business strategy and contractual abilities of the Utilities, Inc., in future acquisitions of utility systems, and thus, this information qualifies for confidential classification based upon the provisions of, and exemptions provided by, Subsections 367.156(3)(d) and (e), F.S. Therefore, we recommend the request for confidential classification be granted for 18 months as discussed above. A detailed recommendation is provided below:

DETAILED STAFF RECOMMENDATION

Staff Work Paper	Page(s)	Line(s)	Recommend	Type of Information Classified confidential
8	1	1-2,9-13,15-25	Grant	Sensitive contractual and competitive business information
8	2	1-4,32-40	Grant	Sensitive contractual and competitive business information
8	3	3-22	Grant	Sensitive contractual and competitive business information

Staff Work Paper	Page(s)	Line(s)	Recommend	Type of Information Classified confidential
Documents 12084-02, 12636-02 and 13972-02				
8	4	1-7	Grant	Sensitive contractual and competitive business information
8-1	1	Column 1,5,7-11	Grant	Sensitive contractual and competitive business information
8-1	2	All columns	Grant	Sensitive contractual and competitive business information
8-1	3	Column 1,5,7-11	Grant	Sensitive contractual and competitive business information
8-1	4	Column 1,5,7-11	Grant	Sensitive contractual and competitive business information
8-2	1	Column 1,5,7-11	Grant	Sensitive contractual and competitive business information
8-2	2	Column 1,5,7-11	Grant	Sensitive contractual and competitive business information
8-2	3	Column 1-5	Grant	Sensitive contractual and competitive business information

A temporary copy of this recommendation will be kept at I:13972-02.raf.wpd for a short time.

cc: Division of Auditing and Safety (Winston)
 Division of Economic Regulation (Kyle)
 Bureau of Records and Hearing Services (Flynn)