

ORIGINAL

LAW OFFICES
ROSE, SUNDBSTROM & BENTLEY, LLP
2548 BLAIRSTONE PINES DRIVE
TALLAHASSEE, FLORIDA 32301

RECEIVED - FPSC

FREDERICK L. ASCHAUER, JR.
CURIS H. BENTLEY, P.A.
ROBERT C. BRANNAN
DAVID F. CHESTER
F. MARSHALL DETERDING
JOHN R. JENKINS, P.A.
STEVEN T. MINDLIN, P.A.
DAREN L. SHIPPY
WILLIAM E. SUNDBSTROM, P.A.
DIANE D. TREMOR, P.A.
JOHN L. WHARTON
ROBERT M. C. ROSE, OF COUNSEL
WAYNE L. SCHIEFELBRIN, OF COUNSEL

(850) 877-6555
FAX (850) 656-4029
www.rsbatorneys.com

CENTRAL FLORIDA OFFICE
600 S. NORTH LAKE BLVD., SUITE 160
ALTAMONTE SPRINGS, FLORIDA 32701
(407) 830-6331
FAX (407) 830-8522
COMMISSION CLERK

REPLY TO ALTAMONTE SPRINGS

MARTIN S. FRIEDMAN, P.A.
VALERIE L. LORD, OF COUNSEL
(LICENSED IN TEXAS ONLY)

January 8, 2004

REC'D JAN 12 11 09 23
REGISTRATION CENTER

Ms. Blanca Bayo
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

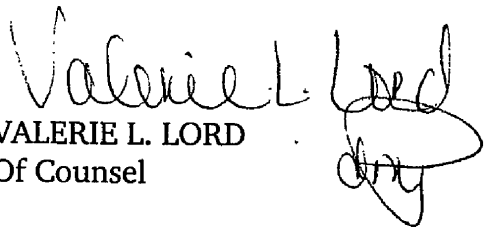
Re: Docket No.: 020567-WS; Lake Utility Services, Inc., Lake Groves Utilities, Inc./Overearnings Investigation
Our File No.: 30057.30

Dear Ms. Bayo:

Enclosed please find the original and five (5) copies of Lake Utility Services, Inc.'s response to Recommendation to Deny Confidential Classification.

Should you have any questions concerning the enclosed, please do not hesitate to give me a call.

Very truly yours,


VALERIE L. LORD
Of Counsel

AUS _____
CAF _____
CMP _____
COM 5 Enclosures
CTR _____
ECR _____
GCL _____
OPC _____
MMS _____
SEC 1
OTH Maguenle

cc: Denise Vandiver, Chief of Auditing, Division of Auditing and Safety (w/enc.)
Jeffrey A. Small, Audit Manager, Division of Auditing and Safety (w/enc.)
Robert Freeman, Government Analyst II, Division of Auditing and Safety (w/enc.)
Ralph Jaeger, Esquire, Office of General Counsel (w/enc.)
Mr. Patrick C. Flynn (w/enc.)
Mr. Steven M. Lubertozzi (w/enc.)
David L. Orr, P.E. (w/enc.)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: LAKE UTILITY SERVICES, INC.
POTENTIAL OVEREARNINGS
INVESTIGATION

Docket No.: 020567-WS

RESPONSE TO RECOMMENDATION TO DENY CONFIDENTIAL CLASSIFICATION

LAKE UTILITY SERVICES, INC. (*LUSI*), by and through its undersigned attorneys and pursuant to Rule 25-22.006, Florida Administrative Code, and Section 367.156, Florida Statutes, files this response to Audit Staff's recommendation that LUSI's request for confidential classification of certain work papers provided by LUSI in connection with the audit of this matter (*Work Papers*) be denied, and in support shows:

1. On September 9, 2003, LUSI filed a request that certain materials it provided to the Commission during Staff Audit 02-350-5-1 be classed as confidential and not open to disclosure as provided by law.

2. The information which Audit Staff do not believe should be accorded confidential status consists of (a) a summary prepared by Audit Staff of certain resolutions of the Board of Directors of Utilities, Inc., the parent company of LUSI (*UI*) relating to changes in the compensation of certain officers of UI ; and (b) a response to Audit Request No. 14 relating to the names and salaries of officers and employees of LUSI's parent company, UI, which has clearly been marked, "Confidential" (*Confidential Information*).

3. The Confidential Information should be classified as confidential because it is proprietary confidential business information owned or controlled by UI and intended by UI and LUSI to be, and is treated by UI and LUSI, as private, in that disclosure of the information would cause harm to the business operations and personnel of UI and its subsidiaries and has not been disclosed, except pursuant to a statutory provision, an order of court or administrative body, or a private agreement that provides that the confidential information will not be released to the public, as set out in Section 367.156(3), Florida Statutes.

4. The Confidential Information relating to the names of certain officers and employees in combination with certain changes in their compensation is “employee personnel information unrelated to compensation, duties, qualifications or responsibilities as provided in Section 367.156 (3)(f), Florida Statutes. The information sought to be kept confidential relates only to the identity of the officer or employee, not the compensation provided.

5. The Confidential Information should be classified as confidential because its disclosure would tend to embarrass the officers and employees involved.

6. The Confidential Information should be classified as confidential because its disclosure is not required by law or the public interest and its disclosure would not serve any public purpose.

7. The Confidential Information should be classified as confidential because of the harm that would be caused to both LUSI and the ratepayers. If the identities of a public utility’s employees, as well as their compensation were to be freely disclosed to the public, as Audit Staff recommend, public utilities would not be able to attract and maintain qualified staff at competitive salaries.

8. Audit Staff have cited three Commission decisions which they assert set a precedent that the Commission is bound to follow. The three decisions are:

- A. Investigation into Southern Bell Telephone and Telegraph Company's non-contact sales practices, Order No. 25237 dated October 22, 1991(Docket No. 900960-TL);
- B. Investigation into Southern Bell Telephone and Telegraph Company's non-contact sales practices, Order No. 25238 dated October 22, 1991(Docket No. 900960-TL); and
- C. Investigation into the integrity of Southern Bell Telephone and Telegraph Company's repair service activities and reports, Order No. PSC-92-1003-CFO-TL dated September 17, 1992 (Docket No. 910163-TL).

9. All three decisions relate to Commission investigations into the alleged impropriety of the regulated activities of a public utility. The information at issue was the names of the employees who were disciplined for the improper conduct. This information lies well outside the exception to the disclosure requirements of Chapter 119, Florida Statutes, for "proprietary business information", established by the Florida Legislature in Section 367.156(3), Florida Statutes.

10. Under Section 367.156(3)(f), Florida Statutes, "proprietary business information" includes, "Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities." The basis of the denials in the cases cited by Audit Staff was that improper employee conduct is related to the duties, qualifications or responsibilities of public utility employees, or more particularly, how they are performed.

11. The Commission, in a prior opinion, has said that:

In order to readily evaluate the relationship between compensation, duties, qualifications or responsibilities of an individual as well as the reliability of such information, it *may* well be necessary to identify the individuals. *This is particularly so in this case where the actions of individuals are under scrutiny to determine whether these actions were sanctioned by or attributed to the company.* Southern Bell Telephone and Telegraph Company, Order No. 24226 dated March 14, 1991(Docket No. 900960-TL; show cause proceeding for misbilling customers) (emphasis added).

12. This clarifies the real issue before the Commission in the three decisions cited by Audit Staff. In contrast, the matter before this Commission is an investigation into potential overearnings of LUSI. The propriety of the activities of LUSI (and its employees') activities in relation to the provision of services to the public is not at issue here. The activities of its employees are not under scrutiny. There is no allegation that any of their actions were sanctioned by, or should be attributed to, LUSI. The decisions cited by Audit Staff are not on point and cannot have any precedential value here. Unfortunately, LUSI's attorneys could not locate any Commission decisions which involve the application of Section 367.156(3)(f), Florida Statutes, and Commission activities which were not induced by allegations of impropriety, or that involved more than the disclosure of the compensation information in rate cases.

13. The Commission has granted confidential classification to employee names in other contexts. In Order No. 24802 dated July 11, 1991 (Review of Rates and Charges of Florida Power and Light Company, Docket No. 900038-EI), the Commission determined that the names of employees who had been terminated as a consequence of an arbitration of a labor grievance for theft by the employee constituted "employee personnel information, unrelated to compensation, duties, qualifications, or responsibilities" under Section 366.093(3)(f), Florida Statutes.

14. LUSI has not asserted that the amount of the salary or compensation is at issue here. What is at issue is the identities of the employees in connection with their salaries, which appears to be a unique situation. The disclosure of this information in combination is what is objectionable. The privacy rights of innocent people who are employed by a public utility are involved. The customers of public utilities such as LUSI are given greater protection than the employees who provide the services. This is patently unfair, and sets a dangerous precedent, which can only ultimately harm both public utilities and the ratepayers.

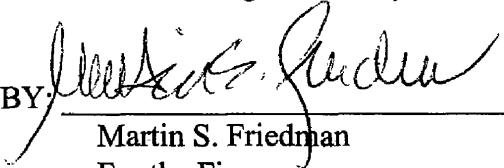
15. The Confidential Information is “employee personnel information unrelated to compensation, duties, qualifications, or responsibilities” in that the identity of the recipient is irrelevant to the context of the audit and the ultimate purpose of the investigation by this Commission. It is, therefore, exempt from Section 119.07(1), Florida Statutes, by virtue of Section 367.156(3)(f), Florida Statutes.

16. Further, LUSI may be exposed to risk of violating the state and federal privacy acts if required to make both the compensation and the identities of the recipient public. There are methods of protecting the identities of the employees involved without compromising Florida’s policy of “operating in the sunshine”. One method is to replace the name with a code or number, or a combination of the two.

WHEREFORE, Lake Utility Services, Inc., respectfully requests that the Commission determine that the Confidential Information is entitled to confidential treatment pursuant to Section 367.156, Florida Statutes, and Rule 25-22.006, FAC, and exempt from public disclosure under Section 119.07 (1), Florida Statutes.

Respectfully submitted on this 8 day of
January, 2004 by:

ROSE, SUNDSTROM & BENTLEY, LLP
600 S. North Lake Boulevard, Ste. 160
Altamonte Springs, FL 32701
Telephone: (407) 830-6331
Facsimile: (407) 830-8522
Email: mfriedman@rsbattorneys.com

BY: 

Martin S. Friedman
For the Firm

CERTIFICATE OF SERVICE
DOCKET NO.: 020567-WS

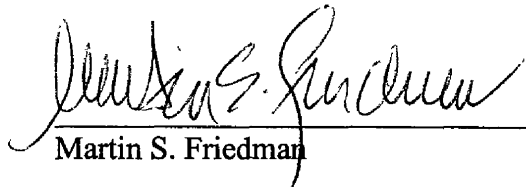
I HEREBY CERTIFY that a true and correct copy of the foregoing RESPONSE TO RECOMMENDATION TO DENY CONFIDENTIAL CLASSIFICATION has been furnished by U.S. Mail this 8 day of January, 2004, to the following parties:

Mr. Jeffrey A. Small, Audit Manager
Florida Public Service Commission
Division of Auditing and Safety
Hurston Tower North, Suite N512
400 West Robinson Street
Orlando, FL 32801-1775

Ms. Denise Vandiver, Chief of Auditing
Florida Public Service Commission
Division of Auditing and Safety
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Mr. Robert Freeman, Government Analyst II
Florida Public Service Commission
Division of Auditing and Safety
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Ralph Jaeger, Esq.
Office of General Counsel
Florida Public Service Commission
Division of Auditing and Safety
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850



Martin S. Friedman