

BEFORE THE PUBLIC SERVICE COMMISSION

In re: (Closed) Request for approval of depreciation study for five-year period 1996 through 2000 by Sebring Gas System, Inc.

DOCKET NO. 010906-GU
ORDER NO. PSC-04-0301-CFO-GU
ISSUED: March 17, 2004

ORDER GRANTING IN PART AND DENYING IN PART CONFIDENTIAL CLASSIFICATION OF DOCUMENT NO. 13539-02 [X-REF DN 13022-02]

On December 11, 2002, Sebring Gas System, Inc. (Sebring) filed a Request for Confidential Classification of Documents, asking that certain workpapers containing salary related information concerning Sebring's general manager be treated as confidential. The individual is also the general manager of Coker Fuel, Inc. (Coker), an unregulated affiliate of Sebring, and he receives a salary from both corporations. The information was produced as part of a staff audit (Audit Control No. 01-167-3-1).

The information subject to the Request is listed below.

(1) Workpaper 44-2, consisting of one page containing a description of the review of account 920 - Administrative and General Salaries. Sebring seeks confidential classification for the information on lines 9, 10, and 11, which provide various components of the general manager's salary including his total salary, salary from Coker, and salary from Sebring.

(2) Workpaper 44-2/1, which is the general manager's W-2 Form from Coker Fuel for the year 2001, and a written description by the general manager of how he allocates his time between Sebring and Coker. Sebring seeks confidential classification for the information in the following boxes: (1) wages, tips and other compensation; (2) federal income tax withheld; (3) social security wages; (4) social security tax withheld; (5) Medicare wages and tips; (6) Medicare tax withheld; (12) insurance withholding information; (d) social security number; and (e) the employee's address.

(3) Workpapers 44-2/2 and 44-2/3, consisting of one page each and containing copies of the general manager's W-2 Forms from Sebring for the years 2000 and 2001. Sebring seeks confidential classification for the information in the following boxes: (2) federal income tax withheld; (4) social security tax withheld; (6) Medicare tax withheld; (d) social security number; and (e) home address.

These workpapers were assigned Document No. 13539-02 [X-REF DN 13022-02]. Sebring claims that this information is proprietary confidential business information, as defined in Section 366.093, Florida Statutes. Sebring claims that if this information were available to the

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public, it “would be of potential value to competitors and would impair the business of Coker Fuel.”

Section 366.093(3), Florida Statutes, provides:

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 private agreement that provides that the information will not be released to the public. Proprietary confidential business information includes but is not limited to:

* * *

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

(f) Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities.

Workpaper 44-2 contains various components of the general manager’s salary including his total salary (Sebring plus Coker), his salary from Coker, and his salary from Sebring. Section 366.093(3)(f) excludes employee compensation from being classified as confidential; however, Section 366.093(3)(e) allows information which would harm competitive interests to be confidential. Sebring argues that the salary from Coker should be confidential because Coker is an unregulated company and because disclosure of the information would harm its competitive interests. Paragraphs (3)(e) and (f) are equally applicable in this situation. In this case, I find that the harm of making the information public would be more damaging than any harm that may come from keeping it confidential. Thus, the salary information related to the general manager’s salary from Coker shall be afforded confidential treatment, since Coker’s competitive interests may be impaired if this salary information is publicly disclosed. However, with respect to the salary information related to Sebring, which is a regulated utility, the request is denied. The total salary shall be confidential since its disclosure along with the Sebring salary would allow calculation of the Coker salary.

Workpaper 44-2/1 is a W-2 form for the year 2001 for wages earned at Coker. Sebring argues that this document should be treated confidentially for the same reasons as 44-2. Part of the information in this document includes salary, home address, and social security number. It is

the Commission's policy to afford confidential treatment to federal income tax returns, which include the accompanying forms required by the Internal Revenue Service such as the W-2 form. Our policy is consistent with the IRS's treatment of tax returns under 26 U.S.C. Section 6103(a). As such, I find that Sebring's request for confidential treatment of the W-2 form issued by Coker shall be granted, and the redacted information is exempt from Section 119.07(1), Florida Statutes, and not subject to disclosure pursuant to Section 366.093, Florida Statutes.

Finally, workpapers 44-2/2 and 44-2/3 are W-2 forms from 2000 and 2001, respectively, for the general manager from Sebring. Sebring asks that most of the same boxes be granted confidential classification as for the W-2 form from Coker. The difference is that Sebring does not request confidentiality for the boxes containing salary, social security wages, Medicare wages and tips, and insurance withholding information. Sebring's requests with respect to workpapers 44-2/2 and 44-2/3 shall be granted for the same reasons as workpaper 44-2/1.

Chapter 366 provides that confidentiality may be granted for up to 18 months unless there is good cause to lengthen that period. Section 366.093(4), Florida Statutes. Sebring has not asked for more than 18 months. The material shall be granted confidentiality for a period of 18 months except for the social security numbers. Pursuant to Section 119.0721, Florida Statutes, the social security numbers shall remain confidential for as long as the W-2 forms are held by the Commission.

Based on the foregoing, it is

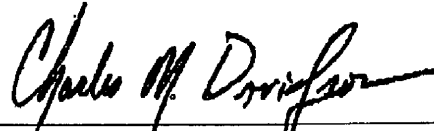
ORDERED by Commissioner Charles M. Davidson that the Request for Confidential Classification filed by Sebring Gas System, Inc. is granted in part and denied in part as set forth herein. It is further

ORDERED that pursuant to Section 366.093(4), Florida Statutes, and Rule 25-22.006, Florida Administrative Code, the confidentiality granted to the material specified herein shall expire eighteen (18) months from the date of the issuance of this Order in the absence of a renewed request for confidentiality, except for the social security numbers which shall remain confidential for as long as the Commission holds them. It is further

ORDERED that this Order will be the only notification by the Commission to the parties concerning the expiration of the confidentiality time period.

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By ORDER of Commissioner Charles M. Davidson, as Prehearing Officer, this 17th
day of March, 2004.



CHARLES M. DAVIDSON
Commissioner and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(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, 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 the Commission Clerk and Administrative Services, 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.