

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Investigation of possible overearnings by  
Lake Groves Utilities, Inc. in Lake County.

DOCKET NO. 020567-WS  
ORDER NO. PSC-04-0734-CFO-WS  
ISSUED: August 3, 2004

ORDER GRANTING CONFIDENTIAL TREATMENT TO  
DOCUMENT NO. 08491-03 [X-REF DN 07801-03]

BACKGROUND

On August 18, 2003, when copies of certain portions of staff's working papers obtained or prepared during the "Lake Utility Services, Inc. (LUSI), Earnings Audit for the Year Ended December 30, 2002," were delivered to LUSI 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 (F.A.C.). Subsequently, on September 9, 2003, LUSI filed a request pursuant to Rule 25-22.006, F.A.C., and Section 367.156, Florida Statutes, that selected portions of the staff working papers prepared during the audit receive confidential classification (Document No. 07801-03). The utility's request includes redacted copies for public inspection (Document No. 08492-03) and highlighted copies (Document No. 08491-03). On January 12, 2004, after discussions with the staff, LUSI filed additional information in support of its request for confidential classification. However, on February 10, 2004, after further discussions with the staff, LUSI reduced the amount of information covered by its request for confidential classification.

ANALYSIS

Pursuant to Section 119.07, Florida Statutes, documents submitted to this Commission are public records. The only exceptions to this law are specific statutory exemptions and exemptions granted by governmental agencies pursuant to specific items of a statutory provision. Subsections 367.156(3)(e) and (f), Florida Statutes, provide the following exemptions:

(3) 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

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

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(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.”

According to Section 367.156, Florida Statutes, and Rule 25-22.006, F.A.C., the utility has the burden of demonstrating that materials qualify for confidential classification. According to Rule 25-22.006, F.A.C., 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 ratepayers harm.

LUSI requests that confidential classification be granted to the notes and summaries of resolutions by the board of directors of Utilities, Inc., the parent company of LUSI, concerning limitations on the authority of officers of Utilities, Inc. to acquire and dispose of property or otherwise create obligations or make commitments which would be binding on Utilities, Inc. LUSI and Utilities, Inc., collectively, are companies that acquire, manage and sell utility systems, and LUSI claims “limitations on the authority of the officers of Utilities, Inc., is information relating to competitive interests, disclosure of which would impair the competitive business of Utilities, Inc., as specified in Section 367.156(3)(e), Florida Statutes.” LUSI further claims that this information has been held as confidential, and the “disclosure of this information would impair or harm Utilities, Inc., in its ability to freely engage in discussions of, and negotiations for, the acquisition or disposal of its assets and the assets of its subsidiaries.”

Paragraphs 367.156(3)(e) and (f), Florida Statutes, provide that proprietary business information includes “information relating to competitive interests” and “employee personnel information unrelated to compensation, duties, qualifications or responsibilities.” While it could be argued that the specific duties and responsibilities of an officer in regard to the purchase of a utility would not be proprietary business information pursuant to Paragraph 367.156(3)(f), Florida Statutes, the information for which confidential classification is sought appears to be more directed at business strategy for the purchase of systems. The profitability and ultimate survival of companies like LUSI and Utilities, Inc., is dependant upon effective decisions in the buying and selling of utility systems.

CONCLUSION

Section 367.156(3)(e), Florida Statutes, provides an exemption for sensitive competitive business information, the release of which would harm the provider of that information. Based on the above, I find that this detailed information concerning how a company makes its decisions to purchase or sell a utility is sensitive and valuable competitive business information, and should be granted confidential protection.

Noting that staff's audit working papers for this type of audit are retained on file for 25 years, LUSI requests that this material be granted a confidential classification without any set time period. According to the provisions of Section 367.156(4), Florida Statutes, absent good cause shown, confidential classification is limited to 18 months. I find that LUSI has not demonstrated good cause for a longer period. Therefore, I find that utility's modified request should be granted in part and denied in part, and that the information identified below shall be granted a confidential classification for 18 months:

Staff Work Paper Number	Page(s)	Lines	Recommend	Type of Information Classified Confidential
Documents 07801-03 and 08491-03				
WP 8	1	10-20,36	Grant	Sensitive competitive business information

As deemed necessary, the utility may request an extension of the confidential classification before the period ends.

Based on the foregoing, it is

ORDERED by Chairman Braulio L. Baez, as Prehearing Officer, that the revised request of Lake Utility Services, Inc., for Confidential Classification is granted, but the request that the confidential classification be without any set time period is denied as set out above. It is further

ORDERED that pursuant to Section 367.156(4), Florida Statutes, and Rule 25-22.006, Florida Administrative Code, the confidentiality granted for the material specified above shall expire eighteen months from the date of the issuance of this Order in the absence of a renewed request for confidentiality. 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 Chairman Braulio L. Baez, as Prehearing Officer, this 3rd day of August, 2004.

  
BRAULIO L. BAEZ  
Chairman and Prehearing Officer

( S E A L )

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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; 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 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.