

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for increase in water and wastewater rates in Alachua, Brevard, Highlands, Lake, Lee, Marion, Orange, Palm Beach, Pasco, Polk, Putnam, Seminole, Sumter, Volusia, and Washington Counties by Aqua Utilities Florida, Inc.

DOCKET NO. 060368-WS
ORDER NO. PSC-07-0579-CFO-WS
ISSUED: July 13, 2007

ORDER DENYING CONFIDENTIAL CLASSIFICATION FOR DOCUMENT NO. 01785-07
(X-REF. DN 01146-07)

On February 2, 2007, Aqua Utilities Florida, Inc., (AUF or utility) filed its Response to Accounting Deficiency No. 32 (Response) set forth in the Deficiency Letter dated January 2, 2007. Pursuant to Rule 25-22.006(3)(a)1., Florida Administrative Code (F.A.C.), AUF filed its Notice of Intent to Request Confidential Treatment of two pages of its Response and those pages were assigned Document No. (DN) 01146-07 and accorded temporary confidential treatment.

Subsequently, on February 23, 2007, AUF timely filed its Request for Confidential Classification pursuant to Section 367.156, Florida Statutes (F.S.), and Rule 25-22.006(3)(a)1., F.A.C., for two pages which it filed with the request and designated as Confidential Exhibit "B" (unredacted Attachment 2), and which were the same two pages in the Response which had been designated DN 01146-07. Confidential Exhibit "B" is assigned Document No. 01785-07 (X-Ref. DN 01146-07), and the information for which AUF seeks confidential treatment is contained on the first two pages of that 16-page document. In its Response, AUF states that the unredacted Attachment 2 Schedule shows "[t]he allocation of each employee's salary to capital and expense."

The Office of the Public Counsel (OPC) filed an Objection to AUF's Request for Confidential Classification (Objection) on March 5, 2007. Because OPC's Objection was not filed within seven days as required by Rule 28-106.204, F.A.C., it is untimely and was not considered. AUF filed a Response in Opposition to OPC's Objection on March 12, 2007 (Response in Opposition). To the extent that its Response in Opposition could be considered a reply requiring leave to file, AUF requests leave for such filing. Because OPC's untimely filed Objection is not being considered, AUF's Response to the Objection will also not be considered.

Section 119.01, F.S., provides that documents submitted to governmental agencies shall be public records. The only exceptions to this law are specific statutory exemptions and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. Pursuant to Section 367.156, F.S., and Rule 25-22.006, F.A.C., it is the utility's burden to show that the material submitted is qualified for specified confidential classification. Rule 25-22.006, F.A.C., provides that the utility may fulfill its burden by demonstrating that the documents fall into one of the statutory examples set out in Section 367.156(3), F.S., or by

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demonstrating that the information is proprietary confidential information, the disclosure of which will cause the utility or its ratepayers harm.

AUF argues that the highlighted information in Confidential Exhibit "B" is proprietary confidential business information within the meaning of Subsections 367.156(3)(d) and (e), F.S., and that the "information is intended to be, and has been, treated by AUF as confidential." AUF specifically states that the highlighted information:

is confidential because it reveals details about compensation for particular employee positions. AUF must compete with other businesses to attract and retain personnel on terms that are favorable to its ratepayers. Disclosure of current salary levels, compensation philosophy and comparative salary information as shown . . . would impair the competitive business interests of AUF as well as AUF's ability to attract and retain personnel for those positions on favorable terms. This information, if disclosed would provide other employers with valuable information regarding AUF's internal salary costs and cost structure, giving such competitors an artificial advantage in their ability to compete with AUF for employee services and disadvantaging AUF and its ratepayers. . . . Further, disclosure of this information would be an unwarranted intrusion into the privacy interests of the particular personnel listed therein.

The affidavit of Ms. Kathy L. Pape filed with the Request for Confidential Treatment reiterated the arguments set out above. The utility requests that the highlighted information be accorded confidential treatment for a period of at least eighteen months.

The request for confidential treatment is purportedly made pursuant to paragraphs 367.156 (3)(d) and (e), F.S. Subsection 367.156(3), F.S., provides in pertinent part:

(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 provides that the information will not be released to the public. Proprietary 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.

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

Although the utility attempts to rely on paragraphs (d) and (e) above, it appears that paragraph (f) is controlling. The information for which the utility seeks confidential treatment clearly relates to salaries and compensation. The Commission has repeatedly, with very few exceptions,¹ denied confidential classification for information relating to salaries, compensation, duties, qualifications, or responsibilities.² Notwithstanding the exceptions noted in Footnote 1 wherein compensation information was granted confidential classification in some instances, Section 367.156(3)(f), F.S., specifically excludes employee compensation. As stated in Order No. PSC-95-0503-CFO-WS, “Because the salary information at issue is employee personnel information related to compensation, and the legislature in section 367.156(3)(f)[sic] specifically excluded that category of information from the statutory definition of proprietary business information, the information must be treated as public record pursuant to section 119.01, Florida Statutes.” (emphasis added) (see Footnote 2) Therefore, AUF’s request that this information be treated as confidential is denied.

Based upon the foregoing, it is

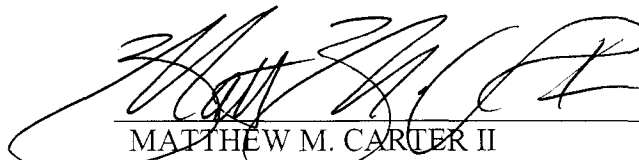
ORDERED by Commissioner Matthew M. Carter II, as Prehearing Officer, that the request of Aqua Utilities Florida, Inc., for confidential classification of the information contained in Document No. 01785-07 (X-Ref. DN 01146-07) is denied. It is further

ORDERED that these documents shall be kept confidential until the time for filing an appeal of this Order has expired, and, upon request, through completion of judicial review.

¹ See Orders Nos. PSC-05-0626-PCO-EI, issued June 7, 2005, in Docket No. 050078-EI, In re: Petition for rate increase by Progress Energy Florida, Inc. (among other things, allowed financial statements and employee compensations to receive confidential treatment); PSC-02-1755-CFO-GU, issued December 12, 2002, in Docket No. 020384-GU, In re: Petition for rate increase by Peoples Gas System (among other things, allowed executive compensation of Peoples executives and executive incentive compensation of Peoples and TECO Energy, Inc., to receive confidential treatment); PSC-02-1613-PCO-GU, issued November 21, 2002, in Docket No. 020384-GU, In re: Petition for rate increase by Peoples Gas System (among other things, allowed compensation philosophy and incentive compensation to receive confidential treatment); PSC-02-0050-PCO-EI, issued January 7, 2002, in Docket No. 010949-EI, In re: Request for rate increase by Gulf Power Company (allowed Incentive Compensation Plan to receive confidential treatment); et al. The four orders noted above did not discuss the applicability of Paragraph 367.156(3)(f), F.S.

² See Orders Nos. PSC-95-0503-CFO-WS, issued April 24, 1995, in Docket No. 950318-WS, In re: Request for Confidential Classification of Certain Material Requested as Part of the Florida Public Service Commission’s Audit of Econ Utilities Corporation; PSC-92-1280-CFO-WS, issued November 10, 1992, in Docket No. 911188-WS, In re: Application for a rate increase in Lee County by LeHigh Utilities, Inc.; PSC-96-0211-CFO-WS, issued February 14, 1996, in Docket No. 950495-WS, In re: Application for rate increase and increase in service availability charges by Southern States Utilities, Inc. for Orange-Osceola Utilities, Inc. in Osceola County, and in Bradford, Brevard, Charlotte, Citrus, Clay, Collier, Duval, Highlands, Lake, Lee, Marion, Martin, Nassau, Orange, Osceola, Pasco, Putnam, Seminole, St. Johns, St. Lucie, Volusia, and Washington Counties; and PSC-97-0022-FOF-WS, issued January 6, 1997, in Docket No. 960541-WS, In re: Application for a rate increase in Duval, Nassau, and St. Johns Counties by United Florida Water Inc.

By ORDER of Commissioner Matthew M. Carter II, as Prehearing Officer, this 13th
day of July, 2007.



MATTHEW M. CARTER II
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; 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 25-22.060, 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.