

State of Florida



RECEIVED--FPSC

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

MAY 16 AM 9:03

COMMISSION
CLERK

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

DATE: May 14, 2008

TO: Ralph Jaeger, Attorney, Office of General Counsel

FROM: Division of Regulatory Compliance and Consumer Affairs (Freeman, Vandiver) F W

RE: Docket 070293-WS, Recommendation concerning the request for confidential classification by K W Resort Utilities Corp (KW) concerning staff's working papers prepared during the audit entitled "K W Resort Utilities Corp File and Suspend Rate Case as of December 31, 2006", Audit Control No. 07-233-4-1, Documents Numbered 09828-07 and 10343-07

On October 26, 2007, at the audit exit conference, KW requested that certain portions of staff's working papers prepared during the audit entitled "K W Resort Utilities Corp File and Suspend Rate Case as of December 31, 2006", be held in a temporary confidential status in accordance with Rule 25-22.006(3)(a)2., Florida Administrative Code (FAC).

On October 29, 2007, staff filed those working papers with the Commission's Division of the Commission Clerk and Administrative Services (Document 09828-07).

On November 16, 2007, KW filed its request for confidential classification for portions of the working papers pursuant to Section 367.156, Florida Statutes (F.S.), and Rule 25-22.006, FAC. KW's request included redacted copies of the materials for public use (Document 10344-07) and copies of the materials with the sensitive portions highlighted (Document 10343-07).

- OMP** _____ On May 8, 2008, after discussions with the staff, the utility reduced the amount of material
- COM** _____ which was requested for confidential classification. This recommendation covers the utility's
- CTR** _____ request as modified.
- ECR** _____ Documents 09828-07 and 10343-07 are currently held by the Office of the Commission Clerk as
- CCL** _____ confidential pending resolution of KW's request for confidential classification.
- OPC** _____ Pursuant to Section 119.07, F.S., documents submitted to this Commission are public records.
- RCA** _____ The only exceptions to this law are specific statutory exemptions and exemptions granted by
- SCR** _____ governmental agencies pursuant to the specific items of a statutory provision. Subsections
- SGA** _____ 366.156(3)(d) and (e), F.S., provide the following exemptions.
- SEC** _____
- OTH** Marguerite .

DOCUMENT NUMBER-DATE

04082 MAY 16 08

May 14, 2008
KW Resort Utilities Corp

Subsection 367.156, F.S., 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:

....

(d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the company or its affiliates to contract for goods and services on favorable terms.

(e) Information relating to competitive business 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 that 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 Utility Request

Reading the utility request reveals the sensitive material consists of:

1. Tax Returns (Working Paper No. 20-3/1, 58 pages)

Section 367.156(3), F.S., provides the general definition of "proprietary confidential business information" and allows the Commission to grant a confidential classification to material if its release will cause harm to the ratepayer, the person or the company.

Further, Section 367.156(3)(d), F.S., provides that the Commission may grant a confidential classification to information if its release would impair the ability of a utility or its affiliates to purchase goods and services.

In addition, Section 367.156(3)(e), F.S., provides that the Commission may grant a confidential classification to sensitive competitive business information if release of that information would harm the provider of the information.

May 14, 2008
KW Resort Utilities Corp

The utility requests that its tax returns be granted a confidential classification on the basis that the information is contractually and competitively sensitive. Review of prior Commission orders reveals 5 instances where the Commission has granted a confidential classification to income tax returns:

Commission Order No. 21011, issued April 10, 1989, Docket 881339-WS;
Commission Order No. 21013, issued April 10, 1989, Docket 881340-WS;
Commission Order No. PSC-92-1073-CFO-WS, issued Sept. 28, 1992, Docket 920199-WS;
Commission Order No. PSC-94-1052-CFO-WU, issued August 29, 1994, Docket 920199-WU;
and
Commission Order No. PSC-99-2150-WU, issued November 2, 1999, Docket 990243-WU

We agree with the rationale set out by the Commission in these decisions. Thus, as set out by the provisions of Section 367.156(3), Florida Statutes, which provides release of this information will cause harm to the company, we recommend that the tax returns be granted a confidential classification.

2. Letter from Weiss, Sugar, Dvorak and Dusek (WP No. 16-5/2-2/1, 1 page)

This letter from the accountants reports the adjusted gross income for 2006 concerning Mr. William L. Smith, a utility director. The utility seeks a confidential classification for this material on the basis that it is competitively and contractually sensitive.

As discussed above, Commission Policy is to consider tax returns eligible for a confidential classification. Here, the utility requests a confidential classification for a letter prepared by Mr. Smith's accountants where his 2006 adjusted gross income is reported. Commission Order PSC-92-1073-CFO-WS finds that correspondence related to federal tax returns is eligible for a confidential classification. Since the information here concerns Mr. Smith's adjusted gross income from the 2006 tax return, therefore as correspondence pertaining to federal income tax returns, this information is eligible for a confidential classification. We therefore recommend that the identified portions of the accountant's letter be granted a confidential classification.

3. Review of Federal Tax Returns (Work Paper No. 20-3, 1 page)

During a rate case investigation, the staff auditor compares the reported rate base investment in the utility's tax returns to the amounts recorded as rate base investment within the utility's financial books and records to ensure the utility has maintained an investment in its plant accounts. That test was performed in this case and can be found upon working paper titled "Review of Federal Tax Returns." The utility now seeks a confidential classification for portions of this one page analysis. A part of the analysis pertains to the balance of K W's plant investment reported within its tax returns. This is detailed information from the tax return, and since it is tax return information, it is recommended for a confidential classification.

May 14, 2008
KW Resort Utilities Corp

Information Held as Confidential

To qualify as proprietary confidential business information, the material must also be held as private and not released to the public. The utility asserts this information is held as confidential.

Duration of the Confidential Classification Period

The utility has not specified how long any confidential classification should last. According to the provisions of subsection 367.156(4), F.S., absent good cause shown, confidential classification is limited to 18 months. Without cause shown for a longer period, the classification period should be set as 18 months. As deemed necessary, the utility may request an extension of the confidential classification before the period tolls.

Summary Staff Recommendation

We recommend that material concerning the utility's tax returns and correspondence and information taken directly from the tax returns be granted a confidential classification for 18 months.

A detailed recommendation follows:

Detailed Recommendations

Working Paper Number	Description	Page(s)	Line(s)	Recommend 18 Months Classification	Type of Information Classified Confidential
Documents 09828-07 and 10343-07					
WP 16-5/ 2-2/4	Letter from Weiss, Sugar, Dvorak and Dusek, Ltd.	1	All	Grant	Income Tax Return Information
WP 20-3	Review of Tax Returns	1	Areas 1,4,7	Grant	Income Tax Return Information
WP 20-3/1	Income Tax Returns	1-58	All	Grant	Income Tax Returns

A temporary copy of this recommendation is held at file:
I:10343-07 KW Resort Rate Case Raf.doc

CC: Division of Regulatory Compliance and Consumer Affairs (Welch)
Office of Commission Clerk and Administrative Services (Cole, Mclean)