

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase in wastewater rates in Lee County by Utilities, Inc. of Eagle Ridge.

DOCKET NO. 110153-SU
ORDER NO. PSC-12-0127-CFO-SU
ISSUED: March 16, 2012

ORDER GRANTING UTILITIES, INC. OF EAGLE RIDGE'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION
(DOCUMENT NO. 09029-11)

On December 19, 2011, pursuant to the provisions of Rule 25-22.006(3) and (4), Florida Administrative Code (F.A.C.), and Section 367.156, Florida Statutes (F.S.), Utilities, Inc. of Eagle Ridge (Eagle Ridge) filed its Request for Confidential Classification (Request) of certain information provided to staff auditors in connection with Audit Control No. 11-192-4-2 (Document No. 09029-11). This request was filed in Docket No. 110153-SU.

Section 367.156(1), F.S., provides that "any records received by the commission which are shown and found by the commission to be proprietary confidential business information shall be kept confidential and shall be exempt from Section 119.07(1)." Section 367.156(3), F.S., defines proprietary confidential business information as information that is intended to be and is treated by the company as private, in that disclosure of the information would cause harm to the company's ratepayers or business operations, and has not been voluntarily disclosed to the public. Sections 367.156(3)(b), (d) and (e), F.S., provides that proprietary confidential business information includes, but is not limited to:

- (b) Internal auditing controls and reports of internal auditors.
- (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 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(4)(e), F.A.C., the utility has the burden of demonstrating that materials qualify for confidential classification, and must meet this burden by demonstrating that the information is proprietary confidential business information, the disclosure of which would impair or harm the competitive businesses of the utility.

Eagle Ridge's Request

Eagle Ridge's original December 19, 2011 Request contained, as Exhibit A to the Request, a detailed Justification Matrix identifying the particular information sought to be

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deemed confidential and its justification. On December 21, 2011, via letter, Eagle Ridge submitted a Revised Justification Matrix to include justification for the loan document. On January 23, 2012, via letter, Eagle Ridge submitted a Second Revised Justification Matrix and requested return of the Memorandum of Closing documents as they were not part of the audit. On February 3, 2011, via letter, Eagle Ridge submitted a Third Revised Justification Matrix correcting a typographical error in the Audit Workpapers reference numbers. The documents that are the subject of this Request remain the same.

The Third Revised Justification Matrix identifies the following documents for which confidential classification is sought: Workpaper 31-3 (All of amounts in the columns on pp. 4-7) (All of pp. 8-21); Workpaper 44-1/1. (The columns of salary information of pp. 1-9); Workpaper 44-1/1-1 (The columns of salary information of pp. 1-7); and Workpaper 44-1/4-1/1 (Benefits amounts on pp. 1-3).

Eagle Ridge contends that the documents, described with specific justification in the Third Revised Justification Matrix, consist of certain information provided to staff auditors in connection with Audit Control No. 11-192-4-2 and is proprietary confidential business information. Eagle Ridge contends that a portion of the information consists of employee's name and title, base salary, benefits, overtime, raises, taxes, pension information and total compensation. Eagle Ridge asserts that this information should be classified as proprietary confidential business information "because its disclosure would impair the Utility's competitive interests, provide other utility companies information to lure employees away (thereby driving up salaries and rates), and create circumstances under which infighting and employee morale could be negatively affected," and cites Florida Power & Light Company et al. v. Public Service Commission, 31 So. 3d 860 (Fla. 1st DCA 2010) in support wherein the Court held that the categories listed in section 366.093(3)(a)-(f), F.S., are not exhaustive, and, thus, a utility's compensation information falls within the definition of proprietary confidential business information in Section 366.(3), F.S. Further, Eagle Ridge contends that a portion of the information consists of confidential audited financial reports and Audit Staff's notes regarding these reports. Finally, Eagle Ridge contends that portions of the information consist of loan and debt information.

Eagle Ridge asserts that the information sought to be made confidential is intended to be and is treated by Eagle Ridge as private and confidential, has not been disclosed publicly, and has been strictly controlled internally.

Ruling

Upon review, it appears the above-referenced information satisfies the criteria set forth in Section 367.156(3)(b), (d), and (e), F.S., for classification as proprietary confidential business information. The information at issue consists of internal auditing controls and reports of internal auditors, information concerning bids or other contractual data, the disclosure of which would impair the efforts of Eagle Ridge or its affiliates to contract for goods or services on favorable terms and information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider of the information. Thus, the

information identified in Document No. 09029-11, as described herein, shall be granted confidential classification.

Pursuant to Section 366.093(4), F.S., the information for which confidential classification is granted herein shall remain protected from disclosure for a period of 18 months from the date of issuance of this Order. At the conclusion of the 18-month period, the confidential information will no longer be exempt from Section 119.07(1), F.S., unless Eagle Ridge or another affected person shows, and the Commission finds, that the records continue to contain proprietary confidential business information.

Based on the foregoing, it is

ORDERED by Commissioner Julie I. Brown, as Prehearing Officer, that Utilities, Inc. of Eagle Ridge's request for confidential treatment of the highlighted portions of Document No. 09029-11 is granted as set forth in the body of this Order. It is further

ORDERED that the highlighted portions of Document No. 09029-11 shall be granted confidential classification for a period of not to exceed 18 months from the date of the issuance of this Order. It is further

ORDERED that this Order shall be the only notification by the Commission to the parties of the date of declassification of the materials discussed herein.

By ORDER of Commissioner Julie I. Brown, as Prehearing Officer, this 16th day of March, 2012.



JULIE I. BROWN
Commissioner and Prehearing Officer
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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 25-22.0376, 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.