



PHONE (850) 425-6654 FAX (850) 425-6694 WEB WWW.RADEYLAW.COM
MAIL POST OFFICE BOX 10967 | TALLAHASSEE, FL 32302 OFFICE 301 SOUTH BRONOUGH ST. | STE. 200 | TALLAHASSEE, FL 32301

tcrabb@radeylaw.com

September 1, 2022

Via Hand Delivery

Florida Public Service Commission
Office of Commission Clerk
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

RECEIVED-FPSC
2022 SEP - 1 PM 2:46
COMMISSION
CLERK

RE: Docket No. 20220149-WS - Application for transfer of Wastewater Certificate No. 365-S of Sebring Ridge Utilities, Inc. to CSWR-Florida Utility Operating Company, LLC, in Highlands County

Dear Commission Clerk:

On behalf of Applicant CSWR-Florida Utility Operating Company, LLC, please find enclosed a Request for Confidential Classification concerning the Consolidated Financial Statements of CSWR, LLC and its subsidiaries. Pursuant to rule 25-22.006(4)(a), Florida Administrative Code, enclosed is an unredacted, highlighted copy of the financial statements. A redacted copy of the financial statements was filed in the docket via the Commission's online filing portal, attached as Exhibit D to the transfer application.

Sincerely,

/s/ Thomas A. Crabb

Thomas A. Crabb
Susan F. Clark
Attorneys for Applicant
CSWR-Florida Utility Operating Company, LLC

cc: Richard Gentry, Esq., Office of Public Counsel (gentry.richard@leg.state.fl.us)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of Wastewater
Certificate No. 365-S of Sebring Ridge
Utilities, Inc. to CSWR-Florida Utility
Operating Company, LLC, in Highlands
County.

Docket No.: 20220149-WS

Filed: September 1, 2022

REQUEST FOR CONFIDENTIAL CLASSIFICATION

CSWR-Florida Utility Operating Company, LLC (“CSWR-Florida UOC” or “Applicant”), pursuant to section 367.156, Florida Statutes, and rule 25-22.006, Florida Administrative Code, requests that the Commission classify as confidential certain affiliate financial information contained in Exhibit D to CSWR-Florida UOC’s Application. In support, CSWR-Florida UOC states:

1. CSWR-Florida UOC filed its Application on August 31, 2022. Part II-B of the Application requires the applicant to provide a “detailed financial statement (balance sheet and income statement), audited if available, of the financial applicant, that shows all assets and liabilities of every kind and character.” Pursuant to that requirement, CSWR-Florida UOC has included such information in Exhibit D to the Application.

2. Exhibit D includes the consolidated financial statements of CSWR, LLC (“CSWR”) and its subsidiaries. As explained in the Application, CSWR-Florida UOC was created for the purpose of acquiring and operating water and wastewater systems in Florida and as yet has no financial statements. To fund the acquisition proposed in the Application, CSWR will invest sufficient equity in CSWR-Florida UOC to (a) pay the purchase price and all costs related to the acquisition of assets currently owned by Sebring Ridge Utilities, (b) fund necessary capital improvements, and (c) provide working capital to sustain operations until fully compensatory rates

are implemented and CSWR-Florida UOC becomes self-sufficient. Thus, in support of its Application, CSWR-Florida UOC has provided the audited financial statements of CSWR.

3. A corporate organization chart showing the affiliation between CSWR and CSWR-Florida UOC is included with the Application at Exhibit E. CSWR is not a publicly-traded company or a regulated utility. Therefore, its financial information is not available to the public.

4. This Request for Confidential Classification pertains to certain financial data included on the consolidated financial statements. For purposes of this Request, the data for which the Applicant requests confidential classification will be called the "CSWR Group Financial Data."

5. The CSWR Group Financial Data contained in Exhibit D is entitled to confidential classification pursuant to section 367.156, Florida Statutes, and is exempt from section 119.07(1), Florida Statutes, and Article I, Section 24(a) of the Florida Constitution because it contains "proprietary confidential business information."

6. Section 367.156(3), Florida Statutes, defines "proprietary confidential business information" as:

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, or order of a court of administrative body, or a private agreement that provides that the information will not be released to the public.

7. Some statutory examples of "proprietary confidential business information" include: (1) trade secrets; (2) internal auditing controls and reports of internal auditors; (3) 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; and (4)

information relating to competitive interests, the disclosure of which would impair the competitive businesses of the provider of the information. § 367.156(3), Fla. Stat.

8. The disclosure of the CSWR Group Financial Data in Exhibit D would negatively affect and impair the business and competitive interests of CSWR and, in turn, CSWR-Florida UOC. The disclosure of such information may also reveal trade secrets or impair the ability of CSWR or CSWR-Florida UOC to contract for goods or services on favorable terms. In addition, it is not necessary to make the information in Exhibit D available to the public.

9. The CSWR Group Financial Data has previously been found by the Commission, twice, to constitute proprietary confidential business information that is confidential and exempt from public disclosure. *See In re: Application for transfer of water facilities of Sunshine Utilities of Central Florida, Inc. and Water Certificate No. 363-W to CSWR-Florida Utility Operating Company, LLC, in Marion County*, Docket No. 20210095-WU, Order No. PSC-2021-0253-CFO-WU (Fla. PSC July 12, 2021); *In re: Application for transfer of water and wastewater systems of Aquarina Utilities, Inc., Water Certificate No. 517-W, and Wastewater Certificate No. 450-S to CSWR-Florida Utility Operating Company, LLC, in Brevard County*, Docket No. 20210093-WS, Order No. PSC-2021-0230-CFO-WS (Fla. PSC June 23, 2021). Moreover, in other states where this issue has come up, regulators have unanimously protected the confidentiality of the CSWR Group Financial Data.

10. In addition, the Commission has ruled that similar financial statements were entitled to confidential classification. *See, e.g., In re: Application for authority to transfer assets of exempt entity in Sumter Cty. by the City of Wildwood to South Sumter Utility Company, LLC*, Docket No. 20190185-WS, Order No. PSC-2020-0076-CFO-WS, 2020 WL 1659672 (Fla. P.S.C. Mar. 17, 2020) (granting request for confidential classification for consolidated financial

information and finding the information was not available to the general public and, if disclosed, could adversely impact the utility's ability to conduct business in a cost-effective manner); *In re: Application for increase in wastewater rates in Charlotte Cty. by Utilities, Inc. of Sandalhaven*, Docket No. 150102-SU, Order No. PSC-15-0561-CFO-SU, 2015 WL 8536715 (Fla. P.S.C. Dec. 9, 2015) (finding the consolidated financial statements met the statutory definition of proprietary confidential business information in section 367.156(3)(d) and (e), Florida Statutes and noting how disclosure would harm the utility by "adversely impact[ing] Sandalhaven's ability to conduct its business in the most cost-effective manner possible").

11. There are many other Commission Orders reaching the same conclusion. *See, e.g., In re: Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties by Utilities, Inc. of Florida*, Docket No. 160101-WS, Order No. PSC-17-0159-CFO-WS (Fla. PSC May 5, 2017) (concluding "[t]he information constitutes information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information"); *In re: Application for original certificates to provide water and wastewater service in Lake County by Sunlake Estates Utilities, L.L.C.*, Docket No. 130180-WS, Order No. PSC-14-0060-CFO-WS (Fla. PSC January 28, 2014); *In re: Application for original certificates for proposed water and wastewater system and request for initial rates and charges in Indian River, Okeechobee and St. Lucie counties by Grove Land Utilities, LLC*, Docket No. 090445-WS, Order No. PSC-12-0097-CFO-WS (Fla. PSC March 5, 2012).

12. Accordingly, designating the CSWR Group Financial Data as proprietary confidential business information is consistent with longstanding Commission precedent.

13. As in the other cases cited by the Applicant, CSWR-Florida UOC's business operations would be harmed by public disclosure of the CSWR Group Financial Data. Since its formation in 2014, CSWR, LLC and its operating company affiliates have been acquiring water and wastewater systems. To date, CSWR-affiliated utility operating companies have acquired and are operating water or wastewater systems in Missouri, Kentucky, Louisiana, Texas, Tennessee, Arkansas, Mississippi, Arizona, and North Carolina. The affiliate group has acquisition applications pending in North Carolina, Florida, Louisiana, Missouri, and Texas.

14. Public disclosure of the CSWR Group Financial Data would harm the competitive interests of CSWR-FL UOC and its affiliates. Companies contemplating a similar business plan could reasonably be encouraged to enter the marketplace and compete with CSWR and its affiliates for the purchase of systems, or would at minimum have an example of a financial roadmap if they had the CSWR Group Financial Data. If a competitor obtained the CSWR Group Financial Data, they could freeride on crucial financial information they would otherwise have to obtain by experience at their own cost and risk. If a system owner contemplating sale obtained the CSWR Group Financial Data, it could impact the sales price of the system or other contractual terms, adverse to the interests of CSWR-FL UOC and its affiliates. Similarly, it could potentially be used by suppliers to undermine the Applicant's negotiating position.

15. Section 367.156(3), Florida Statutes, provides a nonexhaustive list of examples of proprietary confidential business information that includes information relating to competitive interests, the disclosure of which would impair the competitive businesses of the provider of the information, as well as trade secrets.

16. As discussed above, the CSWR Group Financial Data is “information relating to competitive interests, the disclosure of which would impair the competitive businesses of the provider of the information.” The data also constitutes trade secrets.

17. Section 812.081(1)(c), Florida Statutes, defines “trade secret” as follows:

“Trade secret” means the whole or any portion or phase of any . . . compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any . . . commercial information, including financial information Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes. (underlining added)

18. The First District Court of Appeal recently made clear that this statutory definition of “trade secret” has four required elements: (1) a “compilation of information”; (2) “for use or is used in the operation of a business”; (3) “which provides the business an advantage or an opportunity to obtain an advantage, over those who do not know or use it”; and (4) the owner of the information “takes measures to prevent it from becoming available to persons other than those selected.” *Managed Care of N.A., Inc. v. Fla. Healthy Kids Corp.*, 268 So. 3d 856, 860 (Fla. 1st DCA 2019), *reh’g denied* (Apr. 24, 2019). “Value” is not an element of this test. “Instead, the enumerated portion of the statutory subsection establishes a presumption of what a trade secret is ‘considered to be’ once the required elements of a trade secret are established, as set forth in the

first sentence of the statutory subsection.” *Id.* In other words, once the elements of the test are established, “the trade secrets are considered, as a matter of law, to be ‘of value.’” *Id.*

19. The CSWR Group Financial Data meets all the elements of this test. It is a compilation of “financial information,” which is given as an example in the statute. It is used in the operation of the Applicant’s business, including in this acquisition docket to show the financial ability of the Applicant. It provides an advantage or an opportunity to obtain an advantage, over those who do not know or use it, as shown from the competitive interests discussed above. And finally, the Applicant has taken measures to prevent the CSWR Group Financial Data from becoming public by filing this Request for Confidential Classification.

20. Pursuant to rule 25-22.006(4)(d), Florida Administrative Code, CSWR-Florida UOC hereby affirms that the material identified as confidential in Exhibit D is intended to be and is treated by CSWR, along with CSWR-Florida UOC, as private and confidential and has not been publicly disclosed.

21. Exhibit A to this Request For Confidential Classification is a justification table that specifies the information in Application Exhibit D that CSWR-Florida UOC asks the Commission to classify as confidential and the statutory justification for each such request in compliance with rule 25-22.006(4), Florida Administrative Code.

22. In addition, and in compliance with rule 25-22.006(4)(a), Florida Administrative Code, CSWR-Florida UOC has filed a redacted copy of the 2020/2021 consolidated financial statements with the Commission via the online filing portal as Exhibit D to the Application. Also, included with this Request For Confidential Classification is a copy of the 2020/2021 consolidated financial statements with the confidential information subject to this request highlighted (unredacted).

WHEREFORE, CSWR-Florida UOC respectfully requests that the CSWR Group Financial Data contained in Application Exhibit D be classified as proprietary confidential business information that is confidential and exempt from disclosure under the Public Records Act in Chapter 119, Florida Statutes, and Article I, Section 24(a) of the Florida Constitution. CSWR-Florida UOC further requests, pursuant to section 367.156(4), Florida Statutes, that the specified confidential information in Exhibit D be classified by the Commission as confidential for the maximum period of time allowed and the unredacted copy of Exhibit D be returned promptly to CSWR-Florida UOC upon closure of this docket.

Respectfully submitted this 1st day of September, 2022.

/s/ Thomas A. Crabb

Susan F. Clark (Fla. Bar No. 179580)
Thomas A. Crabb (Fla. Bar No. 25846)
Radey Law Firm
301 S. Bronough Street, Suite 200
Tallahassee, Florida 32301-1722
(850) 425-6654
tcrabb@radeylaw.com
sclark@radeylaw.com

*Counsel for CSWR-Florida Utility Operating
Company, LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished via electronic mail to the following this 1st day of September, 2022.

Office of Public Counsel
Richard Gentry
c/o The Florida Legislature
111 W. Madison Street, Room 812
Tallahassee FL 32399
(850) 488-9300
gentry.richard@leg.state.fl.us

/s/ Thomas A. Crabb
Thomas A. Crabb

Exhibit A
Justification Matrix

Location (Document name and location of information)	Justification
<p>Consolidated Financial Statements, December 31, 2021 and 2020:</p> <p>Pages 3-4: amounts under headings 2021 and 2020;</p> <p>Page 5: amounts under headings “Paid-In Capital,” “Retained Deficit,” and “Total Member’s Equity;”</p> <p>Page 6: amounts under headings 2021 and 2020;</p> <p>Page 10, Note 02, Accounts Receivable: allowance amount for doubtful accounts;</p> <p>Page 11, Note 02, Regulation: amounts listed in last two paragraphs;</p> <p>Page 12, Note 02, Contributions in Aid of Construction: amounts for 2021 and 2020;</p> <p>Page 13, Note 03 - all</p> <p>Page 13, Note 04: amounts in last two paragraphs;</p> <p>Page 14, Note 04: amounts in first two paragraphs;</p> <p>Page 14, Note 06: amounts under headings 2021 and 2020, and amounts in last paragraph;</p> <p>Page 15, Note 07: amounts and contractual information listed in first paragraph, amounts under headings 2021 and 2020, and amounts of future maturities of notes payable;</p> <p>Page 16, Note 07, Deferred Financing Costs: amounts in first paragraph;</p> <p>Page 16, Note 08: amounts in second paragraph, amounts listed beside 2022-2025 and “total” row headings, and amounts in the subsequent paragraph;</p> <p>Page 17, Note 09: amounts listed therein;</p> <p>Page 17, Note 11: amounts under columns 2021 and 2020 and in subsequent paragraph;</p> <p>Page 18, Note 12: amounts listed in first two paragraphs and amounts listed beside 2022-2025 and “total” row headings;</p> <p>Pages 19-22: all amounts under each column heading.</p>	<p>§367.156(3)(a), (b), (d) & (e), Florida Statutes: Disclosure of the consolidated financial statements of CSWR, LLC (“CSWR”) which is not a public company and is not subject to public disclosure of its financial statements, would impair CSWR’s (and the Applicant’s) competitive interests, could be used to discern trade secrets, or harm its ability to contract for goods and services on a favorable basis. CSWR keeps this information strictly confidential to also prevent competitors and prospective counterparties from information which could be used in future negotiations to the disadvantage of CSWR and its affiliates.</p>