

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of wastewater
Certificate No. 318-S from BFF Corp to
CSWR-Florida utility Operating Company,
LLC, in Marion County.

DOCKET NO. 20220061-SU
ORDER NO. PSC-2023-0219-CFO-SU
ISSUED: August 3, 2023

ORDER GRANTING CSWR-FLORIDA UTILITY
OPERATING COMPANY, LLC'S REQUESTS
FOR CONFIDENTIAL CLASSIFICATION
(DOCUMENT NOS. 01918-2022, 04454-2022, AND 04822-2022)

On March 16, 2022, pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), CSWR-Florida Utility Operating Company, LLC (CSWR-FL) filed a Request for Confidential Classification (Request) of certain financial information, including consolidated financial statements, contained in Exhibit D to CSWR-FL's Application. The information under review is filed in this docket as Document No. 01918-2022.

On July 19, 2022, CSWR-FL filed a Request for an engineering memo report submitted in supplement Exhibit H to CSWR-FL's Application and in response to discovery requests from the Office of Public Counsel (OPC). On June 29, 2023, CSWR-FL filed a supplemental memorandum in support of its request for confidentiality. The memo under review is filed in this docket as Document No. 04822-2022.

Finally, on July 19, 2022, CSWR-FL filed a Request of certain financial information, including the audited 2020 and 2021 consolidated financial statements of CSWR, LLC and Subsidiaries, contained in supplement Exhibit D to CSWR-FL's Application and in response to discovery requests from OPC. The information under review is filed in this docket as Document No. 04822-2022.

These requests were all filed in Docket No. 20220061-SU.

Requests for Confidential Classification of Consolidated Financial Information

Because Document Nos. 01918-2022 and 04822-2022 include consolidated financial statements, differentiated only by different fiscal years, they will be taken together.

CSWR-FL contends that the financial information contained in 01918-2022 and 04822-2022, constitutes proprietary and confidential business information entitled to protection under Section 366.093, F.S., and Rule 25-22.006, F.A.C. CSWR-FL asserts that this information is intended to be and is treated by CSWR-FL as private and has not been publicly disclosed.

CSWR-FL contends that the confidential information consists of the consolidated financial statements of CSWR, LLC and its subsidiaries. CSWR-FL was created for the purpose of acquiring and operating water and wastewater systems in Florida and has no financial statements. CSWR-FL asserts that the audited financial statements of CSWR, LLC, are not publicly available. CSWR-FL states that the disclosure of the confidential financial information would impair the business and competitive interests of CSWR, LLC and, in turn, CSWR-FL. Therefore, CSWR-FL argues that such information is entitled to confidential classification pursuant to Section 367.156(3)(e), F.S.

Request for Confidential Classification of Engineering Memo

As with the financial information in question, CSWR-FL contends that the engineering memo constitutes proprietary and confidential business information entitled to protection under Section 366.093, F.S., and Rule 25-22.006, F.A.C. CSWR-FL asserts that this information is intended to be and is treated by CSWR-FL as private and has not been publicly disclosed.

According to CSWR-FL, the engineering memo, contained in Document No. 04822-2022, includes detailed engineering information relating to BFF Corp.'s wastewater treatment facility, including a detailed description of the facilities and systems and recommended repairs and improvements, as well as capital estimates for triage and other improvements and repairs. CSWR-FL contends that these details were confidential as "proprietary confidential business information," as defined in Section 367.156(3), F.S., in at least three (3) ways: 1) as trade secrets; 2) as 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 3) as information relating to competitive interests, the disclosure of which would impair the competitive businesses of the provider of the information.

In its supplemental memorandum in support of its request for confidentiality, CSWR-FL cites to Commission precedent to support their argument that, as information concerning CSWR-FL's competitive interests, disclosure of the engineering memo, "could negatively affect the way [their] plans and business strategies are carried out."¹ CSWR-FL contends that disclosure of the referenced portions of the engineering memo would give CSWR-FL's competitors confidential acquisition planning information relating to the BFF Corp. system. Paired with the purchase price, a competitor would know confidential details of the status and condition of the system, providing insight into CSWR-FL's acquisition planning processes and perhaps the opportunity to induce BFF Corp. to breach its agreement with CSWR-FL or otherwise undercut the planned acquisition. Finally, the information is proprietary to CSWR-FL and was prepared at significant

¹ Order No. PSC-03-0410-CFO-WS, Docket No. 20021173-WS, *In re: Request For Confidential Classification Of Certain Work Papers In Connection With Affiliate Transaction Audit (Audit Control No. 02-122-3-1) By Utilities, Inc.* (Disclosure of the utility's business strategies and acquisition planning information would impair negotiations for the purchase of utility systems in the future and its ability to purchase the systems at the lowest possible price. In addition, the costs of planning and efforts to purchase utility systems are not directly recoverable through current rates and charges; therefore, the costs of utility purchases affect the operations and contractual ability of the competitive part of this company.)

expense, which is not directly recoverable and comprises costs that alone “affect the operations and contractual ability of the competitive part of this company.”²

Ruling

Section 366.093(1), F.S., provides that records the Florida Public Service Commission (Commission) has found to contain proprietary business information shall be kept confidential and shall be exempt from Chapter 119, F.S. Section 366.093(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. Section 366.093(3), F.S., provides that proprietary confidential business information includes, but is not limited to:

- (e) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

Upon review, it appears the above-referenced information satisfies the criteria set forth in Section 366.093(3), F.S., for classification as proprietary confidential business information. The information constitutes “information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.” Thus, the information identified in Document Nos. 01918-2022, 04454-2022, and 04822-2022 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 up to 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 CSWR-FL 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 hereby

ORDERED by Commissioner Mike La Rosa, as Prehearing Officer, that CSWR-FL’s Requests for Confidential Classification of Document Nos. 01918-2022, 04454-2022, and 04822-2022 are granted. It is further

² *Id.*

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ORDERED that the information in Document Nos. 01918-2022, 04454-2022, and 04822-2022, for which confidential classification has been granted, shall remain protected from disclosure for a period of up to 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 CSWR-Florida Utility Operating Company, LLC or another affected person shows, and the Commission finds, that the records continue to contain proprietary confidential business information. 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 Mike La Rosa, as Prehearing Officer, this 3rd day of August, 2023.



Mike La Rosa
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.

RPS

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.