

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for exemption from)
Florida Public Service Commission)
regulation for provision of water)
service in Broward County by)
H2OULTON METERING SYSTEMS, INC.)
_____)

DOCKET NO. 910655-WU
ORDER NO. 25823
ISSUED: 2/28/92

ORDER GRANTING CONFIDENTIALITY FOR
INFORMATION CONTAINED IN DOCUMENT NO. 01507

On February 11, 1992, H2Oulton Metering Systems, Inc. (H2Oulton or company) filed a motion to request confidential classification of the information requested by Interrogatory Nos. 3 and 4 of the Commission Staff's First Set of Interrogatories. In the two interrogatories, the Commission Staff requested a list of all properties that H2Oulton is presently providing submetering service to. Specifically, Staff requested a list of the properties within counties over which we have water and wastewater jurisdiction. In response, H2Oulton did submit a list of the properties, along with the city and county location.

Section 119.07(1), Florida Statutes, 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. This law derives from the concept that government should operate in the "sunshine". Therefore, it is our view that parties must meet a very high burden when requesting confidential classification of documents.

Pursuant to Section 367.156, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, H2Oulton has the burden to show that the material submitted is qualified for confidential classification. Rule 25-22.006, Florida Administrative Code, provides that the company may fulfill its burden by demonstrating that the information falls under one of the statutory examples set out in Section 367.156, Florida Statutes, or by demonstrating that the information is proprietary confidential information, the disclosure of which will cause the company harm.

Section 367.156, Florida Statutes, provides several specific categories of proprietary confidential business information including trade secrets, security measures, information concerning bids, information relating to competitive interests, and employee personnel information.

H2Oulton requests confidential classification of the list of properties currently being submetered by the company. In its motion, the company contends that "the material for which confidential classification is sought is intended to be and is treated by H2Oulton as a trade secret and has not been disclosed to

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any other person." Further, H2Oulton states that disclosure of this information would reveal trade secrets to the company's competitors and would thereby adversely affect H2Oulton's marketing and operations.

Because this information is intended to be and is treated by H2Oulton as private, and has not been publicly disclosed and because it is apparent that those in the sub-metering business would benefit by this information to H2Oulton's detriment, we hereby find that the information contained in Document No. 01507 is proprietary confidential business information. Additionally, in accordance with Section 367.156, Florida Statutes, this finding shall be effective for a period not exceeding eighteen months from the issue date of this Order, unless the company shows and the Commission finds, that the protection from disclosure shall be for a specified longer period.

Based on the foregoing, it is, therefore,

ORDERED by Commissioner Susan F. Clark, as Hearing Officer, that the responses to Interrogatory Nos. 3 and 4 of Commission Staff's First Request are proprietary confidential business information pursuant to Section 367.156, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, and that they will be treated as such by the Florida Public Service Commission. It is further

ORDERED that this finding shall be effective for a period not exceeding eighteen months from the date of this Order, unless the company shows and the Commission finds, that the protection from disclosure shall be for a specified longer period.

BY ORDER of Commissioner Susan F. Clark, as Hearing Officer, this 28th day of FEBRUARY, 1992.



SUSAN F. CLARK, Commissioner and
Hearing Officer

(S E A L)

SFC/LAJ

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

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 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) 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 Director, Division of Records and Reporting, 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.