

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for a Rate) DOCKET NO. 920808-SU
Increase for the South Fort) ORDER NO. PSC-93-0492-CFO-SU
Myers Division of FLORIDA CITIES) ISSUED: 04/02/93
WATER COMPANY in Lee County.)
_____)

TEMPORARY PROTECTIVE ORDER

By Motion for Temporary Protective Order filed March 17, 1993, Florida Cities Water Company (FCWC) requested that pursuant to Rule 25-22.006(5)(c), Florida Administrative Code, this Commission issue a Temporary Protective Order for documents and information requested by the Office of Public Counsel (OPC) through discovery. By separate filing on the same date, FCWC requested oral argument on its motion.

FCWC asserts that interspersed among the documents and information sought in Requests Nos. 13 and 23 of OPC's First Request for Production of Documents is information which is the confidential proprietary business information of FCWC and its affiliates, and FCWC claims that such information should be exempt from § 119.07(1), Florida Statutes. Document Request No. 13 solicits the tax returns and associated workpapers of FCWC and its parent, Avatar Holdings, Inc., (Avatar) for the previous three years. Document Request No. 23 solicits various source documents showing the derivation of Avatar's consolidated financial statements for 1991 and 1992. FCWC requests that the information provided in response to OPC's document requests be granted protection from disclosure by a Temporary Protective Order.

In addition to protecting the documents and information against public disclosure pending any determination of permanent confidential status, FCWC requests that the Temporary Protective Order provide the following: (1) allow OPC to inspect but not copy documents that FCWC believes are not related to transactions or cost allocations among FCWC's affiliates, (2) require OPC to attempt to informally resolve the handling of information which OPC will use at the hearing, (3) preserve FCWC's other objections to producing the material, and (4) allow FCWC 21 days from the date of a failed attempt to informally resolve handling the subject information to file for permanent protective orders.

In its March 19, 1993 response, OPC stated only that it would not enter into an agreement with FCWC for the purpose of protecting the information from public disclosure, that it preferred the Commission use the procedures in its rules for protecting

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confidential information from public disclosure, and that it opposed as unnecessary oral argument on FCWC's motion.

The purpose of a temporary protective order issued pursuant to Rule 25-22.006(5)(c), Florida Administrative Code, is to facilitate the provision of information by temporarily exempting the information provided from § 119.07(1), Florida Statutes. Under the rule, if the information is to be used in a proceeding, the utility must file a specific request for a protective order, and if the information is not to be used, OPC must return the information.

In consideration of the purpose of Rule 25-22.006(5)(c), Florida Administrative Code, it is appropriate at this time to grant only the relief which the rule sanctions. Upon the completion of its review of the subject documents, OPC will notify FCWC of the specific documents and information which it intends to use in this docket. FCWC will then request confidential treatment of those portions of the documents which it seeks to protect from disclosure. OPC will return the remainder of the documents and information to FCWC.

Based upon the foregoing, it is

ORDERED by Commissioner Thomas M. Beard, as Prehearing Officer, pursuant to this Commission's authority under § 367.156, Florida Statutes, and Rule 25-22.006 (5)(c), Florida Administrative Code, that Florida Cities Water Company's Motion for Temporary Protective Order is granted as set forth in the body of this Order, and, therefore, the documents and information referenced herein shall be kept confidential and be exempt from public disclosure under § 119.07(1), Florida Statutes, for the duration of this Temporary Protective Order. It is further

ORDERED that this Temporary Protective Order shall expire on June 18, 1993, or on the Commission's final determination of the confidential classification of any of the subject materials and information, whichever occurs first. It is further


ORDERED that this Order shall have no affect on the subsequent determination of any request for specified confidential classification of any of the subject materials and information. It is further

ORDER NO. PSC-93-0492-CFO-SU
DOCKET NO. 920808-SU
PAGE 3

ORDERED that stringent measures shall be taken to preserve the confidentiality of the documents protected by this Order. No disclosure of the documents protected by this Order shall be made or permitted. It is further

ORDERED that Florida Cities Water Company's Request for Oral Argument is denied.

By ORDER of Commissioner Thomas M. Beard, as Prehearing Officer, this 2nd day of April, 1993.


THOMAS M. BEARD, Commissioner and
Prehearing Officer

(S E A L)

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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.