

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for a rate) DOCKET NO. 921261-WS
increase in Lee County by HARBOR) ORDER NO. PSC-94-0391-CFO-WS
UTILITIES COMPANY, INC.) ISSUED: April 6, 1994
_____)

ORDER DENYING REQUEST FOR CONFIDENTIALITY

On November 18, 1994, Harbor Utilities Company, Inc. (Harbor or utility) filed the financial statements of Harbor's parent company, Imperial Harbor, along with a request for confidential classification of Imperial Harbor's financial statements.

Under Section 119.01, Florida Statutes, all documents submitted to this Commission are public records. The only exceptions to this law are documents which are exempt pursuant to specific statutory terms or provisions. Moreover, under Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, the person requesting confidential treatment of materials has the burden of demonstrating that the materials qualify for confidential classification.

The information in Document No. 12346-93 for which Harbor has requested confidential classification concerns Imperial Harbor's financial statements. In its request for confidential treatment, Harbor stated that Imperial Harbor is a "land developer whose utility interests comprise a very small portion of its income and assets." Harbor also mentioned that "Imperial Harbor's total land holdings, the sales prices of land sold and the financing for that land are all included in the 1990 and 1991 financial statements." According to Harbor, disclosure of this information "would be extremely prejudicial to future land transactions and sales by Imperial Harbor in today's highly competitive land sales market." Harbor further argues that "this information is, and has always been, treated confidentially by Imperial Harbor and has only been disclosed pursuant to statutory provisions, court order or administrative order."

Though Harbor argues that the information filed relates to the competitive interests of the parent company, Harbor has not adequately demonstrated, as required by Rule 25-22.006(4)(a), Florida Administrative Code, how the disclosure of Imperial Harbor's financial statements "would be extremely prejudicial" to Imperial Harbor, or to Harbor's customers. Harbor, as well, did not identify pages and lines at which the confidential material is found and did not correlate the pages and lines with specific justification for confidential classification, as required by Rule 25-22.006(4)(a), Florida Administrative Code.

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By not providing specific line by line justification for confidential treatment of the submitted materials and not adequately demonstrating how it will be affected, Harbor has not met the burden of proof pursuant to the Rule referenced herein, to show that the material in question contains bona fide proprietary confidential business information. Because Harbor does not explain how it could presently and in the future be affected, its argument for confidential treatment is conclusory. Harbor's description of the nature of the land sales market does not meet the burden required. For these reasons, Harbor's request for confidential classification of Imperial Harbor's financial statements is denied.

It is, therefore,

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that the request by Harbor Utilities Company, Inc. for confidential classification of financial statements of its parent company Imperial Harbor is hereby denied.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 6th day of April, 1994.



Susan F. Clark, 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.