

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for Amendment of Certificates Nos. 298-W and 248-S in Lake County by JJ's Mobile Homes, Inc.)	DOCKET NO. 921237-WS
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In Re: Investigation into Provision of Water and Wastewater Service by JJ's Mobile Homes to its Certificated Territory in Lake County.)	DOCKET NO. 940264-WS ORDER NO. PSC-94-1335-CFO-WS ISSUED: October 31, 1994

ORDER DENYING JJ'S MOBILE HOMES, INC.'S REQUEST
FOR CONFIDENTIAL TREATMENT OF DOCUMENT NO. 9486-94

On September 14, 1994, JJ's Mobile Homes, Inc. (JJ's or utility) filed a Request for Confidential Treatment. The request relates to a financial statement of the president of the utility, Jordan Hypes, which was attached to the prefiled testimony of Robert Nixon, and is identified herein as Document No. 9486-94. JJ's requests confidential treatment on the grounds that the information was private, sensitive, proprietary and highly personal. JJ's alleges that Jordan Hypes has considered the financial statement to be extremely personal and has never made the information contained in that statement public. JJ's states that no party to this proceeding will be harmed by the granting of confidentiality, and that any party objecting to the request should set forth the grounds for prejudice.

On September 20, 1994, the Office of Public Counsel (OPC) filed an objection to JJ's request for confidentiality. OPC argues that the information is not proprietary confidential business information as defined by statute. OPC has objected to JJ's request on several specific grounds: the relevant statutes and rules only address proprietary confidential business information, not sensitive or personal information; JJ's has not demonstrated that there is a private agreement which protects the information from public disclosure; JJ's has not demonstrated, pursuant to Rule 25-22.006(4)(e), Florida Administrative Code, how the ratepayers or utility's business operations will be harmed by disclosure; and JJ's has improperly attempted to place the burden of proof upon other parties in the proceeding.

On September 29, 1994, the Commission Staff notified the utility of several facial deficiencies, and requested that, pursuant to Commission practice, the utility submit a revised filing which addressed the deficiencies. Specifically, Staff found

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that the filing did not identify the pages and lines of the confidential material, nor did it identify the specific justification of the classification of each item. Further, the utility did not demonstrate line-by-line how the information qualifies as one of the exemptions of Section 367.156(3), Florida Statutes nor did it demonstrate how the ratepayers or utility's business operations would be harmed by disclosure. Finally, the request for confidential treatment did not contain an affirmative statement that the material has been treated by the utility as private. At the September 30, 1994, Prehearing Conference, the utility agreed to respond to OPC's objection and Staff's letter by October 3, 1994.

On October 3, JJ's filed a Response to Citizen's Objection to JJ's Mobile Homes, Inc.'s Request for Confidential Treatment. In its response, JJ's also addresses the concerns raised in Staff's September 29, 1994, deficiency letter. JJ's did not submit a revised filing, but addressed the deficiencies. JJ's asserts that it did not identify the pages and lines where the confidential material must be found because all of the information is considered to be sensitive. The utility states that the information does qualify under one of the exemptions of Section 367.156(3), Florida Statutes, and that the information has not been disclosed publicly.

Pursuant to Section 119.01, Florida Statutes, 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. Contrary to the utility's assertion, pursuant to Rule 25-22.006(4)(e), Florida Administrative Code, the movant has the burden to demonstrate that the material submitted qualifies for confidential classification. Furthermore, other parties are not required to demonstrate how they or the public would be harmed by the granting of confidentiality.

Section 367.156(2), Florida Statutes, requires the Commission to issue an appropriate protective order if it determines that the disclosure of the information will require the disclosure of proprietary confidential business information. JJ's contention that the financial statements should receive confidential treatment relies upon the assertion that the documents are personal and highly sensitive. This category of documents is not one of the statutory examples listed in Section 367.156(3), Florida Statutes. Pursuant to Rule 25-22.006(4)(c), Florida Administrative Code, if the documents do not qualify under Section 367.156(3), the utility shall include a statement "explaining how the ratepayers or the person's or utility's business will be harmed by the disclosure."

In its response, JJ's made brief reference to the harm that might be caused by disclosure, by stating that Mr. Hypes is a businessman who is involved in several ventures and that "the revelation of the contents of Mr. Hypes' financial statement could impact his various businesses and investments in a harmful way." While the utility should not be required to explain in such depth that it essentially reveals the nature of the confidential information, JJ's must provide at least a substantive showing of how Mr. Hypes business will be harmed. JJ's has not met that burden.

Pursuant to 26 U.S.C. Section 6103(a), federal income tax returns are confidential and are therefore exempt from Section 119.07(1), Florida Statutes. See Order No. PSC-92-0773-CFO-WS, In re: Petition for continuation of gross-up of contributions-in-aid-of-construction (CIAC) in Lee County by Gulf Utility Company, (Docket No. 910110-WS). An important distinction must be made between financial statements and federal income tax returns. Financial information by itself is not granted automatic confidentiality.

For example, In Docket No. 921261-WS, In re: the application for a rate increase by Harbor Utilities Company, Inc., the Commission denied Harbor Utilities Company's request for confidential treatment of its parent company's financial statements. In Order No. PSC-94-0391-CFO-WS, issued April 6, 1994, the Commission found that the utility did not demonstrate how disclosure of the statements would be extremely prejudicial, and did not make a line-by-line showing of the justification of confidentiality.

In its response, JJ's cited the case of In Re: Application of Hydratech Utilities, Inc. for increase in water rates in Martin County (Docket No. 880882-WU), to support its position. A review of the confidentiality order in that case, Order No. 21701, issued August 8, 1998, reveals that the materials were granted confidentiality because it appeared the public disclosure of the documents might have been detrimental and because federal tax returns are statutorily exempted from disclosure. JJ's request is distinguishable on both counts. The utility has not made a sufficient showing that a disclosure would be detrimental, but rather asserts that the information is sensitive and personal. As noted herein, the materials related to JJ's request are not federal tax returns, and therefore are not confidential by operation of federal law.

Similarly, in the case of In re: Application of Jasmine Utilities Corporation for a rate increase in Pasco County, (Docket

ORDER NO. PSC-94-1335-CFO-WS
DOCKETS NOS. 921237-WS, 940264-WS
PAGE 4

No. 920148-WS), Order No. PSC-0934-FOF-WS, issued June 22, 1993, granted OPC's request to reconsider a prior order, and required the utility to disclose individual tax returns of the company president. The Commission noted in that order that the utility could seek confidentiality of those tax returns. Although JJ's cites this case to support its argument, the *Jasmine Utilities* decision addressed specific income tax returns, not a financial statement.

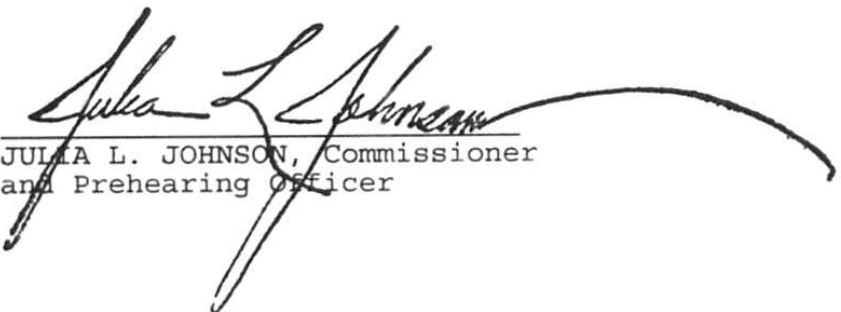
JJ's has not demonstrated that the material is proprietary confidential business information. Based on the foregoing, I find it appropriate, pursuant to this Commission's authority under Section 367.156, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, to deny the utility's Request for Confidential Treatment as set forth above.

It is, therefore,

ORDERED by Commissioner Julia L. Johnson, as Prehearing Officer, that the Request for Confidential Treatment filed by JJ's Mobile Homes, Inc., is hereby denied. It is further

ORDERED that the following document is not proprietary confidential information pursuant to Section 367.156, Florida statutes, and Rule 25-22.006, Florida Administrative Code: the financial statement of Jordan Hypes, which was attached to the prefiled testimony of Robert Nixon, identified herein as Document No. 9486-94.

By ORDER of Commissioner JULIA L. JOHNSON, as Prehearing Officer, this 31st day of October, 1994.


JULIA L. JOHNSON, Commissioner
and Prehearing Officer

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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.