

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request of confidential) DOCKET NO. 960026-WU
treatment of information) ORDER NO. PSC-96-1155-CFO-WU
requested by staff during) ISSUED: September 17, 1996
informal overearnings)
investigation audit, by Peoples)
Water Service Company of)
Florida, Inc.)
_____)

ORDER GRANTING IN PART AND DENYING IN PART A REQUEST FOR
CONFIDENTIAL CLASSIFICATION AND TREATMENT OF CERTAIN INFORMATION

On January 4, 1996, pursuant to Section 367.156, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, Peoples Water Service Company of Florida, Inc., (Peoples or the utility) filed a request for confidential treatment (Document No. 00135-96) for certain information (Document No. 00136-96; Cross-Ref. Document Nos. 12311-95 thru 12323-95) provided in response to the Commission's Overearnings Investigation Audit.

By letter dated February 1, 1996, Commission staff notified Peoples that its request for confidentiality was deficient and gave the utility 15 days to correct the deficiencies. The letter stated that the utility failed to sufficiently identify the information as required by Rule 25-22.006(4)(a) and also failed to include a line-by-line justification demonstrating how the information asserted to be confidential qualifies as such as required by Rule 25-22.006(4)(c). In response, on February 16, 1996, Peoples filed an Amendment to Request for Confidential Treatment (Document No. 01872-96), but failed to adequately remedy the deficiencies of its original filing.

Pursuant to Chapter 119, Florida Statutes, documents submitted to this Commission are 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.

The procedures which must be followed when requesting confidential classification and treatment of certain information are found in Rule 25-22.006(4). The rule requires the utility to identify the page and line at which the confidential material is found and to correlate the page and line identified with the specific justification proffered in support of the classification of such material. In addition, Rule 25-22.006(4)(e) provides in part:

DOCUMENT NUMBER-DATE

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A request for confidential classification that fails to identify the material for which confidential classification is sought in sufficient detail to permit a reasoned analysis or which fails to provide the required justification for classification may be denied as insufficient on its face.

Under the provisions of Section 367.156, Florida Statutes, and Rule 25-22.006, the utility has the burden of demonstrating that the materials qualify for specified confidential classification. According to Rule 25-22.006, the utility must meet this burden by demonstrating that the materials fall into one of the statutory examples set forth in Section 367.156, Florida Statutes, or by demonstrating that the information is proprietary confidential business information, the disclosure of which will cause the utility or its ratepayers harm.

Peoples seeks confidential classification for certain information contained in documents that relate to its parent company: consolidated federal income tax returns, financial operations data, the general ledger, and salary and wage information. According to the utility, the information for which confidential classification is sought either meets one of the statutory exemptions in Section 367.156(3)(b), (d), (e), or (f), Florida Statutes, or "represents proprietary confidential business information, the disclosure of which will be detrimental, not only to the unregulated entities and the employees of the utility, but to the general body of rate payers as well." (Amended Request, p. 8)

Waiver Request

Peoples stated in its amended request that the information for which it sought confidential treatment did not lend itself to the identification or line-by-line justification requirements in Rule 25-22.006(4)(a) and (c) and requested that these provisions be waived. The format of the information for which confidentiality is sought in this case, however, is similar to the format filed by others seeking confidential treatment who could sufficiently identify the information and provide a line-by-line justification. As the information can be provided in the appropriate format, the request for a waiver is denied.

Inquiry

Peoples has also argued that the material was sought inside an inquiry, and, therefore, the information would remain confidential without a request "[u]ntil such time as the Commission Staff

decides that a formal rate inquiry is appropriate." (Amended Request, p. 6) During the course of the audit, the staff auditor incorrectly noted that the material was obtained "inside an inquiry." The staff auditor's clerical error aside, the information was not obtained inside an inquiry as provided for in Section 350.121, Florida Statutes, and defined in Rule 25-22.006(1)(c). The term "inquiry" is defined to mean an investigation pursuant to Section 350.121, Florida Statutes, that:

is set in motion by the Commission Chairman, the Executive Director, or the General Counsel to evaluate a complaint, allegation, or develop information as a basis to initiate action on or dispose of any matter within the Commission's jurisdiction.

Since the information was not obtained pursuant to the criteria established for an inquiry, the request for confidential treatment for the information sought on the grounds that the information was obtained pursuant to an inquiry is denied.

Request for Confidential Treatment

Having reviewed the request and the criteria set forth in Commission Rules, the following findings are made.

Staff Workpapers and Staff Audit Report

The utility seeks confidential treatment of information contained in the parent company's audited financial statements and the Commission auditor's workpapers that was derived from the audit information prepared by the utility's auditors. The utility states that it provided information concerning the financial operations data related to the parent company, much of which includes data and information unrelated to the Florida operations directly regulated by the Commission. (Amended Request, p. 2) The utility is seeking confidential treatment pursuant to Section 367.156(3)(b), Florida Statutes, which provides an exception to the public records law for "internal auditing controls and reports of internal auditors."

The internal audit function is part of a company's internal control structure. The information for which confidential treatment is sought pertains to financial statements which are a function of an external audit, and thus, does not meet the internal audit exception. Therefore, the request for confidential treatment of the audited financial statements and the Commission auditor's workpapers is denied.

Insurance Information

The utility's request for confidential classification for insurance information is also denied. The utility has provided two generalized justifications why this material is confidential, asserting that this material is of both a contractual and competitive nature; but, the utility has not provided a line and page justification as to how the company would be harmed in the future by disclosure of the information pursuant to Rule 25-22.006(4)(c). Denial of this request is consistent with current Commission policy. (See Order 20672, dated January 30, 1989)

Affiliate Information

The utility's request for confidential classification for affiliate information is denied. The utility has not provided by page and line specific justification as to how the company would be harmed either on a contractual or on a competitive basis by disclosure of this information. Affiliate information is not considered confidential solely because it is related to an affiliate.

State and Federal Income Tax Returns

The utility requests confidential treatment of information concerning the consolidated Federal income tax return and the documents which are Federal and Florida income tax returns. The Commission has generally allowed confidential classification of Federal and State income tax returns. However, the Commission has denied confidentiality to tax returns when the utility has not requested confidential treatment in accordance with Commission Rule 25-22.006. (Order 20587, dated January 11, 1989)

The general understanding of the term "return or return information" set out by 26 U.S.C. Section 6103(a) is that these documents are limited to: (1) the tax return itself to include any schedules which were attached to the return when it is filed; and (2) workpapers which are directly used to calculate the tax liability based upon the general books and records of the taxable entity. Generally these documents can be readily identified because they are kept intact and maintained in a separate file, typically called the "tax book."

In its request, the utility has not specifically identified which documents and attached schedules make up the utility's federal income tax returns, nor did the utility designate the difference between the information used to prepare its federal tax return, the information used to support entries within its

accounting system, and the answers to staff questions regarding the utility's income tax accounting practices.

However, where federal income tax material could be clearly identified within the utility's request, copies of pages of the utility's tax return shall receive confidential classification. Those documents where confidential treatment is granted are as follows:

Document No. 00136-96; Cross Reference Document No. 12323-95: Papers Nos. 54-100, pp. 1-3; 54-290, pp. 3-8; 54-291, pp.3-9; 54-292, pp.3-9; 54-293, pp. 3-9; 53-121, pp. 2-3, 6-7, 10-11, 14-15, 18-19.

Where the utility did not fully identify the material or when the utility did not provide a redacted and highlighted copy of the document as required by Rule 25-22.006(4)(a), the utility's request is denied. This finding is consistent with current policy where the Commission has held that the utility has a high burden of proof to meet before materials are excluded from the public record.

Employee Information

Except for portions of working papers 49-250, 49-350, and 49-450, the request by the utility for confidential classification of employee information is denied. Working papers 49-250, 49-350, and 49-450 contain filings with the Florida Department of Labor which holds these materials as confidential pursuant to Section 443.1715, Florida Statutes. In the case of working papers 49-250, 49-350, and 49-450, the utility did not specifically justify by page and line why this information is confidential, and therefore, did not technically meet the burden of proof regarding the information reported. However, because the material was readily identifiable and is protected pursuant to Chapter 443, Florida Statutes, the following documents shall be given confidential classification and treated accordingly:

Document No. 00136-96; Cross Reference Document No. 12322-95: Papers Nos. 49-250, pp. 2, 4, 6, and 8; 49-350, pp. 2, 4, 6, and 8; 49-450, pp. 2, 4, 6, and 8.

IT IS THEREFORE,

ORDERED by Commissioner Diane K. Kiesling, as Prehearing Officer, that the Request for Confidential Classification of certain information contained in Document No. 00136-96 (Cross-Ref. Document Nos. 12311-95 thru 12323-95) filed by Peoples Water Service Company of Florida, Inc., is hereby granted in part and denied in part pursuant to Rule 25-22.006, Florida Administrative Code, and Section 367.156, Florida Statutes, for the reasons set forth in the body of this order. The specific documents that are to be given confidential classification and treatment are as follows:

Document No. 00136-96; Cross Reference Document No. 12323-95: Papers Nos. 54-100, pp. 1-3; 54-290, pp. 3-8; 54-291, pp.3-9; 54-292, pp.3-9; 54-293, pp. 3-9; 53-121, pp. 2-3, 6-7, 10-11, 14-15, 18-19; and

Document No. 00136-96; Cross Reference Document No. 12322-95: Papers Nos. 49-250, pp. 2, 4, 6, and 8; 49-350, pp. 2, 4, 6, and 8; 49-450, pp. 2, 4, 6, and 8.

It is further


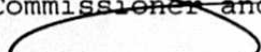
ORDERED that the request by Peoples Water Service Company of Florida, Inc., for a waiver of the requirements of Rule 25-22.006(4)(a) and (c), Florida Administrative Code, is hereby denied for the reasons set forth in the body of this order. It is further

ORDERED that the request by Peoples Water Service Company of Florida, Inc., for confidential treatment of information obtained pursuant to an inquiry is hereby denied for the reasons set forth in the body of this order. It is further

ORDERED that this docket be closed.

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By ORDER of Commissioner Diane K. Kiesling, as Prehearing
Officer, this 17th day of September, 1996.


DIANE K. KIESLING, 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 25-22.0376, 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.