

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Approval of ) DOCKET NO. 950758-WS  
Transfer of Facilities of Harbor ) ORDER NO. PSC-96-1497-CFO-WS  
Utilities Company, Inc., to ) ISSUED: December 10, 1996  
Bonita Springs Utilities and )  
Cancellation of Certificates )  
Nos. 272-W and 215-S in Lee )  
County )  
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ORDER DENYING CONFIDENTIAL CLASSIFICATION  
OF  
COMMISSION DOCUMENT NO. 11192-96

By request filed October 18, 1996, Bonita Springs Utilities, Inc. (BSU), has asked that the Commission treat as confidential a list of customers and a list of members submitted as Late-Filed Exhibit No. 2 in Docket No. 950758-WS, Commission Document 11192-96. No responsive filings were received.

Section 119.01, Florida Statutes provides that documents submitted to governmental agencies shall be public records. The only exceptions are specific statutory exemptions. This law derives from the concept that government should operate in the "sunshine." It is this Commission's view that the burden to be met by one requesting confidential classification of documents submitted during a proceeding before us is very high.

Rule 25-22.006(4), Florida Administrative Code, provides that the utility must demonstrate how the information asserted to be confidential qualifies as one of the statutory exemptions to Section 119.07, Florida Statutes, in Section 367.156(3), Florida Statutes, or how the ratepayers or the utility's business operations will be harmed by disclosure. The burden of proof shall be on the utility to show that the material in question is bona fide proprietary confidential business information.

Section 367.156(2), Florida Statutes provides that:

Discovery in any docket or proceeding before the commission shall be in the manner provided for in Rule 1.280 of the Florida Rules of Civil Procedure ... Upon a showing by a company or other person and a finding by the commission that discovery will require the disclosure of proprietary confidential business information, the commission shall issue an appropriate protective order designating the manner for handling such information in

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the course of the proceeding and for protecting such information from disclosure outside the proceeding. Such proprietary confidential business information shall be exempt from s. 119.07(1).

Section 367.156(3), Florida Statutes, provides that:

Proprietary confidential business information means information, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public. Proprietary business information includes, but is not limited to:

(a) Trade Secrets.

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(e) Information relative to competitive interests, the disclosure of which would impair the competitive business of the provider of information.

BSU states that the material for which confidential classification is sought is intended to be, and is, treated by BSU as private proprietary information. Moreover, BSU states that if this material is not exempted from disclosure as public records under Section 119.07(1), Florida Statutes, certain persons may obtain its customer and membership lists and utilize them to realize a competitive advantage not otherwise available to them to the detriment of BSU's economic and professional interests.

Section 688.002, Florida Statutes, Uniform Trade Secrets Act, provides that trade secret:

means information ... that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other

persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Florida courts have held that some customer lists, but not others, qualify as trade secrets. In Templeton v. Creative Loafing Tampa, Inc., 552 So.2d 288 (Fla. 2d DCA 1989), the court found that advertiser and distribution lists were not entitled to injunctive protection in the absence of evidence that "they are the product of great expense or effort, that they are distillations of larger lists, or that they include information not available from public sources." Templeton, 552 So.2d at 289.

BSU has not provided the required justification for classification, pursuant to Rule 25-22.006(4)(c), Florida Administrative Code. Section 367.156(3), Florida Statutes, enumerates six categories of proprietary business information that may be classified confidential, and permits other, but unspecified, information to be so classified. BSU does not state that the customer list and the member list qualify as one of the enumerated categories of proprietary business information. Further, BSU has not advanced persuasive evidence that, absent a pertinent Section 367.156(3) exemption, harm to its business operations from disclosure of the lists is nonetheless likely to materialize.

I do not in any case find that these lists qualify as trade secrets. Applying the Templeton criteria, the customer and member lists are unselective, not distillations of larger lists. The lists have not been produced or maintained at great effort and expense. The names on these lists can, not unreasonably, be obtained from public sources. Moreover, BSU is a provider of monopoly utility services. Therefore, it cannot be said that the information may be protected as information relative to BSU's competitive interests.

Thus, I find that the information for which BSU requests confidential classification does not satisfy the statutory criteria for protection as proprietary confidential business information. Accordingly, BSU's request for confidential classification of the information contained in its Late-Filed Exhibit No. 2 in this proceeding, Commission Document No. 11192-96, consisting of BSU customer and member lists, is denied.

Pursuant to Rule 25-22.006(9), Florida Administrative Code, Late-Filed Exhibit No. 2 shall be kept confidential until the time

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for filing an appeal has expired, and, upon request, through completion of judicial review.

Based on the foregoing, it is, therefore,

ORDERED by Commissioner Julia L. Johnson, as Prehearing Officer, that Bonita Springs Utilities, Inc.'s Request for Confidential Classification is denied. It is further

ORDERED that Commission Document 11192-96 shall be kept confidential until the time for filing an appeal has expired, and, upon request, through completion of judicial review.

By ORDER of Commissioner Julia L. Johnson, as Prehearing Officer, this 10th day of December, 1996.

  
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JULIA L. JOHNSON, Commissioner  
and Prehearing Officer

( S E A L )

CJP

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

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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.