

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for ) DOCKET NO. 941121-WS  
amendment of Certificates Nos. ) ORDER NO. PSC-96-1551-CFO-WS  
359-W and 290-S to add territory ) ISSUED: December 20, 1996  
in Broward County by SOUTH )  
BROWARD UTILITY, INC. )  
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ORDER GRANTING, IN PART, AND DENYING, IN PART,  
SOUTH BROWARD UTILITY, INC.'S REQUEST FOR THE  
RETURN OF CONFIDENTIAL INFORMATION

BACKGROUND

On March 5, 1996, pursuant to Rule 25-22.006, Florida Administrative Code, South Broward Utility, Inc. (SBU or Utility) filed a Notice of Intent to Request Confidential Classification of documents belonging to the Hugh F. Culverhouse Trust (Trust). The Trust is the sole shareholder of SBU. The City of Sunrise (Sunrise or City) sought these documents in connection with its deposition of Stephen Story, one of the Trust's trustees. The purpose of the deposition was to obtain discovery in preparation for the April 8-9, 1996 technical hearing scheduled for this docket.

On March 8, 1996, the City conducted its deposition of Mr. Story. SBU provided Sunrise copies of the requested documents upon Sunrise's oral agreement to keep the documents confidential. On that same day, SBU filed with the Commission a Motion for Protective Order, Including Request for Confidential Classification, of the documents. In its motion, SBU alleged that the documents sought by Sunrise were proprietary confidential business information of the Trust, and that disclosure of the documents would cause harm to the Trust's business operations. Along with its motion, SBU filed copies of the documents with the Division of Records and Reporting. Pursuant to Section 367.156, Florida Administrative Code, the Commission has maintained the confidentiality of the documents.

On March 26, 1996, Prehearing Order No. PSC-96-0415-PHO-WS was issued. By this order, the Commission established, among other things, the treatment of confidential information intended to be used at hearing. Pursuant to this order, Sunrise filed a Notice of Intent to Use Proprietary Confidential Business Information at the technical hearing.

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The technical hearing was held on April 8-9, 1996, in Fort Lauderdale, Florida. Sunrise did not introduce the Trust's documents into evidence at the hearing, nor did any other participant. On May 21, 1996, SBU filed a Request for Return of Confidential Information, in which it requested that the Commission return the copies of the Trust documents filed with the Division of Records and Recording, along with a copy of the May 8, 1996 deposition transcript that was provided to staff. SBU also requested that the Commission order Sunrise to return all copies of the documents and the deposition transcript.

On May 31, 1996, Sunrise filed its response to SBU's request. In its response, Sunrise agrees to return the Trust documents upon the closing of this docket. However, Sunrise indicates that it will not return the deposition transcript, arguing that the transcript does not meet the statutory definition of confidential records. Moreover, Sunrise also alleges its right to retain the transcript because it paid for the court reporter services and transcript charges.

On June 13, 1996, SBU filed its reply to Sunrise's response. SBU argues that Sunrise failed to provide any legal authority for retaining the Trust documents until the closing of the docket. Furthermore, SBU asserts that the deposition transcript is confidential information, citing Section 367.156(3), Florida Statutes, which states that "proprietary confidential business information means information, regardless of form or characteristic."

#### TRUST DOCUMENTS

With regard to confidential information, Prehearing Order No. PSC-96-0415-PHO states that "[a]ny information provided pursuant to a discovery request for which proprietary business confidential information status is requested shall be treated by the Commission and the parties as confidential." The order also states that "[i]f no determination of confidentiality is made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information."

Given that the technical hearing ended April 9, 1996, Sunrise shall return the Trust documents to SBU within fourteen days of the issuance date of this Order. Accordingly, the Division of Records and Reporting shall return the Commission's copies of the Trust documents within the same period of time.

Deposition Transcript

When it filed its Motion for Protective Order, Including request for Confidential Classification, SBU moved the Commission to issue a protective order that in part:

[l]imits the transcript of the deposition to only an original transcript with no copies and seals the transcript and tapes of the deposition. The seal shall only be opened upon an order by the Commission.

Rule 25-22.006(4)(a), Florida Administrative Code, provides that when a utility requests confidential classification of materials, including motions for protective orders, it shall do the following:

The utility or other person shall file with the request one copy of the material for which confidential treatment is requested. On this copy, the specific information asserted to be confidential shall be highlighted. Along with the highlighted copy, the utility or other person shall file two or more edited copies as required by the type of proceeding, which will be made available for public inspection. In the edited copies, the specific information asserted to be confidential shall be blocked out by the use of an opaque marker or other masking device. The utility or other person shall identify the page(s) and line(s) at which the confidential material is found and shall correlate the page(s) and line(s) identified with the specific justification proffered in support of the classification of such material.

The utility filed the foregoing with respect to the Trust documents but not with respect to the transcript. Therefore, we do not find that the transcript itself constitutes confidential information. Furthermore, as stated earlier, Sunrise was responsible for hiring the court reporter and paying all reporting and transcript expenses. Sunrise also provided SBU and our staff with copies of the deposition transcript. Despite SBU's motion to limit the transcript to a sealed original, it did not object to the release of the transcript copies.

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In consideration of the foregoing, Sunrise shall retain the original and any copies of the deposition transcript in its possession. The copy provided to staff shall remain a part of the file in this docket.

Based on the foregoing, it is

ORDERED by Commissioner Joe Garcia, as Prehearing Officer, that South Broward Utility Inc.'s Request for Return of Confidential Information is hereby granted, in part, and denied, in part, as set forth in the body of this Order.

By ORDER of Commissioner Joe Garcia, as Prehearing Officer, this 20th day of February, 1996.

  
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JOE GARCIA, 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.