

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase
in rates in Martin County by
Hobe Sound Water Company.

DOCKET NO. 970164-WU
ORDER NO. PSC-98-0039-CFO-WU
ISSUED: January 6, 1998

ORDER DENYING CONFIDENTIAL CLASSIFICATION OF
COMMISSION DOCUMENT NO. 07606-97

Pursuant to Rule 25-22.006(3)(a), Florida Administrative Code, at the July 7, 1997, audit exit conference, Hobe Sound Water Company (Hobe Sound or utility) noticed its intent to seek confidential classification of certain staff working papers prepared during the rate case audit of the utility's projected test year. Commission Document No. 07606-97; Cross-Ref. Commission Document No. 07065-97. These working papers consist of a Stock Purchase and Sale Agreement and Agreement and Plan of Corporation Separation (Agreement).

On July 28, 1997, pursuant to Section 367.156, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, Hobe Sound timely filed a request for confidential classification of Commission Document No. 07606-97. No responsive filings were received. Although the Commission did not rely upon the Agreement in ruling upon the utility's request for a rate increase in this docket, because the retention period for audit working papers is twenty-five years, confidential status of the sales agreement must be determined.

Pursuant to Section 119.07, Florida Statutes, documents submitted to this Commission are public records. The only exemptions to this law are specified by statute. 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 listed in Section 367.156(3), Florida Statutes, or how the ratepayers or the utility's business operations will be harmed by disclosure. Hobe Sound alleges that the Agreement is entitled to confidential classification pursuant to Section 367.156(3), Florida Statutes, because it is intended to be, and has been, treated by the utility as private and has not been disclosed other than pursuant to the request of the Commission auditors.

DOCUMENT NUMBER-DATE

00134 JAN-68

FPSO-RECORDS/REPORTING

Section 367.156(3)(d) and (e), Florida Statutes, provide the following exemptions to the public records law:

(d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the utility or its affiliates to contract for goods or services on favorable terms.

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

According to the utility, prior to the effective date of the Agreement, The Hobe Sound Company (Company) owned all outstanding shares of stock in the utility. The Trustees To The Hobe Sound Trust (Trust) owned 60 percent of the shares in the Company, and the remaining 40 percent was owned by members of the Jupiter Island Club (JIC or Club). By the Agreement, the Company separated the ownership and control of its Club operations from its other operations. The Trust exchanged a portion of its shares in the Company for all outstanding stock in the utility¹ and JIC acquired a controlling interest in the Club. The utility states that the Agreement contains the price paid for shares of stock and other highly sensitive information, and that revealing the details of the Agreement could negatively impact the price at which stock in the Company, the utility, and/or JIC, may be sold in the future. Moreover, the utility states that it is unable to provide a date by which the Agreement will no longer be proprietary confidential business information because of the sensitive stock information contained therein.

By Order No. 19780, issued August 9, 1988, in Docket No. 880069-TL, the Commission granted confidential status to certain documents which contained projected financial and related stock price information. However that ruling is distinguishable because it concerned a publicly traded company. The information was protected because it directly related to projections concerning

¹The Commission acknowledged the corporate reorganization of the utility by Order No. PSC-96-0678-FOF-WU, issued May 23, 1996, in Docket No. 960349-WU.

ORDER NO. PSC-98-0039-CFO-WU
DOCKET NO. 970164-WU
PAGE 3

publicly traded stock, and the Commission found that kind of information to be very sensitive. In the instant case, Hobe Sound makes no claim that the stock is publicly traded, nor does it report an ongoing market for the involved stock.

The sales price of closely held stock is set based upon value of the assets, liabilities, and business operations controlled by the stockholders. It is not unusual that many details regarding a closely held business are described in sales agreements. Nevertheless, it would be speculative to say whether the knowledge of a prior stock sales price would affect the future price of a business. Generally, in company acquisitions, the operations of the underlying business are fully disclosed and audited at the request of the potential buyer and the operations of the business to be purchased are thoroughly analyzed by the buyer before any purchase price is set. The sales price of a business is generally set where the needs of the seller equal the future revenue expectations of the buyer. The prior stock sales price would be insignificant compared to the expected cash flows and unexpired net assets of the underlying business. Moreover, the knowledge of the prior stock sales price would become obsolete over time compared to the operational success or failure of the business.

Hobe Sound has failed to explain how or why the disclosure of the Agreement or of the closely held stock prices contained therein would cause harm to the utility's business operations or to its rate payers. For the foregoing reasons, Hobe Sound's request for confidential treatment of Commission Document No. 07606-97 is hereby denied.

Pursuant to Rule 25-22.006(9), Florida Administrative Code, Commission Document No. 07606-97 shall be kept confidential until the time for filing an appeal has expired, and, upon request, through completion of judicial review.

Based on the foregoing, it is

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that Hobe Sound Water Company's request for confidential classification of Commission Document No. 07606-97 is hereby denied. It is further

ORDER NO. PSC-98-0039-CFO-WU
DOCKET NO. 970164-WU
PAGE 4

ORDERED that Commission Document No. 07606-97 shall be kept confidential until the time for filing an appeal of this Order has expired, and, upon request, through completion of judicial review.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 6th day of January, 1998.



SUSAN F. CLARK, Commissioner and
Prehearing Officer

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ORDER NO. PSC-98-0039-CFO-WU
DOCKET NO. 970164-WU
PAGE 5

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.