

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for confidential classification of certain work papers provided in connection with affiliate transaction audit (Audit Control No. 02-122-3-1) by Utilities, Inc.

DOCKET NO. 021173-WS
ORDER NO. PSC-03-0410-CFO-WS
ISSUED: March 25, 2003

ORDER GRANTING REQUEST FOR CONFIDENTIAL CLASSIFICATION

At the exit conference on October 31, 2002, concluding staff's audit of Utilities, Inc.'s affiliate transactions for the year ending December 31, 2001, the utility requested temporary confidential treatment of certain portions of staff's working papers in accordance with the provisions of Rule 25-22.006(3)(a)(2), Florida Administrative Code. Document No. 12084-02 contains the specified portions of the working papers. On November 19, 2002, Utilities, Inc., filed a formal request for confidential classification of the materials pursuant to Section 367.156, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. Utilities, Inc.'s request included a highlighted but incomplete copy of the working papers (Document No. 12636-02). The utility filed a revised request including the missing page on December 23, 2002 (Document No. 13972-02). Utilities, Inc., filed a second revised request on January 29, 2003, that included a redacted copy for public inspection (Document No. 00932-03).¹

The information for which Utilities, Inc., requests confidential classification consists of 1) schedules of utility acquisitions and 2) portions of board meeting minutes concerning acquisitions. The information relates principally to Utilities, Inc.'s business strategies and acquisition planning information. Utilities, Inc., asserts that disclosure of its schedule of utility acquisitions would impair negotiations for the purchase of utility systems in the future. The utility claims a prospective purchaser of a utility system could utilize this information to determine how much Utilities, Inc., would be willing to pay for the system, and thus impair the objective of purchasing utility systems at the lowest possible price. The utility reports that a number of proposed acquisitions are still pending or have been temporarily tabled for a number of business reasons, and to disclose these matters prematurely could negatively affect the way these plans and business strategies are carried out. Utilities, Inc., states that it is not requesting confidential classification for information about completed acquisitions, where such information has been disclosed in applications for approval or which is on file with the Commission for other reasons, unless the Commission has granted that information confidential classification on other grounds.

Pursuant to Section 367.156, Florida Statutes, any records received by the Commission that are shown and found by the Commission to be proprietary confidential business information shall be kept confidential and shall be exempt from the public access requirements of Section 119.07(1), Florida Statutes. Under Section 367.156, Florida Statutes, and Rule 25-22.006, Florida

¹The first page of this document is a cover letter that mistakenly refers to the requesting utility as "Lake Utility Services, Inc." The remainder of Document No. 00932-03 correctly refers to the requesting utility as "Utilities, Inc."

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Administrative Code, the utility has the burden of demonstrating that the materials qualify for confidential classification. Rule 25-22.006, Florida Administrative Code, requires the utility to demonstrate that the information falls into one of the categories set forth in Section 367.156, Florida Statutes.

Section 367.156(3), Florida Statutes, defines “proprietary confidential business information” as

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 a private agreement that provides that the information will not be released to the public. Proprietary business information includes, but is not limited to:

(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.

Disclosure of the utility’s business strategies and acquisition planning information would impair negotiations for the purchase of utility systems in the future and its ability to purchase the systems at the lowest possible price. In addition, the costs of planning and efforts to purchase utility systems are not directly recoverable through current rates and charges; therefore, the costs of utility purchases affect the operations and contractual ability of the competitive part of this company. Since release of planned purchases and purchasing strategies would impair the competitive business strategy and contractual abilities of Utilities, Inc., this information qualifies for a confidential classification based on the provisions set forth in Subsections 367.156(3)(d) and (e), Florida Statutes.

Upon review, and as specifically identified in the chart incorporated in this Order as Attachment A, I find that the information identified in Utilities, Inc.’s Second Amended Request for Confidential Classification reveals sensitive contractual and competitive information, the disclosure of which may impair the efforts of the utility in future acquisitions of utility systems. Accordingly, Utilities, Inc.’s request for confidential classification is hereby granted for a period of 18 months from the issuance date of this Order.

Based on the foregoing, it is

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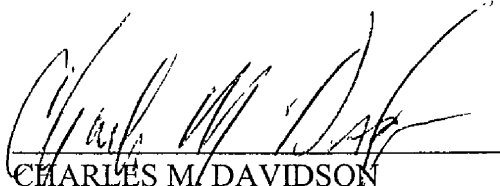
ORDERED by Commissioner Charles M. Davidson, as Prehearing Officer, that Utilities, Inc.'s Second Amended Request for Confidential Classification of portions of Document Nos. 12084-02, 12636-02 and 13972-02 is granted as set forth in the body of this Order. It is further

ORDERED that pursuant to Section 367.156, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, any confidentiality granted to the documents specified herein shall expire 18 months from the date of issuance of this Order in the absence of a renewed request for confidentiality pursuant to Section 367.156. It is further

ORDERED that this Order will be the only notification by the Commission to the parties concerning the expiration of the confidentiality time period.

ORDERED that this docket shall be closed.

By ORDER of Commissioner Charles M. Davidson, as Prehearing Officer, this 25 day of March, 2003.



CHARLES M. DAVIDSON
Commissioner and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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 the Commission Clerk and Administrative Services, 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.

ATTACHMENT A

Staff Work Paper	Page(s)	Line(s)	Decision	Type of Information Classified Confidential
Document Nos. 12084-02, 12636-02 and 13972-02				
8	1	1-2,9-13,15-25	Grant	Sensitive contractual and competitive business information
8	2	1-4,32-40	Grant	Sensitive contractual and competitive business information
8	3	3-22	Grant	Sensitive contractual and competitive business information
Document Nos. 12084-02, 12636-02 and 13972-02				
8	4	1-7	Grant	Sensitive contractual and competitive business information
8-1	1	Column 1,5,7-11	Grant	Sensitive contractual and competitive business information
8-1	2	All columns	Grant	Sensitive contractual and competitive business information
8-1	3	Column 1,5,7-11	Grant	Sensitive contractual and competitive business information

Staff Work Paper	Page(s)	Line(s)	Decision	Type of Information Classified Confidential
8-1	4	Column 1,5,7-11	Grant	Sensitive contractual and competitive business information
8-2	1	Column 1,5,7-11	Grant	Sensitive contractual and competitive business information
8-2	2	Column 1,5,7-11	Grant	Sensitive contractual and competitive business information
8-2	3	Column 1-5	Grant	Sensitive contractual and competitive business information