

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for increase in water and wastewater rates in Marion, Orange, Pasco, Pinellas, and Seminole Counties by Utilities, Inc. of Florida.

DOCKET NO. 060253-WS  
ORDER NO. PSC-07-0640-CFO-WS  
ISSUED: August 7, 2007

ORDER GRANTING IN PART AND DENYING IN PART  
UTILITIES, INC.'S, REQUEST FOR CONFIDENTIAL CLASSIFICATION  
OF DOCUMENT NO. 07990-06 (X-REF. DN 06381-06)

I. Background

Utilities, Inc., of Florida (UIF) is a Commission-regulated water and wastewater utility company, which serves portions of five Florida counties and is 100% owned by Utilities, Inc. (UI, utility, or parent). UI and certain affiliates allocate costs to over 80 subsidiary companies in the group including UIF and several other Commission-regulated utilities. During 2006, the following Florida subsidiaries, wholly-owned by UI, requested rate increases:

Utilities, Inc. of Florida	Mid-County Services, Inc.
Alafaya Utilities, Inc.	Tierre Verde Utilities, Inc.
Lake Placid Utilities, Inc.	Sandalhaven Utility, Inc.
Cypress Lakes Utilities, Inc.	Labrador Utilities, Inc.
Sanlando Utilities Corporation	Pennbrooke Utilities, Inc.

UI is wholly owned by a third company, nvNuon, a Dutch company. Early in 2006, HydroStar LLC, bought nvNuon's stock.

On July 15, 2006, at the audit exit conference, UIF requested that certain portions of Commission staff's working papers prepared during the audit, entitled "Utilities, Inc. Affiliate Transaction Investigation as of December 31, 2005," be held in a temporary confidential status in accordance with Rule 25-22.006(3)(a)2., Florida Administrative Code (F.A.C.). On July 20, 2006, our staff filed those working papers with the Commission's Office of Commission Clerk (Document No. 06381-06), and, pursuant to the rule, that document was afforded temporary confidential treatment pending a ruling on the subsequent request for confidential classification.

On August 31, 2006, UI requested confidential classification for certain portions of the working papers pursuant to Section 367.156, Florida Statutes (F.S.), and Rule 25-22.006, F.A.C. On that same date, UI filed copies of the materials with the sensitive portions highlighted (Document No. 07990-06), and, pursuant to Rule 25-22.006, F.A.C., that document was also afforded temporary confidential treatment pending a ruling on the request for confidential classification. Subsequently, on December 8, 2006, UI filed redacted copies of the materials for public use (Document No. 11262-06).

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

By letter dated December 15, 2006, Commission staff advised UI that the utility had “not justified and demonstrated that release of all the information contained within the 14 pages of financial information described . . . would cause harm as required by Rule 25-22.006(4)(c) and (e).” Our staff requested that UI respond to these perceived deficiencies within 21 days. Further, if UI failed to respond to the letter, our staff advised UI that a recommendation would be presented to the Prehearing Officer based upon the existing record. When UI failed to respond to the letter, Commission staff contacted UI several times by telephone. However, as of the date of this Order, UI has not responded to or corrected the deficiencies noted in staff’s letter.

Documents Nos. 06381-06 and 07990-06 are identical and are currently held by the Office of the Commission Clerk as confidential pending resolution of UI’s request for confidential classification. These documents contain the: (1) Management Representation Letter; (2) 401(k) Audit Engagement Letter; and (3) Audited Consolidated Financial Statements. The Management Representation Letter is designated WP 9-1, consists of six pages, and the utility is requesting that only lines 29-31 on page five be granted confidential classification. The 401(k) Audit Engagement Letter is designated WP 48-7/6, consists of five pages, and the utility is requesting that only a portion of line 24 on page three be granted confidential classification. The Audited Consolidated Financial Statements are designated WP 31-4, consist of 16 pages, and the utility is requesting that the last 14 pages (3-16) in their entirety be granted confidential classification.

This Commission has jurisdiction over requests for confidential treatment pursuant to Section 367.156, F.S. That section and Rule 25-22.006, F.A.C., govern the granting of confidential classification.

## II. Confidentiality of Documents Nos. 060381-06 and 07990-06

### A. Criteria for Granting Confidential Classification

Section 119.01, F.S., provides that documents submitted to governmental agencies shall be 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. Pursuant to Section 367.156, F.S., and Rule 25-22.006, F.A.C., it is the utility’s burden to show that the material submitted is qualified for specified confidential classification. Rule 25-22.006, F.A.C., provides that the utility may fulfill its burden by demonstrating that the documents fall into one of the statutory examples set out in Section 367.156(3), F.S., or by demonstrating that the information is proprietary confidential information, the disclosure of which will cause the utility or its ratepayers harm.

Subsections 367.156(1) and(3), F.S., provide in pertinent part as follows:

(1) . . . Upon request of the utility or any other person, any records received by the commission which are shown and found by the commission to be proprietary confidential business information shall be kept confidential and shall be exempt from s. 119.07(1).

\* \* \*

(3) 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 a private agreement that provides that the information will not be released to the public. Proprietary confidential 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 company or its affiliates to contract for goods and services on favorable terms.

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

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#### B. Timeliness of Request

Although the audit exit conference was held on July 15, 2006, UI did not file its request for a confidential classification until August 31, 2006. Rule 25-22.006(3)(a)2., F.A.C., requires the request for confidentiality be filed within 21 days of the audit exit conference, and provides that "absent good cause shown, failure to file such a request [for confidentiality] within 21 days shall constitute a waiver of confidentiality." Therefore, UI's request for confidentiality was not timely filed.

For good cause shown, UI states:

Since the beginning of the year, UI has filed 14 rate proceedings in the State of Florida alone. In the course of assisting [Commission] Staff in conducting this audit, correcting deficiencies and responding to data requests, UI inadvertently overlooked the filing of this Request for Confidential Classification within the 21 days provided in the Rule. The delay in filing this Request for Confidential Classification was the result of an oversight during a period of time when UI was experiencing an overwhelming amount of activity. The period of delay is not significant. Allowing filing at this time will not impair the rights of any interested person.

Based on the above, the utility appears to have shown good cause for its tardiness. Therefore, the request for confidential classification will not be denied based on UI having late-filed its request.

C. Analysis of Confidential Classification for Each of the Three Documents Contained in Documents Nos. 07990-06 and 06381-06

1. Management Representation Letter – WP 9-1 (Lines 29-31, page 5)

For both this document (WP 9-1), and the other two documents (WP 48-7/6 and WP 31-4), the utility states four common allegations as reasons for granting confidential classification. First, UI states that failure to grant confidential classification will cause harm to UI and the taxpayers because it would “unfairly disclose confidential and privileged information which is irrelevant to, and have no impact on, the outcome of this proceeding.” Second, UI questions the Commission’s need to release records to the public claiming that the utility considers the material contained in WP 9-1 (and also in WP 48-7/6 and WP 31-4) as “proprietary and confidential and which would not be disseminated to the public in the ordinary course of business.” Third, UI states that the information is treated “as confidential and privileged, and which the courts of this state would, but for the use in this proceeding, treat as confidential and privileged.” Finally, UI argues that disclosure would harm UI’s ability to negotiate for goods and services competitively with other utilities both locally and on a national basis.

Section 367.156(1), F.S., provides that this Commission “shall continue to have reasonable access to all utility records and records of affiliated companies, including its parent company, regarding transactions or cost allocations . . . to ensure that a utility’s ratepayers do not subsidize nonutility activities.” Corporate costs of the parent and affiliate companies were allocated to the Florida subsidiaries that asked for rate increases. Information concerning the allocated costs was agreed to balances reported within consolidated financial information and traced to the companies’ requests for rate increases. During the review of parent and affiliate cost allocations, Commission staff identified certain allocated costs which were out of period and reduced the need for increased rates charged to the Florida ratepayer. In addition, debt and equity levels used in the rate cases were established based upon information reported within the consolidated financial statements. Commission staff also examined representations made by UI to its external auditor during the financial audit of the year ended December 31, 2005, and retained this material. The year 2005 was used in the rate case filings. Therefore, the utility’s allegation that the material is irrelevant is in error, and all three documents obtained from UI were obtained based upon the need to gather evidence to test assertions in the rate cases. Therefore, this argument for confidential classification is rejected for all three documents (WP 9-1, WP 48-7/6, and WP 31-4).

Section 367.156(3)(e), F.S. provides that the Commission may grant a confidential classification to sensitive competitive business information if release of that information would “impair the competitive business of the provider of the information.” During the course of an audit conducted according to Generally Accepted Auditing Standards, the company being audited sends a letter to its auditor describing management actions and conduct during the period

under audit. This letter is called a Management Representation Letter. Of the many representations made by a company, a representation may reflect the proprietary audit strategy and work plan of the auditor. Here, UI makes such a proprietary representation in this management letter to its auditor, release of which would harm the competitive business of the auditor. See Commission Order 25297, issued November 5, 1991, in Docket 890190-TL.<sup>1</sup> UI argues that release of this portion of the management representation letter sent to its auditors would harm the ability of UI to contract for goods and services in the future. While it does not appear that disclosure of the information in WP 9-1 would impair the ability of UI to contract for goods and services,<sup>2</sup> it does appear to be “information relating to competitive interests, the disclosure of which would impair the competitive businesses of the provider.”<sup>3</sup> Therefore, having complied with the requirements of Section 367.156(3)(e), F.S., the material contained on lines 29-31, page five of WP 9-1 shall be granted a confidential classification on the basis that the material is sensitive competitive business information.

## 2. 401(k) Audit Engagement Letter – WP 48-7/6 (line 24, page 3)

As stated above, the utility’s argument that the information is irrelevant is rejected. Also, as it did for WP 9-1, the utility claims that sensitive financial information in WP 48-7/6 is otherwise considered confidential and privileged in the courts. However, the utility does not provide any further specific explanation or justification of why this situation pertains here. Nor does the utility provide a previous administrative decision of this Commission supporting the position that this type of material should be granted a confidential classification. Further, according to Section 367.156(3), F.S., and Rule 25-22.006(4)(c) and (e), F.A.C., before specified material may be granted a confidential classification, it must meet the specific terms of a statutory provision granting the exemption. The burden of proof is the responsibility of the utility.

For this document, the utility again argues that the information is considered and treated as proprietary, confidential, and privileged. Section 367.156(3), F.S., states in pertinent part: “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 a private agreement that provides that the information will not be released to the public.” (emphasis supplied) See also, Commission Order No. PSC-05-0353-CFO-TP, issued April 1, 2005, in Docket No. 040732-TP.<sup>4</sup>

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<sup>1</sup> In re: Petition of the Citizens of the State of Florida to investigate Southern Bell Telephone and Telegraph Company’s cost allocation procedures.

<sup>2</sup> See, Section 367.156(3)(d), F.S.

<sup>3</sup> See, Section 367.156(3)(e), F.S.

<sup>4</sup> In re: Complaint against BellSouth Telecommunications, Inc. seeking resolution of monetary dispute regarding alleged overbilling under interconnection agreement, and requesting stay to prohibit any discontinuance of service pending resolution of matter, by Saturn Telecommunications Services, Inc. d/b/a STS Telecom.

An audit engagement letter is a contract executed between the external auditor and its client (the utility). UI supplied this information to Commission staff without a notice that the information was confidential. As a public record, this information was communicated among Commission staff and the material has been communicated publicly. Therefore, the information contained in WP 48-7/6 is a part of the public record and is not eligible for a confidential classification.

Florida law presumes that documents submitted to governmental entities shall be public records. The only exceptions to this presumption are the statutory exemptions provided in the law and exceptions granted by governmental agencies pursuant to the specific terms of a statutory provision. This presumption is based on the concept that government should operate in the "sunshine." Rule 25-22.006(4)(c), F.A.C., provides that if the Commission is to grant a confidential classification to information submitted, then this information must fall into one of the statutory examples set out in section 367.156, F.S. Section 367.156(3), F.S., requires that the information be treated by the company as private in order to be classified confidential. As described in Section 367.156(3), F.S., for the Commission to grant a confidential classification, the material must not have been previously 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. Although the utility claims that the information in this document have been treated as private by the company, the actions of the utility demonstrate otherwise. Because the utility has previously provided the information and it has been publicly disclosed, the utility has not complied with the requirements of Section 367.156(3), F.S., for confidential classification. Therefore, the utility's request that the information contained in WP 48-7/6 now be classified as confidential is denied.

### 3. Audited Consolidated Financial Statements – WP 31-4 (pages 3-16 in their entirety)

As discussed previously, the utility's argument that the information is irrelevant is rejected. Also, as it did for WP 9-1 and WP 48-7/6, the utility claims that sensitive financial information in its filing is otherwise considered confidential and privileged in the courts. However, the utility again does not provide any further specific explanation or justification of why this situation pertains here. Nor does the utility provide a previous administrative decision of this Commission supporting the position that this type of material should be granted a confidential classification.

As the utility did for WP 48-7/6, the utility's Audited Consolidated Financial Statements (WP 31-4) were provided to Commission staff without a notice that the material was confidential. Subsequently, this material has been discussed among Commission staff without the benefit of a confidential classification and extracts from this document have been disclosed publicly. As discussed above for Document WP 48-7/6, because the Audited Consolidated Financial Statements were publicly disclosed, they cannot now qualify for a confidential classification.

The utility argues that disclosure of the information contained in WP 31-4 would cause harm to UI and the ratepayers because it would "provide prospective sellers and buyers of utility

systems owned by UI with an unfair advantage in that they could determine how much UI would be willing to pay for a utility system, or sell a utility system for, thus impair UI's ability to sell and buy utility systems at reasonable prices." The utility asserts the information contained in the last 14 pages of the 16-page 31-4 (Audited Consolidated Financial Statements) would provide other buyers and sellers competitively sensitive information regarding the sales price at which UI would sell a system and insight into what price UI would be willing to pay to acquire a new system.

Section 367.156(3)(e), F.S., provides the Commission may grant a confidential classification to sensitive competitive business information release of which would impair the competitive business of the provider of that information. The Commission requires that any request for a confidential classification specify the location of the sensitive information by page and line (Rule 25-22.006(4)(c), F.A.C.) (Also see Commission Order No. PSC-94-0391-CFO-WS, issued July 11, 1994, in docket No. 921261-WS<sup>5</sup> wherein we found that the utility neither separately identified any of the information in its financial statements, nor adequately demonstrated how disclosure of the information would affect the utility, but instead used conclusory language in requesting that the entire financial statements be granted a confidential classification.)

Financial statements typically consist of summarized and itemized reports such as a Balance Sheet, Income Statement, Statement of Cash Flows, and perhaps a Statement of Changes in Retained Earnings, and since the statements are audited, the materials include Notes to the Financial Statements. In these 14 pages of material, UI claims that the disclosure of any of it would cause competitive or contractual harm.

As in Order No. PSC-94-0391-CFO-WS, cited above, the utility has not demonstrated how the release of its consolidated financial statements would harm the utility's ability to buy or sell utility systems in the future, but has merely used conclusory language in alleging that it would so harm the utility. Prudent buyers of a business would seek full financial information about the business they are about to buy. In the case where UI was selling a system, the company would be expected to furnish financial information to the buyer. Without cooperation between the two parties, a prudent sale price could not be reached.

In the case where UI is seeking to buy a utility system, there is a wealth of information concerning the sale and purchase of hundreds of utility systems in the Florida jurisdiction alone. Public information in Florida is also available concerning the income statement, or rate base, or balance sheet of a utility system. This type of summary financial information becomes typically available each time a system is sold, each time a rate request is heard, and each time an annual report is filed. Also, it is public record that UI operates over 80 utilities, and was allowed to secure over \$1,000,000 in interim rates through a corporate undertaking for the rate cases filed in 2006.

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<sup>5</sup> In re: Application for a rate increase in Lee County by Harbor Utilities Company, Inc.

In the private market place, a prudent buyer of a non-utility business would also request financial information from the seller before purchasing that business. A prudent seller of a non-utility business could draw its own judgments concerning a buyer that operates 80 utility systems in 17 states that was allowed a \$1,000,000 corporate undertaking in lieu of a performance bond. Because of the fact that financial information would be exchanged in the prudent purchase of any business, and because of the large amount of information already public and the lack of justification supporting the utility's case, UI has not proven its case that release of its financial statements would cause competitive harm.

The utility also argues that release of its Audited Consolidated Financial Statements would harm the ability of UI to contract favorably both locally and on a national basis. Financial information in consolidated financial statements is highly summarized. Financial transactions are summed up into cost categories called double entry accounts, and then the cost categories for each entity in the consolidated group are summed to reach consolidated balances. After necessary adjustments are made to the consolidated balances, required notes to the statements are prepared. As a result of this high degree of summarization, it is difficult to determine which detailed transactions make up the reported balances in the statements. It is speculative to assume that release of this summarized general information provides enough detail of the underlying transactions to impair the ability of a company to fairly contract for goods and services in the open marketplace.

Each year, 15,000 to 17,000 public companies file public financial statements with the U.S. Securities and Exchange Commission (SEC). If the mere filing of financial statements caused competitive or contractual impairment, this long-term SEC policy would not exist or persist. Here at the Commission, there are a number of rate-regulated companies that regularly file audited financial statements and have done so for a number of years. In the Water and Wastewater industry, a large number of rate-regulated companies file detailed annual reports each year, and there are no reported and demonstrated instances of competitive or contractual harm due to the mere filing of these reports.

#### Financial Statements of Telecommunications Companies

The Commission has determined that the audited financial statements of telecommunications companies qualify for a confidential classification. These telecommunications companies operate in a fully competitive market where technological innovations are present and customers may readily replace the provider of his or her telecommunications service. In a fully competitive market like the telecommunications industry, information regarding gain or loss of competitive market share and profitability margins are extremely sensitive. Telecommunications industry information is so sensitive the Commission has adopted Rule 25-22.006(5), FAC, titled "Claim of Confidential Treatment" granting special provisions in processing telecommunications information.



Similar provisions do not exist for the other industries. In a rate-regulated industry, technological innovations have not provided competitive options of the customers to switch their water or wastewater service company. Therefore, it does not appear that the release of general financial information from a water and wastewater utility would cause competitive or contractual harm, and the utility has not provided any justification to the contrary.

Based on all the above, the utility's request that the 14 pages of WP 31-4 be accorded confidential classification does not comply with the requirements of Section 367.156(3), F.S., or Rule 26-22.006. Therefore, the request for confidential treatment of these 14 pages of WP 31-4 is denied.

### III. Duration of the Confidential Classification Period

UI has not specified how long any confidential classification should last. According to the provisions of Subsection 367.156(4), F.S., absent good cause shown, confidential classification is limited to 18 months. Without cause shown for a longer period, and for that portion of WP 9-1 which was granted confidential classification, the classification period shall be set as 18 months from the date of this Order. As deemed necessary, the utility may request an extension of the confidential classification before the period tolls.

### IV. Summary

For WP 9-1, lines 29-31, page five, the utility has complied with the requirements of Section 367.156(3)(e), F.S., and Rule 25-22.006, F.A.C., and the request for confidential classification of that portion of the document is granted. For WP 48-7/6 and WP 31-4, the utility has failed to comply with the requirements of Section 367.156, F.S., and Rule 25-22.006, F.A.C., and the request for confidential classification of those portions is denied.

Documents Nos. 06381-06 and 07990-06					
Working Paper Number	Description	Page(s)	Line(s)	18 Months Classification	Type of Information Classified Confidential
WP 9-1	Management Representation Letter	5	29-31	Grant	Sensitive competitive business information, Section 367.156(3)(e), F.S.
WP 48-7/6	401(k) Audit Engagement Letter	3	24	Deny	Fails to qualify, information is public record
WP 31-4	Audited Financial Statements	3-16	All	Deny	Fails to qualify, information is public record.  Fails to qualify, information was not demonstrated and justified to qualify for a confidential classification on the basis that the material was contractually or competitively sensitive.

Based on the foregoing, it is

ORDERED by Commissioner Nathan A. Skop, as Prehearing Officer, that the requested portion of the Management Representation Letter (WP 9-1, lines 29-31, page five) found in both Documents 07990-06 and 060381-06 shall be granted a confidential classification. It is further

ORDERED that a confidential classification of portions of the 401(k) Audit Engagement Letter (WP 48-7/6, line 24, page three) found in both Documents 07990-06 and 060381-06 shall be denied. It is further


ORDERED that a confidential classification for the Audited Consolidated Financial Statements (WP 31-4, pages 3-16) found in both Documents 07990-06 and 060381-06 shall be denied. It is further

ORDERED that the documents denied confidential classification shall be kept confidential until the time for filing an appeal of this Order has expired, and, upon request, through completion of judicial review. It is further

ORDERED that the information for which confidential classification has been granted shall remain protected from disclosure for a period of 18 months from the date of issuance of this Order. It is further

ORDERED that this Order shall be the only notification by the Commission to the parties of the date of declassification of the materials discussed herein.

By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 7th day of August, 2007.

  
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NATHAN A. SKOP  
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 120.569(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; or (2) 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 Office of Commission Clerk, 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.