

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase in water/wastewater rates in Alachua, Brevard, DeSoto, Hardee, Highlands, Lake, Lee, Marion, Orange, Palm Beach, Pasco, Polk, Putnam, Seminole, Sumter, Volusia, and Washington Counties by Aqua Utilities Florida, Inc.

DOCKET NO. 100330-WS
ORDER NO. PSC-11-0413-CFO-WS
ISSUED: September 26, 2011

ORDER GRANTING CONFIDENTIAL CLASSIFICATION FOR CERTAIN AUDIT
WORKPAPERS (DOCUMENT NOS. 08822-10 AND 09225-10)

BY THE COMMISSION:

On October 21, 2010, our staff advised Aqua Utilities Florida, Inc. (AUF or Utility) that certain audit workpapers prepared during the Rate Case Audit conducted in this docket would become public documents unless the Utility requested confidential classification within 21 days. On October 22, 2010, staff filed Document Number 08822-10 consisting of portions of the staff's audit working papers. This document was accorded confidential treatment pending the Utility's request.

By letter dated October 26, 2010, the Office of Public Counsel (OPC) requested that it be allowed to take possession of the confidential audit workpapers. Subsequently, on November 8, 2010, AUF timely requested that these materials be temporarily exempted from public access and accorded confidential treatment in accordance with provisions of Rule 25-22.006(3)(a)2., Florida Administrative Code (F.A.C.). Attached to its request was a copy of the alleged confidential workpapers, and this copy was assigned Document No. 09225-10. To allow OPC to take possession of the confidential audit workpapers, a Temporary Protective Order was issued on February 22, 2011. The Utility specifically requests that Working Papers Vol. 5 for AUF and all Florida Affiliates, for audit affiliated transactions (Audit Control No. 10-181-4-1) be accorded confidential treatment.

The Utility's request includes redacted copies for public inspection (Exhibit B, Document No. 09226-10) and copies with the sensitive material highlighted (Exhibit A, Document No. 09225-10). On August 11, 2011, AUF submitted a line-by-line justification for confidential treatment for these documents. Document Numbers 08822-10 and 09225-10 are currently held by the Commission Clerk as confidential pending resolution of AUF's request for confidential classification.

Pursuant to Section 119.07, F.S., documents submitted to this Commission are public records. The only exceptions to this law are specific statutory exemptions and exemptions granted by governmental agencies pursuant to the specific items of a statutory provision. Subsections 367.156(3)(e), F.S., provides in pertinent part as follows:

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

(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:

* * *

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

According to Section 367.156, F.S., and Rule 25-22.006, F.A.C., the utility has the burden of demonstrating that materials qualify for confidential classification, and must meet this burden by demonstrating that the information is proprietary confidential business information, the disclosure of which would impair or harm the competitive businesses of the utility.

Analysis of the Request

The Utility alleges that the information for which it seeks confidential classification is proprietary confidential business information consisting of either proprietary employee compensation information or sensitive internal assessments of active litigation which relates to competitive business interests, the disclosure of which would impair the competitive business of AUF.

Further, as required by Section 367.156(3), F.S., and as regards the proprietary employee compensation information, the Utility states that all of the above-noted information is held by it as private, proprietary, confidential, and is not released to the public, as it would lead to salary escalation, loss of valued employees, and decreased morale if such information was made public. AUF notes that the First District Court of Appeals "recently ruled that this type of competitively sensitive employee compensation information was proprietary confidential business information, and should be protected from public disclosure." See Florida Power & Light Company v. Public Service Commission, 31 So. 3d 860 (Fla. 1st DCA 2010). As regards the internal assessments of active litigation, AUF notes that the Commission as routinely granted confidential protection as disclosure of such information would give AUF's adversaries and potential adversaries inappropriate insight into AUF's litigation strategies. Based on the above, Document Nos. 08822-10 and 09225-10 shall be accorded confidential classification to the extent requested by the Utility.

According to the provisions of Section 367.156(4), F.S., absent good cause shown, confidential classification is limited to 18 months. Because the Utility has not shown good cause for a longer period, the period of confidential classification 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. At the conclusion of the 18-month period, the confidential information will no longer be exempt from Section 119.07(1), F.S., unless AUF or another affected person shows, and the Commission finds, that the information continues to contain proprietary confidential business information. This Order shall be the only notification by the Commission to the parties concerning the expiration of the confidentiality time period.

Based on the foregoing, it is

ORDERED by Commissioner Ronald A. Brisé, as Prehearing Officer, that Aqua Utilities Florida, Inc.'s request for confidential classification of Document Nos. 08822-10 and 09225-10 is granted. It is further

ORDERED that the information for which confidential classification has been requested will be granted confidential classification for a period of 18 months from the date of the issuance of this Order. It is further

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

By ORDER of Commissioner Ronald A. Brisé, as Prehearing Officer, this 26th day of September, 2011.



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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 25-22.0376, 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.