

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase in wastewater rates in Lee County by Utilities, Inc. of Eagle Ridge.

DOCKET NO. 110153-SU
ORDER NO. PSC-12-0126-CFO-SU
ISSUED: March 16, 2012

ORDER GRANTING UTILITIES, INC. OF EAGLE RIDGE'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION
(DOCUMENT NO. 06134-11)

On August 25, 2011, pursuant to the provisions of Rule 25-22.006(3) and (4), Florida Administrative Code (F.A.C.), and Section 367.156, Florida Statutes (F.S.), Utilities, Inc. of Eagle Ridge (Eagle Ridge) filed its Request for Confidential Classification (Request) of certain information contained in Eagle Ridge's response to Staff's Request for Additional Information, Item No. 5, dated July 26, 2011 (Document No. 06134-11). This Request was filed in Docket No. 110153-SU.

Section 367.156(1), F.S., provides that "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 Section 119.07(1)." Section 367.156(3), F.S., defines proprietary confidential business information as information that is intended to be and is treated by the company as private in that disclosure of the information would cause harm to the company's ratepayers or business operations, and has not been voluntarily disclosed to the public. Sections 367.156(3)(d) and (e), F.S., provides that 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 utility or its affiliates to contract for goods or 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.

According to Section 367.156, F.S., and Rule 25-22.006(4)(e), 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.

Eagle Ridge's Request

Eagle Ridge seeks confidential classification of the information contained in its response to Staff's Request for Additional Information, Item No. 5, dated July 26, 2011. The information sought to be confidential is located in the document entitled 2011 Rate Cases Salary Adjustment,

DOCUMENT NUMBER DATE

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pages 14 – 27 of 124, Columns A – E (except column totals and column headings) and on pages 28 – 41 of 124, Columns F – J (except column totals and column headings). Eagle Ridge has provided detailed justification for the confidential classification of the documents in Attachment A to its Request. Eagle Ridge asserts that a portion of the information sought to be made confidential consists of compensation information, specifically employees' name and title, base salary, overtime, raises, taxes, pension information, total compensation and contribution to 401 (k) plans. Eagle Ridge contends that this information should be classified as proprietary confidential business information because its disclosure would impair its competitive interests, provide other utility companies information to lure employees away (thereby driving up salaries and rates), and create circumstances under which infighting and employee morale could be negatively affected. In further support of its contention, Eagle Ridge cites Florida Power & Light Company et. al. v. Public Service Commission, 31 So. 3d 860 (Fla. 1st DCA 2010), wherein the Court held that the categories listed in section 366.093(3)(a)-(f), F.S., are not exhaustive, and, thus, a utility's compensation information falls within the definition of proprietary confidential business information in Section 366.(3), F.S.

Eagle Ridge asserts that the information sought to be made confidential is intended to be and is treated by Eagle Ridge as private and confidential, has not been disclosed publicly, and has been strictly controlled internally.

Ruling

Upon review, it appears the above-referenced information satisfies the criteria set forth in Section 367.156(3)(d) and (e), F.S., for classification as proprietary confidential business information. The information at issue consists of information concerning bids or other contractual data, the disclosure of which would impair the efforts of Eagle Ridge or its affiliates to contract for goods or services on favorable terms, or information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information. Thus, the information identified in Document No. 06134-11, as described herein, shall be granted confidential classification.

Pursuant to Section 366.093(4), F.S., the information for which confidential classification is granted herein shall remain protected from disclosure for a period of 18 months from the date of issuance of this Order. At the conclusion of the 18-month period, the confidential information will no longer be exempt from Section 119.07(1), F.S., unless Eagle Ridge or another affected person shows, and the Commission finds, that the records continue to contain proprietary confidential business information.

Based on the foregoing, it is

ORDERED by Commissioner Julie I. Brown, as Prehearing Officer, that Utilities, Inc. of Eagle Ridge's request for confidential treatment of the highlighted portions of Document No. 06134-11 is granted as set forth in the body of this Order. It is further

ORDERED that the information in Document No. 06134-11 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 Julie I. Brown, as Prehearing Officer, this 16th day of March, 2012.



JULIE I. BROWN
Commissioner and Prehearing Officer
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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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

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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.