

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for a rate) DOCKET NO. 911188-WS
increase in Lee County by) ORDER NO. PSC-92-1280-CFO-WS
LEHIGH UTILITIES, INC.) ISSUED: 11/10/92
_____)

ORDER DENYING LEHIGH UTILITIES, INC.'S
REQUEST FOR CONFIDENTIAL TREATMENT OF RESPONSES
TO PUBLIC COUNSEL'S INTERROGATORIES NOS. 28 AND 46,
AND DOCUMENT REQUEST NO. 10

BY THE COMMISSION:

On July 7, 1992, Lehigh Utilities, Inc. (Lehigh) filed a Motion for Protective Order, including Temporary Protective Order for Confidential Information. On September 2, 1992, Lehigh filed a Request for Confidential Classification and Motion for Protective Order. Both motions requested that the information sought by the Office of Public Counsel's (OPC's) Interrogatories Nos. 28 and 46 be held confidential, as stated in the Notice of Intent. No parties filed responses to Lehigh's motion.

On August 17, 1992, Lehigh filed a Second Motion for Temporary Protective Order for Confidential Information.

On September 8, 1992, Lehigh filed a Second Request for Confidential Classification and Motion for Protective Order. Both of these motions requested that the information submitted in Lehigh's response to OPC's First Set of Requests for Production of Documents, Document No. 10, be held confidential. The specific information for which confidentiality is requested is the 1991 Incentive Compensation Plan for Lehigh employees.

Specifically, Lehigh requests confidential treatment for documents and information produced in response to the following portions of Office of Public Counsel (OPC) discovery requests:

OPC's First Set of Interrogatories

- (28) State the number of persons directly employed by Lehigh; state the position and salary of each; and provide a summary of the duties of each person.

DOCUMENT NUMBER-DATE

13207 NOV 10 1992

FPC-RECORDS/REPORTING

- (46) Provide the name, title and salary of any management employees (including those employed by subsidiaries or affiliates, including parent companies) who engage in public relations on behalf of the company.

OPC's First Set of Requests for Production of Documents

10. Please provide a copy of each bonus and incentive compensation plan in use at the Company and the annual estimated cost to the Company under each plan.

In response to the above discovery requests, Lehigh provided to OPC and filed with this Commission the following written materials for which it requests confidential treatment: Appendix 28-B to Interrogatory No. 28; Appendix 46-B to Interrogatory 46; and the response to Document Request No. 10.

Florida law provides, in Section 119.01, Florida Statutes, 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. This law derives from the concept that government should operate in the "sunshine." In the instant matter, the value that all parties would receive by examining and utilizing the information contained in the subject documents must be weighed against the legitimate concerns of Lehigh regarding disclosure of business information which it considers proprietary.

Pursuant to Section 367.156, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, Lehigh has the burden to show that the material submitted qualifies for confidential classification. Lehigh's claims to confidentiality are confined to one category: officers and employee compensation.

Regarding the officers and employee compensation information provided in Appendix 28-B to Interrogatory No. 28 and Appendix 46-B to Interrogatory No. 46, the utility asserts that under Section 367.156(3), Florida Statutes, "proprietary confidential business information" includes, but is not limited to:

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

Regarding the information in Lehigh's response to Document Request No. 10, the Lehigh quotes from Section 688.002(4), Florida Statutes, which states that trade secrets include information that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

In its motions, Lehigh argues, that the salary and benefits and bonus and incentive plan applicable to its employees requested by OPC is a "trade secret" as defined by statute. Lehigh continues,

The information also relates to Lehigh's competitive interests such that the public disclosure of such information would cause harm to Lehigh's business operations and competitive interests. The water and wastewater industry is a highly competitive industry. Water and wastewater utilities compete for qualified and experienced personnel. Maintaining quality employees at reasonable and justified salary levels is a key ingredient to the provision of quality service at reasonable rates. The bonus and compensation plan documents requested by Public Counsel clearly relate to Lehigh's competitive interests and the public disclosure of such information may ultimately serve to adversely impact Lehigh's ability to retain qualified employees at reasonable salary levels.

The utility's request for confidential status of the above information concerning officers and employee compensation is denied for the following reasons. First, employee compensation is not confidential under Section 367.153(3), Florida Statutes, which provides in pertinent part:

Proprietary confidential business information means information...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....Proprietary business information includes, but is not limited to:...

(f) Employee personnel information unrelated to compensation, duties, qualification, or responsibilities." [Emphasis supplied.]

Second, the information for which the utility seeks confidential treatment is not a trade secret. The confidentiality provision of the statute is designed to protect against a competitor's obtaining, through the public disclosure of information, an unfair advantage in a competitive market for goods or services. This is not the type of competitive interest which Lehigh seeks to protect. Lehigh has not offered any substantial evidence to support their argument that disclosure of the subject information would have the effect which the utility fears. Finally, Lehigh cites no judicial or administrative precedent which supports its view, and it cites no prior decision of this Commission where it was held that employee compensation of a rate base regulated utility was found to be confidential.

Based on the foregoing, I find it appropriate, pursuant to this Commission's authority under Section 367.156, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, to deny Lehigh's Request for Confidential Classification and Motion for Protective Order, as set forth above.

It is, therefore,

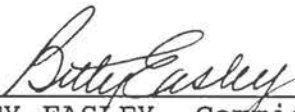
ORDERED by Commissioner Betty Easley, as Prehearing Officer, that the Request for Confidential Classification and Motion for

ORDER NO. PSC-92-1280-CFO-WS
DOCKET NO. 911188-WS
PAGE 5

Protective Order filed by Lehigh Utilities, Inc. is hereby denied, as set forth above. It is further

ORDERED that the following are not proprietary confidential information pursuant to Section 367.156, Florida Statutes, and Rule 25-22.006, Florida Administrative Code: Appendix 28-B to Interrogatory No. 28; Appendix 45-B to Interrogatory 45; and the response to Document Request No. 10.

By ORDER of Commissioner Betty Easley, as Prehearing Officer, this 10th day of November, 1992.



BETTY EASLEY, Commissioner
and Prehearing Officer

(S E A L)

BE/LK/CB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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,

ORDER NO. PSC-92-1280-CFO-WS
DOCKET NO. 911188-WS
PAGE 6

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.