

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for limited proceeding increase and restructuring of water rates by Water Oak Utilities Co., Inc. in Lake County.

DOCKET NO. 990243-WU  
ORDER NO. PSC-99-2150-CFO-WU  
ISSUED: November 2, 1999

ORDER GRANTING REQUEST FOR CONFIDENTIAL CLASSIFICATION OF WATER OAK UTILITY CO., INC.'S 1996, 1997 AND 1998 FEDERAL INCOME TAX RETURNS CONTAINED IN DOCUMENT NO. 10097-99

On August 13, 1999, copies of certain portions of staff's working papers, which include federal income tax returns for 1996, 1997, and 1998 for Water Oak Utilities Co., Inc. (Water Oak or utility), were delivered to the utility at the audit exit conference. At that time, the utility requested that its federal income tax returns for 1996, 1997, and 1998, be temporarily excepted from public access. On August 24, 1999, staff filed Document No. 10097-99, which consists of staff working papers containing those specified portions of the utility's federal income tax returns.

On August 26, 1999, pursuant to Rule 25-22.006, Florida Administrative Code, and Section 367.156, Florida Statutes, the utility filed a request to have its 1996, 1997, and 1998 federal income tax returns contained in Document No. 10097-99 receive confidential classification. The utility's request was initially mailed to the Orlando District Audit Office and was forwarded to the Division of Records and Reporting on September 9, 1999. The utility requests confidential classification of the following portions of Document No. 10097-99:

Staff Work Paper No. 59-1, consisting of pages 1-55 of the utility's 1996 Federal Income Tax Return; Staff Work Paper No. 59-2, consisting of pages 1-17 of the utility's 1997 Federal Income Tax Return; and Staff Work Paper No. 59-3, consisting of pages 1-18 of the utility's 1998 Federal Income Tax Return.

Pursuant to Section 119.07, Florida Statutes, documents submitted to the Commission are public records. The only exceptions to this provision include specific statutory exemptions and exemptions granted by governmental agencies in accordance with

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the specific terms of the statutory provision. Section 367.156, Florida Statutes, provides statutory exceptions to Section 119.07, Florida Statutes. Specifically, subsection (3) of this section defines proprietary confidential business information as an exception. This section provides:

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.

Additionally, Rule 25-22.006(4)(e), Florida Administrative Code, provides, "[t]he burden of proof shall be on the utility or other person to show that the material in question contains bona fide proprietary confidential business information." Pursuant to this rule, the utility must meet this burden by demonstrating that the materials fall into one of the statutory exceptions set forth in Section 367.156, Florida Statutes, or by demonstrating that the information is proprietary confidential business information, the disclosure of which will cause harm to the utility, the provider of the information, or the ratepayer.

In its request, the utility specifically identified the material in Document No. 10097-99 for which it was requesting confidential classification. We have identified these documents as the utility's federal income tax returns for 1996, 1997, and 1998. The utility has requested its tax returns be held as confidential because they contain private information related to non-regulated affiliates. The utility reasoned that if the information was released, it could harm the company as well as its limited partners. We have contacted the utility and confirmed that the material the utility requested to receive confidential classification has not been released to the public. Upon consideration, this material qualifies as proprietary confidential business information and should be granted confidential classification.

On September 27, 1999, the utility amended its request for confidential classification by asking that the tax returns be held as confidential for a period of ten years. Section 367.156(4), Florida Statutes, limits the length of time for confidential protection to 18 months, unless, for good cause shown, a longer protection period is appropriate. The utility reasons that because the information contained within its federal income tax returns includes private information from non-affiliated entities, it could harm the company if the information was released. Income tax returns of non-regulated affiliates have been granted confidential classification by this Commission. See Order No. PSC-94-1332-PHO-WU, issued October 27, 1994, in Docket No. 931122-WU. However, the utility's arguments are not sufficient demonstration of good cause as to why the federal income tax returns should be held as confidential for a period of ten years. Further, prior to the expiration of the 18-month period, the utility can request continued confidential treatment for another 18-month period.

Because the material at issue meets the definition of proprietary confidential business information pursuant to Section 367.156(4), Florida Statutes, and Rule 25-22.006, Florida Administrative Code, the utility's tax returns shall be granted confidential classification for a period of 18 months from the date of issuance of this Order. In the absence of a renewed request for confidentiality pursuant to Section 367.156, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, any confidential classification granted to the documents specified herein shall expire 18 months from the date of issuance of this Order.

Based on the foregoing, it is


ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that the utility's 1996, 1997, and 1998 Federal Income Tax Returns described in the body of this Order as contained in Document No. 10097-99 are granted confidential classification. It is further

ORDERED that confidential classification 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. It is further

ORDERED that this Order will be the only notice by the Commission to the parties of the declassification date of this document.

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By ORDER of Commissioner J. Terry Deason as Prehearing  
Officer, this 2nd Day of November, 1999.

  
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J. TERRY DEASON  
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.

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, 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.