



Public Service Commission

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DATE: January 17, 2003
TO: Office of General Counsel (Jaeger)
Division of Economic Regulation (Willis, Merchant, Boutwell, Rieger)
FROM: Division of Auditing and Safety (Vandiver, Freeman)
RE: Docket 020344-SU, Application for rate increase in Monroe County by Key Haven Utility Corporation (Key Haven), Request for confidential classification for documents prepared during "Key Haven Utility Corporation Rate Case Audit for the Year Ended December 31, 2001, Audit Control No. 02-249-4-1, Documents 13464-02 and 13971-02

On December 6, 2002, when copies of certain portions of staff's working papers prepared during "Key Haven Utility Corp. Rate Case Audit for the Year Ended December 31, 2001", were delivered to the utility at the audit exit conference, the utility requested that these materials be temporarily exempted from public access in accordance with the provisions of Rule 25-22.006(3)(a)(2), Florida Administrative Code (FAC).

On December 10, 2002, staff filed document 13464-02 consisting of these materials.

On December 23, 2002, the utility filed a request pursuant to Rule 25-22.006, FAC, and Section 367.156, Florida Statutes (F.S.), that certain portions of the audit working papers prepared by the staff receive a confidential classification. The utility request includes redacted copies for public inspection (document 13970-02) and copies with the sensitive information highlighted (document 13971-02).

Documents 13464-02 and 13971-02 are currently held by the Division of Commission Clerk and Administrative Services in a temporary confidential classification pending resolution of Key Haven's request.

In accordance with Section 119.07, F.S., documents submitted to this Commission are public records. The only exceptions to this law are specific statutory exceptions and exemptions granted by Governmental agencies pursuant to the terms of a statutory provision. Subsections 367.156(3)(e) and (f) provide the following exceptions:

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“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 interests, the disclosure of which would impair the competitive business of the provider of the information....

(f) Employee personnel information unrelated to compensation, duties, qualifications or responsibilities.”

According to Section 367.156, F.S., and Rule 25-22.006, FAC, the utility has the burden of demonstrating the materials qualify for confidential classification. According to Rule 25-22.006 FAC, the utility must meet this burden by demonstrating that the information is proprietary confidential business information, the disclosure of which will cause the utility, the provider of the information or the ratepayer harm.

### **Staff Analysis of the Request**

Reading the Key Haven filing reveals the sensitive material consists of:

Copies of W-2 forms of an employee of Key Haven and an independent contractor paid by Key Haven pursuant to a management contract (collectively, the *Lujans*).

Key Haven argues this information is private and confidential, its disclosure is not required by law or public interest, and the information discloses income earned by the Lujans which is not from compensation attributable to any contractual relationship between either of the Lujans and Key Haven.

Key Haven claims this income reports commissions indirectly earned by the Lujans pursuant to agreements between business enterprises which are owned or controlled by one or more of the Lujans, and the employees of such enterprise. A. Wayne Lujan is not an employee of Key Haven but performs services for Key Haven pursuant to a management agreement with Key Haven. Andrea Lujan is an employee of Key Haven; however, information relating to her income deriving from sources other than Key Haven does not relate to her “compensation, duties, qualification or responsibilities as an employee of Key Haven....”

Key Haven claims “disclosure of this information would impair the competitive business of the enterprises and the Lujans....” and argues the Lujans’ income which is derived from businesses other than the utility should not be disclosed because this income is not a cost that will be passed on to Key Haven ratepayers.

Key Haven also reports that social security numbers can be found on the W-2 forms.

### **Impact of Federal law**

Federal Law concerning Federal Income Taxes, specifically 26 USC 6103 provides:

Returns and return information shall be confidential...no officer or employee of any state...who has or had access to returns or return information...shall disclose any return or return information obtained by him in any manner in connection with his service....

Since Federal Law provides that W-2 information is confidential, staff recommends the W-2 information provided by Key Haven be granted a confidential classification.

### **Impact of Prior Public Service Commission Decisions**

Generally, social security numbers of employees have also been granted a confidential classification, see Commission Order 24457, dated May 1, 1991, Docket 890190-TL.

The Commission has specifically held that compensation of employees does not qualify for a confidential classification pursuant to the provisions of Section 367.156(3)(f), F.S., see Commission Order PSC-92-1280-CFO-WS, dated November 10, 1992, docket 911188-WS and Commission Order PSC-95-0503-CFO-WS, dated April 24, 1995, docket 950318-WS. Nevertheless, when compensation information is in the form of a W-2, Federal Statutes provide that W-2 information is confidential.

### **Length of the Classification Period**

Audit reports and related audit working papers of this nature are retained by the Commission for 25 years. Section 367.156(4), F.S., limits the length of any confidential classification to 18 months unless cause is shown for allowing a longer period of protection. Since cause has not been shown for a longer period of protection within this filing, we recommend any confidential classification be limited to 18 months. If the utility finds additional confidential protection is needed, an extension may be filed before any granted protection period tolls.

### **STAFF RECOMMENDATION**

Staff's reading of the sensitive materials reveals it discloses information reported on employee W-2 forms. We therefore recommend the utility's request for confidential classification be granted for 18 months as discussed above. A detailed recommendation is provided below:

**DETAILED STAFF RECOMMENDATION**

Staff Work Paper	Page(s)	Line(s)	Recommend	Type of Information Classified confidential
43-4	1	All Marked Lines	Grant	W-2 Information
43-4	2	All Marked Lines	Grant	W-2 Information
43-6	1	All Marked Lines	Grant	W-2 Information

A temporary copy of this recommendation will be kept at I:13971-02.raf for a short time.

cc: Bureau of Records and Hearing Services (Flynn)