

ORIGINAL

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: February 24, 2004

TO: Office of General Counsel (Jaeger)

FROM: Division of Auditing and Safety (Freeman, Vandiver) *F* *a* *MA*

RE: Docket 020567-WS, Recommendation concerning Lake Utility Services, Inc. (LUSI), request for confidential classification of a portion of the staff's working papers obtained during the preparation of "Lake Utility Services, Inc., Earnings Audit for the Year Ended December 31, 2002", Audit Control No. 02-350-3-1, Documents Numbered 07801-03 and 08491-03

On August 18, 2003, when copies of certain portions of staff's working papers obtained or prepared during the "Lake Utility Services, Inc., Earnings Audit for the Year Ended December 30, 2002", were delivered to LUSI 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 August 22, 2003, staff filed document 07801-03 consisting of those specified portions of the working papers.

On September 9, 2003, LUSI filed a request pursuant to Rule 25-22.006, FAC, and Section 367.156, Florida Statutes (F.S.), that selected portions of the staff working papers prepared during the audit receive confidential classification. The utility's request includes redacted copies for public inspection (Document 08492-03) and highlighted copies (Document 08491-03).

On January 12, 2004, after discussions with the staff, LUSI filed additional information in support of its request for confidential classification.

On February 10, 2004, after further discussions with the staff, LUSI reduced the amount of information covered by its request for confidential classification.

Documents 07801-03 and 08491-03 are currently held by the Commission's Division of Commission Clerk and Administrative Services as confidential pending resolution of the LUSI's request for confidential classification.

- AUS _____
- CAF _____
- CMP _____
- COM _____
- CTR _____
- ECR _____
- GCL _____
- OPC _____
- MMS _____
- SEC _____
- OTH _____

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 specific items of a statutory provision. Subsection 367.156(3)(e) and (f), F.S., provide the following exemptions:

DOCUMENT NUMBER-DATE

02992 MAR-1 04

FPSC-COMMISSION CLERK

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“(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 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 25-22.06, FAC, the utility has the burden of demonstrating that 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 LUSI filing reveals the sensitive materials consist of notes taken from Director’s Minutes

More specifically LUSI requests that a confidential classification be granted to summaries of resolutions by the board of director’s of Utilities, Inc., the parent company of LUSI, concerning limitations on the authority of officers of Utilities, Inc. to acquire and dispose of property or otherwise create obligations which would be binding on Utilities, Inc.

LUSI states; “...limitations on the authority of the officers of Utilities, Inc., is information relating to competitive interests, disclosure of which would impair the competitive business of Utilities, Inc., as specified in Section 367.156(3)(e), Florida Statutes. The disclosure of this information would impair or harm Utilities, Inc., in its ability to freely engage in discussions of, and negotiations for, the acquisition or disposal of its assets and the assets of its subsidiaries.”

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LUSI and Utilities, Inc., collectively, are companies that acquire, manage and sell utility systems. Its officers are assigned the duties of committing the company to a particular sale or purchase in accordance with sensitive business plans. Section 367.156(3)(f), F.S., provides that the compensation, duties, responsibilities, and qualifications of employees should be public record. While it is appropriate public information to know that the purchase or the sale of a Florida-regulated utility is an arm's length transaction in accordance with the company's policies as evidenced by the approval of a specific company officer, here LUSI and Utilities, Inc., request a confidential classification for information concerning how these companies are structured to make the best decision in purchasing or selling a utility system.

When rates are set for a water or wastewater utility system regulated by the Florida Public Service Commission, absent extraordinary circumstances, those rates are set based upon the original cost of placing that utility in service and not upon a subsequent purchase price or the sales price of that system. The profitability and ultimate survival of companies like LUSI and Utilities, Inc., is dependant upon effective decisions in buying and selling utility systems.

This detailed information concerning how a company makes its decisions to purchase or sell a utility is sensitive and valuable competitive business information. LUSI states this information has been held as confidential. Section 367.156(3)(e), F.S., provides an exemption for sensitive competitive business information release of which would harm the provider of that information. It would be appropriate that this information be granted a confidential classification.

Lastly, this information does not include social security numbers.

Duration of the Confidential Classification Period

LUSI requests that this material be granted a confidential classification without any set time limit concerning the classification period. Staff's audit working papers for this type of audit are retained on file for 25 years.

According to the provisions of Section 367.156(4), F.S., absent good cause shown, confidential classification is limited to 18 months. Without cause shown for a longer period, we recommend that the period of confidential classification be set as 18 months. If necessary, the utility may request an extension of the confidential classification before the period ends.

Staff Recommendation

Based upon reading the filing, and for the reasons presented above, we recommend, the utility's request be granted and that the identified material be granted a confidential classification for 18 months. A detailed recommendation concerning the material follows:

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Detailed Recommendation

Staff Work Paper Number	Page(s)	Lines	Recommend	Type of Information Classified Confidential
Documents 07801-03 and 08491-03				
WP 8	1	10-20,36	Grant	Sensitive competitive business information

A temporary copy of this recommendation will be held a I:08491-03.lakeraf.doc for a short period.

CC: Bureau of Auditing and Safety (Winston)
Bureau of Records and Hearing Services (Flynn)