

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase in water rates in Franklin County by Water Management Services, Inc. | DOCKET NO. 100104-WU
ORDER NO. PSC-10-0586-CFO-WU
ISSUED: September 22, 2010

ORDER GRANTING CONFIDENTIAL CLASSIFICATION FOR DOCUMENTS
PRODUCED IN RESPONSE TO AUDIT REQUEST NO. 2
(DOCUMENT NOS. 07868-10 and 05550-10)

On June 14, 2010, Commission staff made 11 audit requests to Water Management Services, Inc. (WMSI or Utility), including Audit Request No. 2, for WMSI to “[p]lease provide any continuing property records as well as all invoices, contracts, cancelled checks and any other supporting documentation for plant in service (including land) additions, retirements, and recorded adjustments from January 1, 2004 up through December 31, 2009.” WMSI provided responses to this request on June 18, 2010, with copies of numerous documents, including three documents related to a litigation settlement between WMSI and McWane, Inc., Consolidated Pipe & Supply Company, Inc., Boh Brothers Construction Co., LLC, and Blankenship Contracting, Inc. (hereinafter Companies), which was provided in redacted form in response to Florida Public Service Commission (“Commission”) audit staff’s request for information.

Subsequently, on July 7, 2010, WMSI filed the documents requested by audit staff with the Commission Clerk, and requested that portions of those documents be accorded confidential treatment. The documents which contained both redacted and unredacted confidential provisions were assigned Document No. 05550-10. Although WMSI did provide the documents with most of the confidential information highlighted, it continued to redact the names of the companies. When the Utility was advised by staff that this was unacceptable, the Utility provided the documents with no redactions whatsoever, and again requested confidential treatment of the previously highlighted information and the company names. This latter filing was assigned Document No. 07868-10.

These documents include copies of the Mediation Settlement Agreement and of attorney invoices dated June 9, 2008, and July 2, 2008, containing entries related to the settlement. In accordance with paragraph 10 of the Mediation Settlement Agreement, WMSI asserts that the terms of the agreement “are confidential and may not be disclosed to any third party, unless required by law.” Paragraphs 1-9 and 11-12 of the Mediation Settlement Agreement show the confidential terms of the settlement agreement. WMSI states that in the June 9, 2008 invoice, the 5/28/08 entry on page 4, and the trust account activities on page 5 contain confidential information related to the terms of the settlement agreement. In the July 2, 2008 invoice, the 6/2/08, 6/5/08, 6/10/08, 6/11/08, and 6/12/08 entries on page 1, the 6/19/08 entry on page 2, and the 6/20/08 and 6/23/08 trust account activities on page 3 contain confidential information related to the terms of the settlement agreement.

DOCUMENT NUMBER: 07868-10

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FPSC-COMMUNICATIONS SECTION

WMSI states that disclosure of this information would cause harm because it would expose WMSI to potential liability to the Companies for violating the Mediation Settlement Agreement. Therefore, WMSI alleges that the documents are entitled to confidential classification pursuant to Section 367.156(3), Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), and are exempt from section 119.07(1), F.S., and Article I, Section 24(a) of the Florida Constitution because the documents contain confidential information related to a private, contractual agreement between WMSI and the Companies, which constitutes proprietary confidential business information as defined in Section 367.156(3), F.S.

Section 367.156(3), F.S., defines propriety confidential business information, and states in pertinent part:

(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 a private agreement that provides that the information will not be released to the public. Proprietary business information includes, but is not limited to:

(a) Trade secrets.

* * *

(c) Security measures, systems, or procedures.

(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 interests, the disclosure of which would impair the competitive businesses of the provider of the information.

* * *

Upon review, it appears that "the information that WMSI seeks to protect includes contractual data related to a settlement agreement, the disclosure of which would impair the utility's ability to enter into such an agreement in the future and would impair its business operations by exposing WMSI to potential liability to the Companies for violating the settlement agreement." Therefore, I find that the settlement agreement information found in Document Nos. 05550-10 and 07868-10 fits the statutory definition of propriety confidential business information under Section 367.156(3), F.S., and Rule 25-22.006, F.A.C., and this information shall be afforded confidential classification. The information constitutes "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information."

Thus, the following information contained in Document Nos. 05550-10 and 07868-10 shall be afforded confidential treatment: Paragraphs 1-9 and 11-12 of the Mediation Settlement Agreement; portions of the June 9, 2008 invoice, i.e., the 5/28/08 entry on page 4 and the trust account activities on page 5; and portions of the July 2, 2008 invoice, i.e., the 6/2/08, 6/5/08, 6/10/08, 6/11/08, and 6/12/08 entries on page 1, the 6/19/08 entry on page 2, and the 6/20/08 and 6/23/08 trust account activities on page 3.

Pursuant to Section 367.156(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 Water Management Services, Inc., 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 Nathan A. Skop, as Prehearing Officer, that the Request for Confidential Classification of information contained within Document Nos. 05550-10 and 07868-10, is granted, as set forth in the body of this Order. It is further

ORDERED that the information in Document Nos. 05550-10 and 07868-10 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 Nathan A. Skop, as Prehearing Officer, this 22nd day of September, 2010.



NATHAN A. SKOP
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.

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 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.