

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for approval of transfer of Certificate No. 117-W from Crestridge Utility Corporation to Crestridge Utilities, LLC, in Pasco County.

DOCKET NO. 140174-WU

In re: Application for approval of transfer of Certificate No. 116-W from Holiday Gardens Utilities, Inc. to Holiday Gardens Utilities, LLC, in Pasco County.

DOCKET NO. 140176-WU
ORDER NO. PSC-15-0341-CFO-WU
ISSUED: August 21, 2015

ORDER GRANTING IN PART AND DENYING IN PART
MICHAEL SMALLRIDGE'S REQUEST FOR CONFIDENTIAL
CLASSIFICATION (DOCUMENT NO. 04002-15)

On June 29, 2015, Michael Smallridge (Smallridge) filed in both Docket Nos. 140174-WU and 140176-WU a request for confidential classification of portions of responses given in both dockets to Staff's Fifth Data Request Nos. 11, 18, 19, and 20 (Document No. 04002-15). The response to Staff's Fifth Data Request No. 11 consists of a list of Smallridge's personal property whose value exceeds \$1,000 as identified on his financial statement dated March 1, 2015.¹ The response to Staff's Fifth Data Request No. 18 consists of Smallridge's June 20, 2015 personal financial statement. The response to Staff's Fifth Data Request No. 19 consists of a 1099 miscellaneous income form for the tax year 2014 and the response to Staff's Fifth Data Request No. 20 consists of the job titles, number of hours worked per week, and salaries/hourly rate for employees of Florida Utility Services 1, LLC.

Request for Confidential Classification

In his June 29 confidentiality request, Smallridge argues that various portions of his responses to Staff's Fifth Data Request Nos. 11, 18, 19 and 20 constitute proprietary confidential business information entitled to protection under Section 367.156, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.) Smallridge further states that all of the information contained in this material for which he has requested confidential classification has not been disclosed to the public and is treated by him as confidential.

Smallridge states that the majority of the information produced consists of "personal financial information of the owner," is "unrelated to his compensation from the Utility" and if disclosed "would impair the owner's competitive interests as he moves to acquire other systems in the future." Further, Smallridge argues that with regard to Florida Utility Services 1, LLC's employee names and salary information, their disclosure "would impair the Utility's competitive

¹ Document No. 02606-15 granted confidential status by Order No. PSC-15-0242-CFO-WU, issued on June 9, 2015, in Docket No. 140174-WU, In re: Application for approval of transfer of Certificate No. 117-W from Crestridge Utility Corporation to Crestridge Utilities, LLC, in Pasco County.

interests, provide other utility companies information to lure employees away (thereby driving up salaries and rates), and create circumstances under which infighting and employee morale could be negatively affected.”

Ruling

Section 367.156(1), F.S., provides that records the Florida Public Service Commission (Commission) has found to contain proprietary confidential business information shall be kept confidential and shall be exempt from Chapter 119, F.S. Section 367.156(3), F.S., defines proprietary confidential business information as information that is intended to be and is treated by the company as private, in that disclosure of the information would cause harm to the company’s ratepayers or business operations, and that has not been voluntarily disclosed to the public. Section 367.156(3), F.S., provides that proprietary confidential business information includes, but is not limited to:

- (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.

With regard to Staff’s Fifth Data Request No. 11, Smallridge alleges that the responsive list of personal property is completely unrelated to Crestridge Utility Corporation or Crestridge Utilities, LLC (collectively referred to herein as Crestridge), or to Holiday Gardens Utilities, Inc. or Holiday Gardens Utilities, LLC (collectively referred to herein as Holiday Gardens). Smallridge states that if this information is disclosed it could “lead to burglary or worse.” Staff’s Fifth Data Request No. 11 asks for a description of the personal property associated with Section 3 of Smallridge’s March 1, 2015 financial statement (Document No. 02606-15). Smallridge’s March 1, 2015 financial statement is the subject of Order No. PSC-15-0242-CFO-WU (Order No. PSC-15-0242), issued on June 9, 2015, which held the dollar amounts associated with the categories in Section 3, but not the categories themselves, to be confidential. Order No. PSC-15-0242 held that the dollar amounts were confidential because their disclosure could impair Smallridge’s competitive business interests. The same situation is present here. Therefore, consistent with Order No. PSC-15-0242, the dollar amounts the utilities’ response to Staff’s Fifth Data Request No. 11 shall be deemed confidential pursuant to Section 367.156(3)(e), F.S., but not the categories of personal property listed.

The response to Staff’s Fifth Data Request No. 18 consists of Smallridge’s June 20, 2015 personal financial statement. The June 20, 2015 personal financial statement uses the same CenterState Bank format as the December 31, 2014 and March 1, 2015 personal financial statements (Documents Nos. 00503-15 and 02606-15) addressed in Order No. PSC-15-0242. Smallridge has requested confidentiality for the same type of information in the June 20, 2015 financial statement as he did for the December 31, 2014 and March 1, 2015 financial statements based on the same rationale.

Smallridge argues that the material contained on his June 20, 2015 personal financial statement should be confidential since it is unrelated to his compensation from the utility and would impair his ability to acquire other systems in the future. First, I find that Smallridge's personal financial statements are relevant to the evaluation of these certificate transfer cases. At this time, as when Order No. PSC-15-0242 was issued, Smallridge is the sole owner of both Crestridge and Holiday Gardens and is presently managing both utilities. Thus, the means to meet both utilities' financial and capital obligations must be provided either from the operations of each utility or from Smallridge's personal finances. Crestridge's and Holiday Gardens' Staff Audits indicate either an annual net loss or a very small profit for the period ending September 30, 2014.² Therefore, Smallridge's personal funds at least initially will have to be used to meet each utilities' near term identified capital improvement needs which combined total approximately \$103,200.³ Therefore, as in Order No. PSC-15-0242, a thorough review of Smallridge's financial status is required to properly evaluate the statutory requirements of Section 367.071(1), F.S.

There is one difference between the June 20, 2015 and March 1, 2015 financial statements regarding Florida Utility Services 1, LLC and the six water and wastewater companies that are "owned" by Smallridge either directly or indirectly as listed in Section C, Unlisted Securities. Smallridge has requested that the value of these entities be kept confidential, but not the names of the entities themselves. The rationale supporting this request is that the information is personal and its disclosure would violate the personal privacy right bestowed by Article I, Section 23 of the Florida Constitution. As discussed in Order No. PSC-15-0242, Article I, Section 23 of the Florida Constitution does not create an exception to Florida's Public Records Act. Further, the value for at least five of the entities listed are already in the public record having been filed with the Commission without a request for confidentiality in both this case and other pending Commission cases. For example, the value of Florida Utility Services 1, LLC is the same as the value on the balance sheet for that entity provided in response to Staff's Fifth Data Request No. 7. Likewise, the values for Holiday Gardens Utilities, LLC, Crestridge Utilities, LLC, Pinecrest Utilities, LLC and East Marion Utilities, LLC are the same as those found on balance sheets for those entities previously filed with the Commission without requests for confidentiality. That being the case, it appears that this information has not, in fact, been treated as confidential by Smallridge and has already been disclosed to the public. With regard to West Lakeland Wastewater, Inc. and Charlie Creek Utilities, LLC, the values listed are based on per ERC calculations which do not appear to have been previously provided to the Commission. However, I do not agree that disclosure of the values for these systems, or any of the other systems listed, will result in any competitive disadvantage to Smallridge as required by Section 367.156(3)(e), F.S. Nor is this information bid or contractual data covered by Section 367.156(3)(d), F.S. Given these facts, I find that the information in Schedule C, attached to Smallridge's June 20, 2015 personal financial shall not be treated as confidential.

Staff's Fifth Data Request No. 19 consists of a 1099 miscellaneous form for the tax year 2014 for which Smallridge has requested confidentiality for his Social Security, Entity

² For Crestridge the annual net loss was \$6,748; for Holiday Gardens the annual profit was \$2,320.

³ Response to Staff's Fifth Data Request No. 21.

Identification (EIN) and bank account numbers. Social Security numbers are exempt from the provisions of Chapter 119, F.S., pursuant to Section 119.071(5)(a)5, F.S. Their exempt status protects them from disclosure to the general public pursuant to Chapter 119, F.S. Bank account numbers are likewise exempted from the provisions of Chapter 119, F.S., by Section 119.071(5)(b), F.S. Therefore, no rulings on these portions of the request are necessary. Since the federal income tax forms are part of Smallridge's federal income tax return for 2014, they are confidential under federal law, specifically 26 U.S.C. Section 6103(a), which prohibits us from releasing this information. Therefore, it is Commission policy to afford confidential treatment to federal income tax returns under the sections cited above.

Staff's Fifth Data Request No. 20 consists of the job titles, number of hours worked per week and salaries/hourly rate for employees of Florida Utility Services 1, LLC. Smallridge has requested confidentiality under Sections 367.156(3)(d) and (e), F.S., for only the hourly pay rate for the listed employees, citing Florida Power & Light Company v. Public Service Commission (FPL), 31 So. 3d 860 (Fla. 1st DCA 2010). In FPL, the First District Court of Appeal held that Section 366.093(3)(e), F.S., the equivalent of Section 367.156(3)(e), F.S., protected employees' salaries from disclosure on the basis that if disclosed, other utility companies could hire away their employees, and that disclosure could cause employee infighting, and ultimately higher salaries having to be paid to maintain workplace peace, to the detriment of ratepayers. I agree that the FPL case is applicable here and find that the hourly wage information in Staff's Fifth Data Request No. 20 is confidential.

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 up to 18 months from the date of the issuance of this Order. At the conclusion of this period, the confidential information will no longer be exempt from Section 119.07(1), F.S., unless Smallridge 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 hereby

ORDERED by Commissioner Ronald A. Brisé, as Prehearing Officer, that the request for specified confidential classification of the materials contained in Document No. 04002-15 is granted in part and denied in part as set forth herein. It is further

ORDERED that the information in Document No. 04002-15 for which confidential classification has been granted, shall remain protected from disclosure for a period of up to 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 Ronald A. Brisé, as Prehearing Officer, this 21st day
of August, 2015.



RONALD A. BRISÉ
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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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.