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July 5, 2022

Via Hand Delivery

Florida Public Service Commission
Office of Commission Clerk
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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COMMISSION
CLERK

RE: Docket No. 20220061-SU - Application for transfer of Wastewater Certificate No. 318-S from BFF Corp. to CSWR-Florida Utility Operating Company, LLC, in Marion County

Dear Commission Clerk:

On behalf of Applicant CSWR-Florida Utility Operating Company, LLC, please find enclosed a Request for Confidential Classification concerning the Wastewater Facility Report that supplements Exhibit H of CSWR-Florida's transfer application. Pursuant to rule 25-22.006(4)(a), Florida Administrative Code, enclosed is an unredacted, highlighted copy of the report. A redacted copy of the report has been filed in the docket via the Commission's online filing portal.

Sincerely,

/s/ Thomas A. Crabb

Thomas A. Crabb
Susan F. Clark
Attorneys for Applicant
CSWR-Florida Utility Operating Company, LLC

cc: Charles J. Rehwinkel, Esq., Office of Public Counsel (rehwinkel.charles@leg.state.fl.us)
Charles deMenzes (charlie@altfo.com)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of Wastewater
Certificate No. 318-S from BFF Corp. to
CSWR-Florida Utility Operating Company,
LLC, in Marion County.

Docket No.: 20220061-SU

Filed: July 5, 2022

**REQUEST FOR CONFIDENTIAL CLASSIFICATION OF
WASTEWATER FACILITY REPORT**

CSWR-Florida Utility Operating Company, LLC (“CSWR-Florida UOC” or “Applicant”), pursuant to section 367.156, Florida Statutes, and rule 25-22.006, F.A.C., requests that the Commission classify as confidential the Engineering Memo portion of a Wastewater Facility Report filed by Applicant to supplement Exhibit H to its Application and produced by Applicant in response to Citizens’ First Request For Production Of Documents. In support, CSWR-Florida UOC states:

1. On March 15, 2022, CSWR-Florida UOC filed its Application, which contains a preliminary engineering report as Exhibit H.
2. The report that is the subject of this Request is an engineering memo subsequently prepared by Clearpoint Consulting Engineers, P.A. as part of its Wastewater Facility Report relating to the condition of the BFF Corp. system.
3. For purposes of this Request, the Wastewater Facility Report will be referred to as the “System Assessment Expert Report” or as the “Expert Report.”
4. The Office of Public Counsel requested the Expert Report in its First Request For Production Of Documents (item 4) and CSWR-Florida UOC also files it to supplement Application Exhibit H.

5. The System Assessment Expert Report was prepared by Clearpoint Consulting Engineers as part of the acquisition due diligence process at significant expense to CSWR-Florida UOC.

6. CSWR-Florida UOC's purchase of the assets of BFF Corp. will not close unless and until the Commission approves the transfer.

7. The System Assessment Expert Report contains detailed engineering information relating to BFF Corp.'s wastewater treatment facility, including a detailed description of the facilities and systems and recommended repairs and improvements, as well as capital estimates for triage and other improvements and repairs.

8. More specifically, the Wastewater System Assessment Expert Report addresses:

- General system information
- Description of the wastewater collection system and recommended repairs and improvements
- Capital estimates for both triage repairs and other improvements and repairs

9. If for any reason, CSWR-Florida UOC's acquisition of the assets of BFF Corp. does not close, and the System Assessment Expert Report is not protected as confidential, another prospective purchaser could freeride on the Expert Report to formulate its own offer without having to expend the time and significant expense invested by CSWR-Florida UOC.

10. CSWR-Florida UOC accordingly requests that the System Assessment Expert Report be classified as confidential only until such time as the asset sale closes, at which point the competitive value of the Expert Report will have waned. If for any reason the asset sale does not close, then CSWR-Florida UOC would request the Commission return to it the unredacted version of the Expert Report without it having been publicly disclosed.

11. Pursuant to section 367.156(1), the Expert Report is confidential and exempt from section 119.07(1), Florida Statutes, and Article I, Section 24(a) of the Florida Constitution because they contain proprietary confidential business information.

12. Section 367.156(3), Florida Statutes, defines proprietary confidential business information as “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, or order of a court of administrative body, or a private agreement that provides that the information will not be released to the public.” (underlining added)

13. The System Assessment Expert Report is information owned and controlled by CSWR-Florida UOC, the public disclosure of which would harm CSWR-Florida UOC’s business operations as described above. The Expert Report has not been previously disclosed.

14. Section 367.156(3), Florida Statutes, provides a nonexhaustive list of examples of proprietary confidential business information that includes: trade secrets; 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; and information relating to competitive interests, the disclosure of which would impair the competitive businesses of the provider of the information.

15. The System Assessment Expert Report is trade secret.

16. The Florida Legislature has expressly made trade secrets confidential and exempt from disclosure under the Florida Public Records Act. Section 815.045, Florida Statutes, provides:

The Legislature finds that it is a public necessity that trade secret information as defined in s. 812.081, and as provided for in s. 815.04(3), be expressly made confidential and

exempt from the public records law because it is a felony to disclose such records. Due to the legal uncertainty as to whether a public employee would be protected from a felony conviction if otherwise complying with chapter 119, and with s. 24(a), Art. I of the State Constitution, it is imperative that a public records exemption be created. The Legislature in making disclosure of trade secrets a crime has clearly established the importance attached to trade secret protection. Disclosing trade secrets in an agency's possession would negatively impact the business interests of those providing an agency such trade secrets by damaging them in the marketplace, and those entities and individuals disclosing such trade secrets would hesitate to cooperate with that agency, which would impair the effective and efficient administration of governmental functions. Thus, the public and private harm in disclosing trade secrets significantly outweighs any public benefit derived from disclosure, and the public's ability to scrutinize and monitor agency action is not diminished by nondisclosure of trade secrets.

(underlining added)

17. Section 812.081(1)(c), Florida Statutes, defines "trade secret" as follows:

"Trade secret" means the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

18. The First District Court of Appeal recently made clear that this statutory definition of "trade secret" has four required elements: (1) a "compilation of information"; (2) "for use or is used in the operation of a business"; (3) "which provides the business an advantage or an

opportunity to obtain an advantage, over those who do not know or use it”; and (4) the owner of the information “takes measures to prevent it from becoming available to persons other than those selected.” *Managed Care of N.A., Inc. v. Fla. Healthy Kids Corp.*, 268 So. 3d 856, 860 (Fla. 1st DCA 2019), *reh'g denied* (Apr. 24, 2019). “Value” is not an element of this test. “Instead, the enumerated portion of the statutory subsection establishes a presumption of what a trade secret is ‘considered to be’ once the required elements of a trade secret are established, as set forth in the first sentence of the statutory subsection.” *Id.* In other words, once the elements of the test are established, “the trade secrets are considered, as a matter of law, to be ‘of value.’” *Id.*

19. The System Assessment Expert Report is a compilation of information, including both objective data and the expert opinions of the engineering firm. The fact that public information is periodically referenced by the experts in the reports does not alter their trade secret status. *See Managed Care of N.A., Inc.*, 268 So. 2d at 861 (noting that “[p]ublic information can be subject to trade secret protection, as the time and effort spent compiling and the unique presentation thereof, may render the product a trade secret”).

20. The System Assessment Expert Report is used in the operation of CSWR-Florida UOC’s business, including as part of the due diligence process in evaluating BFF Corp.’s system and by being produced in this acquisition docket.

21. The System Assessment Expert Report provides an advantage to CSWR-Florida UOC, or opportunity to obtain an advantage, over any competitors interested in acquiring the BFF Corp. system. The Expert Report provides comprehensive information relating to the systems that are presently unknown to competitors.

22. In satisfaction of the last element of the test for trade secret material, CSWR-Florida UOC has taken “measures to prevent it from becoming available to persons other than those selected” including by filing this Request for Confidential Classification.

23. In addition to being trade secrets, the Expert Report includes both “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” and “information relating to competitive interests, the disclosure of which would impair the competitive businesses of the provider of the information.” § 367.156(3), Fla. Stat.

24. If a competitor could freeride on the information contained in the System Assessment Expert Report, it could avoid the time and expense required to generate the Expert Report, impairing the efforts of CSWR-Florida UOC to contract on favorable terms as its costs are made higher by the costs of the Expert Report, which would similarly “impair the competitive business interests” of CSWR-Florida UOC.

25. In sum, the System Assessment Expert Report meets the general definition of proprietary confidential business information in section 367.156(3) as well as the examples in that same statute relating to trade secrets, information concerning bids or other contractual data, and information relating to competitive interests. The value invested by CSWR-Florida UOC in the Expert Report is entitled to protection on these bases.

26. CSWR-Florida UOC is not requesting confidential classification of the entirety of the Expert Report. The Wastewater Facility Report is 173 pages. Pages 2-6 of the Wastewater Facility Report comprise the Engineering Memo portion and pages 167-171 comprise the Attachment C (Collection System Photographs). Confidential classification is requested for only these portions of the report -- the Engineering Memo and Attachment C. Pursuant to rule 25-

22.006(4), Florida Administrative Code, the statutory justifications to protect this portion of the Expert Report is detailed above.

27. The remaining pages of the “Supporting Documentation” section of the report are either publicly available already or are otherwise documents over which the Applicant does not request confidential classification.

28. In compliance with rule 25-22.006(4)(a), Florida Administrative Code, CSWR-Florida UOC has filed a redacted copy of the report with the Commission via the online filing portal. In addition, CSWR-Florida UOC will hand deliver to the Commission Clerk’s office a highlighted copy of the Expert Report that CSWR-Florida UOC seeks to protect through this Request for Confidential Classification.

WHEREFORE, CSWR-Florida UOC respectfully requests that the referenced portions of the System Assessment Expert Report be classified as confidential and exempt from disclosure under the Public Records Act, chapter 119, Florida Statutes, and Article I, Section 24(a) of the Florida Constitution and remain so until CSWR-Florida UOC’s acquisition of the assets of BFF Corp. closes.

Respectfully submitted this 5th day of July, 2022.

/s/ Thomas A. Crabb

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*Counsel for CSWR-Florida Utility Operating
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished via electronic mail to the following this 5th day of July, 2022.

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