

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase in wastewater
rates in Monroe County by K W Resort
Utilities Corp.

DOCKET NO. 070293-SU
ORDER NO. PSC-08-0394-CFO-SU
ISSUED: June 12, 2008

ORDER GRANTING IN PART AND DENYING IN PART CONFIDENTIAL TREATMENT
TO DOCUMENT NUMBER 10343-07 [X-REF DOCUMENT NUMBER 09828-07]

I. Background

On October 26, 2007, at the audit exit conference, K W Resort Utilities Corp. (KW Resort or utility) requested that certain portions of staff's working papers prepared during the audit be held in temporary confidential status in accordance with Rule 25-22.006(3)(a)2., Florida Administrative Code (F.A.C.). On October 29, 2007, staff filed those working papers with the Commission Clerk, and, pursuant to the utility's request, those papers were afforded temporary confidential status and assigned Document No. 09828-07.

On November 16, 2007, KW Resort timely filed its request for confidential classification for portions of the working papers pursuant to Section 367.156, Florida Statutes (F.S.), and Rule 25-22.006, F.A.C. The unredacted confidential documents were assigned Document No. 10343-07, and the redacted copies were assigned Document No. 10344-07. Included in the working papers were: (1) Minutes of the Annual Meeting of Board of Directors (Work Paper No. 8, 2 pages); (2) Review of Federal Tax Returns (Work Paper No. 20-3, 1 page); (3) Keys Environmental, Inc. (KEI) Statement of Income and Expenses (Work Paper No. 43-1/2-4, 2 pages); (4) KW Resort Tax Returns (Work Paper No. 20-3/1, 58 pages); and (5) Letter from Weiss, Sugar, Dvorak and Dusek, Ltd. (Work Paper No. 16-5/2-2/4, 1 page).

On May 8, 2008, after discussions with Commission staff, KW Resort withdrew its request that the Minutes of the Annual Meeting of the Board of Directors and the KEI Statement of Income and Expenses be accorded confidential classification. Based on this request, those four pages (Work Paper No. 8, 2 pages, and Work Paper No. 43-1/2-4, 2 pages) shall no longer be accorded confidential treatment. The remainder of this Order addresses the documents for which the utility continues to request confidential classification.

II. Standard For Granting Confidentiality

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. Subsections 367.156(3)(d), and (e), F.S., provide the following exemptions:

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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:

* * *

(d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public 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 business of the provider of the information.

Pursuant to the above provisions, it is the Commission's policy to afford confidential treatment to federal income tax returns.¹

According to Section 367.156, F.S., and Rule 25-22.006, F.A.C., the utility has the burden of demonstrating that materials qualify for confidential classification. According to Rule 25-22.006, F.A.C., 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 ratepayers harm.

III. Company's Request And Analysis

The information for which KW Resort seeks confidential classification falls into three categories. These categories, with reference to the specific working paper number (WP No.) and KW Resort's justification for protecting each, are discussed below.

1. Minutes of the Annual Meeting of Board of Directors (Working Paper No. 8, 2 pages), all lines

As stated above, by letter dated May 8, 2008, the utility now agrees that these pages should not be accorded confidential status and has withdrawn its request for confidential status. Therefore, these pages shall no longer be accorded confidential treatment.

¹ See, Commission Order No. PSC-92-1073-CFO-WS, issued September 28, 1992, in Docket No. 920199-WS, In re: Application for rate increase in Brevard, Charlotte/Lee, Citrus, Clay, Duval, Highlands, Lake, Marion, Martin, Nassau, Orange, Osceola, Pasco, Putnam, Seminole, Volusia, and Washington Counties by Southern States Utilities, Inc.; Collier County by Marco Shores Utilities (Deltona); and Volusia County by Deltona Lakes Utilities (Deltona). Order No. PSC-94-1052-CFO-WU, issued August 29, 1994, in Docket No. 940109-WU, In re: Petition for interim and permanent rate increase in Franklin County by St. George Island Utility Company, Ltd.; and Order No. PSC-99-2150-CFO-WU, issued November 2, 1999, in Docket No. 990243-WU, In re: Application for a limited proceeding increase and restructuring of water rates by Water Oak Utilities, Inc. in Lake County.

2. Review of Federal Tax Returns (Work Paper No. 20-3, 1 page)

The "Review of Federal Tax Returns" presents an analysis prepared by the staff auditor to ensure the utility has retained an investment in its plant based upon reported balances in its tax returns. The "Review of Federal Tax Returns" analysis is reported in nine unnumbered blocks of information and reports tax information, utility "per book" account information and analytical calculations. Three of these blocks (1, 4 and 7) report information from the tax returns and, as requested by the utility, shall be afforded a confidential classification.

However, 3 blocks of information (2, 5, and 8) report utility plant and CIAC balances from the utility's public annual report to the Commission and are presented in the utility's public request for a rate increase. Since this information is public, it is not eligible for a confidential classification.

Also, 3 blocks of information (3, 6, and 9) report the staff auditor's assessment of the appropriate level of plant investment. Commission staff's evaluation of the utility's investment in its plant will not cause the harm the utility suggests. The information pertains to the process of rate-making for a regulated monopoly, and, therefore, does not pertain to either a competitive business or a contract. Further since the utility publicly reports its level of plant investment in its request for a rate increase, it reasonably follows that publicly reporting the level of utility's investment found by the Commission would not cause harm. Therefore, these three blocks shall also not be afforded confidential classification.

In its letter dated May 8, 2008, the utility states that it agrees with the above reasoning. Therefore, based on the above, blocks 1, 4, and 7 shall be afforded confidential classification, while blocks 2, 3, 5, 6, 8, and 9 shall not.

3. KEI Statement of Income and Expenses (Work Paper No. 43-1/2-4, 2 Pages)

As stated above, by letter dated May 8, 2008, the utility now agrees that these pages should not be accorded confidential status and has withdrawn its request for confidential status. Therefore, these pages shall no longer be accorded confidential treatment.

4. Tax Returns (WP No. 20-3/1, 58 pages)

The utility requests that its tax returns be granted a confidential classification on the basis that the information is contractually and competitively sensitive. As stated earlier, it is this Commission's practice to grant confidential classification to income tax returns. Therefore, based on the above, and finding that the information is competitively and contractually sensitive, I find that the entire 58 pages of this working paper shall be granted confidential classification.

5. Letter from Weiss, Sugar, Dvorak and Dusek (WP 16-5/2-2/4,1 page)

The letter from the accountants of Mr. William L. Smith, a utility director, reports Mr. Smith's adjusted gross income for 2006. This information was taken from the 2006 tax return. The utility seeks a confidential classification for this material on the basis that it is competitively and contractually sensitive.

Pursuant to Order No. PSC-92-1073-CFO-WS, this Commission found that correspondence related to federal tax returns was eligible for a confidential classification. Therefore, based on that Order and finding that the information is competitively and contractually sensitive, the identified portions of the accountant's letter shall be granted a confidential classification.

IV. Conclusion

Based upon a review of the utility's filing, and noting the withdrawal of the requests for WP No. 8, 2 pages, and WP No. 43-1/2-4, 2 pages, I find that the utility's request, as modified, shall be granted, except for the subareas 2, 3, 5, 6, 8, and 9 of WP 20-3, 1 page, which shall not be granted. The information as listed below shall be granted a confidential classification for the reasons as indicated:

Working Paper No.	Description	Page(s)	Line(s)	18 Months Classification	Type of Information Classified Confidential
Documents 09828-07 and 10343-07					
WP 8	Minutes of Annual Meeting of Board of Directors	1-2	All	Request Withdrawn	Release of general information would not cause harm to the company's business operations
WP 16-5/2-2/4	Letter from Weiss, Sugar, Dvorak and Dusek, Ltd.	1	All	Grant	Release of tax return information would cause harm
WP 20-3	Review of Tax Returns	1	Areas 1,4,7	Grant	Release of tax return information would cause harm
			Areas 2,5,8	Request Withdrawn	Information which is available to the public is not eligible
			Areas 3,6,9	Request Withdrawn	Release of auditor's calculations concerning a ratemaking difference would not cause harm

Working Paper No.	Description	Page(s)	Line(s)	18 Months Classification	Type of Information Classified Confidential
WP 20-3/1	Income Tax Returns	1-58	All	Grant	Release of tax return information would cause harm
WP 43-1/ 2-4	KEI Statement of Income & Expenses	1-2	All	Request Withdrawn	Summary financial information including commingled utility and other information

Staff's audit working papers for this type of audit are retained on file by the Commission 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. Because the utility has not shown good cause for a longer period, the period of confidential classification shall be set at 18 months from the date of this Order. As deemed necessary, the utility may request an extension of the confidential classification before the period ends. This Order shall be the only notification by this Commission concerning the expiration of the confidentiality time period.

Based on the foregoing, it is

ORDERED by Commissioner Nancy Argenziano, as Prehearing Officer, that the revised request of K W Resort Utilities Corp. for confidential classification is granted in part and denied in part as set forth in the body of this Order. It is further

ORDERED that based on the request of the utility, the four pages consisting of Work Paper No. 8, 2 pages, and Work Paper No. 43-1/2-4, 2 pages shall not be accorded confidential treatment. It is further

ORDERED that areas 1, 4, and 7 of WP 20-3 shall be accorded confidential treatment, but that areas 2, 3, 5, 6, 8, and 9 shall not be accorded confidential treatment. It is further

ORDERED that pursuant to Section 367.156(4), F.S., and Rule 25-22.006, F.A.C., the confidentiality granted for the material specified above shall expire eighteen months from the date of the issuance of this Order in the absence of a renewed request for confidentiality. It is further

ORDERED that this Order will be the only notification by the Commission concerning the expiration of the confidentiality time period.

By ORDER of Commissioner Nancy Argenziano, as Prehearing Officer, this 12th day of June, 2008.



NANCY ARGENZIANO
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 25-22.060, 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.