

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for original certificates for proposed water and wastewater system and request for initial rates and changes in Indian River, Okeechobee and St. Lucie counties by Grove Land Utilities, LLC.

DOCKET NO. 090445-WS
ORDER NO. PSC-10-0232-CFO-WS
ISSUED: April 14, 2010

ORDER GRANTING GROVE LAND UTILITIES, LLC'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION
(DOCUMENT NO. 11479-09)

By letter dated October 9, 2009, Florida Public Service Commission Staff (staff) notified Grove Land Utilities, LLC (Grove Land or utility) of two outstanding deficiencies in its Application for Original Certificates, specifically the absence of a statement showing the financial ability of the applicant to provide service and the financial statements of any entity upon which the utility is relying to provide funding as required by Rule 25-22.033(1)(e) and (s), Florida Administrative Code (F.A.C.). In response, on November 12, 2009, Grove Land filed financial reports and related information of Evans Properties, Inc. (Evans), which Grove Land asserts is the privately held ultimate parent of Grove Land. On November 19, 2009, Grove Land filed a Request for Confidential Classification of this information (Document No. 11479-09). On December 2, 2009, pursuant to Rule 25-22.006(3)(b), F.A.C., Indian River County (the County) timely filed an Objection to the Request.

Section 367.156(1), Florida Statutes (F.S.), provides that "any records received by the commission which are shown and found by the commission to be proprietary confidential business information shall be kept confidential and shall be exempt from Section 119.07(1) [the Public Records Act]." Section 367.156(3), F.S., defines proprietary confidential business information as information that is intended to be and is treated by the person or company as private, in that disclosure of the information would cause harm to the person's or company's ratepayers or business operations, and has not been disclosed to the public. Paragraph (e) of Section 367.156(3), F.S., provides that proprietary confidential business information includes, but is not limited to "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information."

Grove Land contends that the information contained in its response to staff's October 9, 2009, letter, specifically the cover sheet and the entirety of pages 2 through 22, falls within this category and thus constitutes proprietary confidential business information entitled to protection under Section 367.156, F.S., and Rule 25-22.006(3), F.A.C. Grove Land states that this information is intended to be and is treated by Grove Land as private and has not been publicly disclosed.

DOCUMENT NUMBER DATE

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FPSC-COMMISSION CLERK

Grove Land's Request

Grove Land claims that the information provided in its response to staff's October 9, 2009, letter regarding deficiencies in Grove Land's Application contains confidential information regarding the finances of Evans Properties, Inc., which is a privately-held company. Grove Land further claims that the disclosure of the information could have a severe impact on business operations and private negotiations of Evans and the utility.

Indian River County's Objection

In its objection, Indian River County notes that Grove Land's Request makes an unsubstantiated assertion that disclosure of the information could have a severe impact on business operations, which does not equate with the statutory language requiring that disclosure would cause harm to the ratepayers or the company's business operations. The County further notes that neither Evens nor Grove Land have demonstrated a factual scenario on how the disclosure of the financial statements would harm ratepayers or the company's business operations. The County avers that the requirement of Rule 25-22.033(1)(e), F.A.C., is intended to provide evidence of the applicant's ability, and a grant of confidential classification would prevent the public and interested parties from ensuring the financial ability of the utility to provide service. The County finally notes that "financial statements" do not fall within any of the enumerated categories of confidential information in Section 367.156(3), F.S.

Analysis and Ruling

Upon review, the specific document for which confidential classification is sought appears to consist of a Consolidated Financial Report (the report), dated December 31, 2008, of Evans Properties, Inc. and Subsidiaries, prepared by McGladrey & Pullen, Certified Public Accountants. Grove Land is requesting that the cover sheet and the entirety of pages 2 through 22 of the report be granted confidential classification, which would prevent disclosure of the information therein to the public at large.

Section 367.031, F.S., requires each utility subject to the jurisdiction of the Commission hold a certificate of authorization to provide water or wastewater service. Section 367.045(1)(b), F.S., requires each utility applying for an initial certificate to "[p]rovide all information required by rule or order of the commission, which information may include a detailed inquiry into the ability of the applicant to provide service" Rule 25-30.033(1)(e), F.A.C., requires an applicant for an original certificate to provide "a statement showing the financial and technical ability of the applicant to provide service," while paragraphs (1)(r) and (s) require the applicant to provide:

(r) A detailed financial statement (balance sheet and income statement), certified if available, of the financial condition of the applicant, that shows all assets and liabilities of every kind and character. . . . If available, a statement of the source and application of funds shall also be provided;

(s) A list of all entities, including affiliates, upon which the applicant is relying to provide funding to the utility, and an explanation of the manner and amount of such funding, which shall include their financial statements and copies of any financial agreements with the utility. . . .

Therefore, in order to be granted an original certificate by this Commission, the applicant must provide detailed financial information, including financial information of any entities upon which the utility relies to provide funding.

Rule 25-22.006(8)(a) specifically states that “[t]he Commission may rely upon confidential information during a formal proceeding and such information, if otherwise admissible, will be received in evidence. In such event, reasonable precautions will be taken to segregate confidential information in the record and otherwise protect its integrity.”¹ This Commission has extensive experience with, and procedures in place to ensure, that confidential information is available for review by staff, parties to the proceeding, and the Commissioners.² These procedures allow all parties to view and use the information in the presentation of their case, including at hearing, while preventing public disclosure of the information. Therefore, the County’s concerns that the Commission and the County will not have access to the information is incorrect.

While the County is correct that Grove Land has not demonstrated any factual scenario demonstrating the exact harm that would befall it or Evans were the information to be publically disclosed, I do not believe such a showing is necessary in this case. It is not difficult to imagine a myriad of ways in which competitors of Evans could use its private financial information to the competitive disadvantage of Evans, not only in direct business negotiations, but in deducing Evans’ strategic business planning, expansion opportunities, business relationships, etc. While federal and state law require publicly held companies to report certain financial data, privately held companies are specifically excluded from these reporting requirements.

I therefore conclude the information contained in Document No. 11479-09 satisfies the criteria set forth in Section 367.156(3), F.S., for classification as proprietary confidential business information. 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 information contained in Document No. 11479-09, specifically the cover sheet and the entirety of pages 2 through 22, shall be granted confidential classification.

¹ The County appears to cite Farmton Water Resources, LLC, Order No. PSC-04-0980-FOF-WU (issued October 8, 2004) as authority that this Commission can and does rely on the financial statements of a utility’s parent in determining the financial ability of the applicant. This assertion is correct. However, it has no relevance to the determination of whether those financial statements should be determined to be proprietary, confidential business information protected from public disclosure under the public records law.

² In fact, this Commission’s standard Order Establishing Procedure, issued at the beginning of an adjudicatory proceeding, contains an entire section detailing the procedures to be applied when confidential information is involved.

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 Grove Land 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 Chairman Nancy Argenziano, as Prehearing Officer, that Grove Land Utilities, LLC's Request for Confidential Classification of information contained within Document No. 11479-09, specifically the cover sheet and pages 2 through 22 in their entirety, is granted. It is further

ORDERED that the information in Document No. 11479-09 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 Chairman Nancy Argenziano, as Prehearing Officer, this 14th day of April, 2010.



NANCY ARGENZIANO
Chairman and Prehearing Officer

(S E A L)

RRJ

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.