

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to establish rate base value of wastewater system of Forest Utilities, Inc. in Lee County, using alternative valuation procedure, by CSWR-Florida Utility Operating Company, LLC.

DOCKET NO. 20260083-SU
ORDER NO. PSC-2026-0339-CFO-SU
ISSUED: September 23, 2026

ORDER DENYING CSWR'S REQUEST FOR
CONFIDENTIAL CLASSIFICATION
(DOCUMENT NO. 03161-2026)

On May 27, 2026, pursuant to Rule 25-22.006, Florida Administrative Code (F.A.C.), CSWR-Florida Utility Operating Company, LLC (CSWR or Utility) filed a request for confidential classification (Request) of certain information provided with its Petition to Establish Rate Base Value of the Wastewater System of Forest Utilities, Inc., Using the Alternative Valuation Procedure. This request was filed in Docket No. 20260083-SU. The request concerns five documents that an applicant is required to prepare and file in order to proceed under the alternative procedure for establishing rate base value of acquired utility system, codified in Section 367.0811, Florida Statutes (F.S.). The five documents are, as described in the Request, the three appraisals required by Rule 25-30.0372, F.A.C., and Section 367.0811(4)(a), F.S., and the Engineering Assessment required by Rule 25-30.0372, F.A.C., and Section 367.0811(4)(b), F.S. Specifically, the five documents are:

- 1) the Kimley-Horn Wastewater Treatment Plant Facility Report,
- 2) the ScottMadden Inc. Valuation Report,
- 3) the Mosaic Property Valuations Appraisal Report,
- 4) the NewGen Strategies & Solutions Appraisal Report, and
- 5) the Kimley-Horn Engineering Assessment and three-year plan

According to paragraph 4 of the Request, document 1, consisting of the Facility Report, and document 5, consisting of an Asset Inventory and Condition Assessment, together comprise the Engineering Assessment required by Sections 367.0811(4)(b) and (5)(c), F.S.

Request for Confidential Classification

CSWR contends that the information constitutes proprietary confidential business information entitled to protection under Section 367.156, Florida Statutes (F.S.), and Rule 25-22.006, F.A.C. CSWR asserts that the information in the documents is intended to be proprietary, is treated as proprietary, and has not been publicly disclosed. CSWR states that, should CSWR's acquisition of the assets of Forest Utilities, Inc. (Forest) fail to close, "another prospective purchaser could free-ride on the information contained in those documents to formulate its own offer without having to expend the time and significant expense invested by [CSWR]." CSWR

accordingly requests the information be classified only until such time as the asset sale closes, at which point CSWR acknowledges the competitive value of the information will have diminished.

CSWR further contends that the documents constitute trade secrets as they are compilations of information that is being used in the operation of CSWR's business, including meeting the requirements set forth for its Petition and in its due diligence in the process of evaluating utility systems. This information is currently unknown to competitors, and provides either an advantage or the opportunity to obtain an advantage over any competitors interested in acquiring the subject utility.

In addition, CSWR states the appraisals include "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" under 367.156(3)(d), F.S., and "information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information" under 367.156(3)(e), F.S. CSWR again states that if a competitor could obtain the information, it could free-ride on the time and expense required to generate it, impairing the efforts of CSWR to contract on favorable terms and impairing the competitive business interests of CSWR.

Ruling

Law

Florida has a broad public records policy, but the Florida Constitution permits the Florida Legislature to exempt certain public records from disclosure. *Managed Care of North America, Inc. v. Florida Healthy Kids Corporation*, 268 So. 3d 856, 858 (Fla. 1st DCA 2019). A private party cannot render public records exempt from disclosure merely by designating information confidential. *Seapro Corp. v. Fla. Dept. of Environmental Protection*, 839 So.2d 781, 784 (Fla. 1st DCA 2003). In deciding whether a public records exemption applies, the burden rests with the person asserting the exemption. *White v. Baker County Hospital Authority*, ___ So. 3d ___ (Fla. 1st DCA 2026) citing *Staton v. McMillan*, 597 So. 2d 940, 941 (Fla. 1st DCA 1992) (explaining that whether a public records "exemption[] . . . applies . . . is in the nature of an affirmative defense").

The general purpose of the broad public records policy is so that Florida's citizens can discover the actions of their government. *City of Riviera Beach v. Barfield*, 642 So. 2d 1135, 1136 (Fla. 4th DCA 1994). Given the right of public records access is a cornerstone of our political culture, it is well settled that the policy must be construed in favor of access, and all exemptions must be limited to their stated purpose. *Palm Beach County Sheriff's Office v. Sun-Sentinel Co., LLC*, 226 So. 2d 969, 972 (Fla 4th DCA 2017). "If there is any doubt as to whether a matter is a public record subject to disclosure, the doubt is to be resolved in favor of disclosure." *Morris Pub. Group, LLC v. Fla. Dept. of Educ.*, 133 So. 3d 957, 960 (Fla. 1st DCA 2013) citing *Nat'l Collegiate Athletic Assoc. V. Associated Press*, 18 So.3d 1201, 1206 (Fla. 1st DCA 2009).

Chapter 119 of the Florida Statutes defines a public record as “all documents ... made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” The documents subject to the Request were both made and received pursuant to law and in direct connection with the transaction of official business by the Commission. These documents memorialize the knowledge of the value of the utility in question, and act as a substitute for a deeper investigation of that value by the Commission itself pursuant to Section 367.081, F.S. The documents in question are central to the action for which Petitioner seeks approval from the Commission. If they are made confidential until after-the-fact, the public’s ability to provide timely and meaningful input may be hampered. For example, individual customers of Forest currently have no access to the contents of these documents to examine the representations and assessments made therein and determine whether formal intervention into these proceedings may be in their interest.

Section 367.156(1), F.S., provides that records the Florida Public Service Commission (Commission) has found to contain proprietary 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 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:

(a) Trade Secrets.

* * *

(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 business of the provider of the information.

Upon review, and for the reasons set forth below, CSWR has failed to demonstrate that the information satisfies the criteria set forth in Section 367.156(3), F.S., for classification as proprietary confidential business information.

Trade Secrets

The Request largely focuses on the information qualifying as a “trade secret” pursuant to Sections 367.156(3)(a) and 812.081, F.S. Under the latter, a trade secret is (1) a secret (2) of value (3) for use or in use by the business and (4) of advantage or providing an opportunity to obtain an advantage over those who do not know it. See *Managed Care of North America, Inc. v. Florida Healthy Kids Corporation*, 268 So.3d 856, 860 (Fla. 1st DCA 2019). For entitlement to

the exemption under 812.081(1)(c), the requesting party must not only label the information as secret, but must also prove a business advantage or an opportunity to obtain an advantage. *Id.*

As an initial matter, I note that the documents subject to the Request were generated over a year after CSWR executed the Purchase and Sale Agreement with Forest. These documents were generated only because CSWR elected to proceed under the alternative valuation methodology of Section 367.0811, F.S. These documents are not records of business activity that were created for separate purposes and then swept up in litigation such that they must now be protected from disclosure. These records were created solely for the express purpose of satisfying the statutory requirements, which exist to inform the Commission's ultimate decision.

CSWR has failed to allege any facts upon which I can conclude that a competitor would gain an advantage by having the information contained in these reports. *See also James, Hoyer, Newcomer, Smiljanich, and Yanchunis, P.A. v. Rodale, Inc.*, 41 So. 3d 386, 389 (Fla. 1st DCA 2010). In support of this element, CSWR states simply that "[t]he Confidential Information provides comprehensive information relating to the systems that are presently unknown to competitors." CSWR offers no other support to satisfy this element. Regulated monopoly wastewater utilities do not have traditional competitors to obtain any advantage over. The only competitors CSWR might have are those that may make competing offers to Forest Utilities. However, those "competitors" are presently unable to make an offer to Forest because of the exclusive Purchase and Sale Agreement between CSWR and Forest. The competition, to the extent any may exist, has been locked out since October 2023, and will remain so through at least the conclusion of this proceeding. With the Purchase and Sale Agreement in place, there is no "advantage" granted to other potential acquiring parties who have knowledge of the contents of the documents during the course of this proceeding.

At the conclusion of this proceeding, the Commission will grant, grant with modifications, or deny CSWR's petition. CSWR will then choose whether to exercise its exclusive rights under the Purchase and Sale Agreement. Should the sale close, CSWR acknowledges the information would not need further protection. This is presumably because the real protection from competition in this instance comes from the monopoly structure of the utility, and not the protection of the information contained in the documents. If the information contained actual trade secrets necessary to secure an advantage in the operation of the utility business, then the information would require protection beyond the closing of the sale.

CSWR argues that, if it does not close on Forest, the next potential acquirer will start with an advantage if it has the appraisals and engineering report. However, any competitor that purchases or enters into an agreement to purchase Forest will have to undertake the same process under the statute that CSWR did if they elect to proceed under the alternative rate base procedure. They will have three appraisers randomly selected, will obtain separate and up-to-date appraisals, will retain an engineer, and will have an up-to-date engineering assessment prepared. The statute does not allow a "free-ride" at the expense of CSWR.

Bids or Contracts and Competitive Interests

CSWR also contends that the Appraisals include information that requires protection as either “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 business of the provider of the information” under Sections 367.156(3)(d) and (e), respectively. In support of its claim, CSWR states “[i]f a competitor could obtain the Confidential Information, it could free-ride on the time and expense required to generate it, impairing the efforts of [CSWR] to contract on favorable terms as [CSWR’s] costs are made higher by the cost of the Confidential Information. This would similarly “impair the competitive business interests” of [CSWR].” CSWR offers no further support for these statements, and they are insufficient standing alone to justify confidential treatment.

Precedent

CSWR points to several instances where the Commission has found similar reports to constitute proprietary confidential business information that is exempt from public disclosure. These dockets were not proceeding under Section 367.0811, F.S., however, and therefore they are not persuasive. The Commission has only considered one other docket under this statute, and no party sought confidential treatment for any information in that docket.¹

Moreover, each of those orders were based on different dispositive facts. The Order Granting Confidential Classification cited by CSWR as support for holding the appraisals in this docket confidential was entered in a docket in which Florida Power & Light Company sought approval of a purchase and sale agreement.² The document at issue there was a discovery response that “consists of *specific negotiated terms* between FPL and Calypso Energy Holdings, LLC for the Indiantown Cogeneration, L.P.” and “identifies with specificity the *proprietary methodology* that Duff & Phelps employs in performing such valuations.”³ There are no allegations that the documents in this docket contain confidential terms of the purchase and sale agreement or that the appraisals reveal a propriety methodology.

The two orders cited as support for holding the engineering report confidential were entered in dockets where CSWR requested Commission approval of the transfer of certain certificates and the associated water and wastewater facilities of two utilities. Neither engineering report was required by statute or rule. The information that is required by Rule 25-30.037(2)(q), F.A.C., to support a certificate transfer was submitted by CSWR in both of those dockets as non-confidential. The supplemental engineering studies which were not required by rule or statute were held to be confidential. The information that was identified by statute and rule, upon which the Commission was to determine whether to approve the subject request or

¹ See Docket No. 20260031-WS, *Petition to establish rate base value of acquired system using alternative procedure by Sunshine Water Services Company*.

² Order No. PSC-16-0419-CFO-EI, entered October 3, 2016, in Docket No. 160154-EI, *In re: Petition for approval of a purchase and sale agreement between Florida Power & Light Company and Calypso Energy Holdings, LLC, for the ownership of the Indiantown Cogeneration LP and related power purchase agreement*.

³ *Id.* at 1 (emphasis added).

rule, was not confidential which allowed for a transparent decision. The underlying supporting analyses were held confidential, protecting the legitimate business interests of the applicant.

Conclusion

CSWR has not sufficiently demonstrated its claims to justify confidential treatment of the information in question. It is undisputed that these records constitute public records, and therefore the burden is on the person requesting the exception to show the information fits the statutory criteria. CSWR has not shown that the documents constitutes proprietary business information. Furthermore, Section 367.0811(5), F.S., requires that any petition filed pursuant to it must contain all of the information for which CSWR seeks confidential treatment, and the statute makes no mention of confidential treatment of any of the information.

Based on the foregoing, it is

ORDERED by Commissioner Mike La Rosa that CSWR-Florida Utility Operating Company, LLC's Request for Confidential Classification of Document No. 03161-2026, is Denied.

By ORDER of Commissioner Mike La Rosa, as Prehearing Officer, this 23rd day of September, 2026.



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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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