

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Application for transfer of facilities of North Peninsula Utilities Corporation and Wastewater Certificate No. 249-S to CSWR-Florida Utility Operating Company, LLC, in Volusia County.

Docket No.: 20210133-SU

**CSWR-FLORIDA UTILITY OPERATING COMPANY, LLC'S  
SUPPLEMENTAL MEMORANDUM IN SUPPORT OF ITS  
REQUEST FOR CONFIDENTIAL CLASSIFICATION OF  
CSWR, LLC'S CONSOLIDATED FINANCIAL STATEMENTS**

At the request of Commission Staff, Applicant CSWR-Florida Utility Operating Company, LLC ("CSWR-FL UOC" or "Applicant"), files this supplemental memorandum in support of its Request for Confidential Classification of the consolidated financial statements of CSWR, LLC and its subsidiaries. In support, CSWR-FL UOC states:

1. CSWR-FL UOC filed its Application on August 9, 2021.
2. Exhibit B to the Application includes the consolidated financial statements of CSWR, LLC and its subsidiaries. A corporate organization chart showing the affiliation between CSWR, LLC and CSWR-FL UOC has previously been provided in discovery. CSWR, LLC, is not a publicly-traded company or a regulated utility. Therefore, its financial information is not available to the public.
3. Exhibit B was filed on August 9, 2021, with a Request for Confidential Classification pertaining to certain financial data included on the consolidated financial statements.
4. For purposes of this memorandum, the data for which the Applicant requests confidential classification will be called the "CSWR Group Financial Data."
5. CSWR-Florida UOC was formed for the purpose of acquiring and operating utility assets in Florida. Because CSWR-Florida UOC has not yet acquired any such assets, it has no current or historical financial information – i.e., no balance sheet or income statement. CSWR-

Florida UOC confidentially submitted the CSWR Group Financial Data as part of its Application to enable the Commission, Staff, and the Office of the Public Counsel to have confidential access to financial information that might aid in determining that CSWR-Florida UOC has the financial ability to own and operate regulated utilities in Florida.

6. The CSWR Group Financial Data has previously been found by the Commission, twice, to constitute proprietary confidential business information that is confidential and exempt from public disclosure. *See In re: Application for transfer of water facilities of Sunshine Utilities of Central Florida, Inc. and Water Certificate No. 363-W to CSWR-Florida Utility Operating Company, LLC, in Marion County*, Docket No. 20210095-WU, Order No. PSC-2021-0253-CFO-WU (Fla. PSC July 12, 2021); *In re: Application for transfer of water and wastewater systems of Aquarina Utilities, Inc., Water Certificate No. 517-W, and Wastewater Certificate No. 450-S to CSWR-Florida Utility Operating Company, LLC, in Brevard County*, Docket No. 20210093-WS, Order No. PSC-2021-0230-CFO-WS (Fla. PSC June 23, 2021). Moreover, in other states where this issue has come up, regulators have unanimously protected the confidentiality of the CSWR Group Financial Data.

7. In addition to other authority, the Applicant's August 9, 2021, Request for Confidential Classification cites other Orders in which the Commission concluded that similar financial statements were proprietary confidential business information. *See, e.g., In re: Application for increase in wastewater rates in Charlotte County by Utilities, Inc. of Sandalhaven*, Docket No. 150102-SU, Order No. PSC-15-0561-CFO-SU (Fla. PSC Dec. 9, 2015) (noting how disclosure would harm the utility by "adversely impact[ing] Sandalhaven's ability to conduct its business in the most cost-effective manner possible").

8. Beyond those cited in the initial Request, there are many other Commission Orders reaching the same conclusion. *See, e.g., In re: Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties by Utilities, Inc. of Florida*, Docket No. 160101-WS, Order No. PSC-17-0159-CFO-WS (Fla. PSC May 5, 2017) (concluding “[t]he information constitutes information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information”); *In re: Application for original certificates to provide water and wastewater service in Lake County by Sunlake Estates Utilities, L.L.C.*, Docket No. 130180-WS, Order No. PSC-14-0060-CFO-WS (Fla. PSC January 28, 2014); *In re: Application for original certificates for proposed water and wastewater system and request for initial rates and charges in Indian River, Okeechobee and St. Lucie counties by Grove Land Utilities, LLC*, Docket No. 090445-WS, Order No. PSC-12-0097-CFO-WS (Fla. PSC March 5, 2012).

9. Accordingly, designating the CSWR Group Financial Data as proprietary confidential business information is consistent with longstanding Commission precedent.

10. As in the other cases cited by the Applicant, CSWR-FL UOC’s business operations would be harmed by public disclosure of the CSWR Group Financial Data. Since its formation in 2014, CSWR, LLC and its operating company affiliates have been acquiring water and wastewater systems. To date, CSWR-affiliated utility operating companies have acquired and are operating water or wastewater systems in Missouri, Kentucky, Louisiana, Texas, Tennessee, Arkansas, and Mississippi. The affiliate group has acquisition applications pending in North Carolina, Florida, Louisiana, Missouri, and Texas.

11. Public disclosure of the CSWR Group Financial Data would harm the competitive interests of CSWR-FL UOC and its affiliates. Companies contemplating a similar business plan

could reasonably be encouraged to enter the marketplace and compete with CSWR and its affiliates for the purchase of systems, or would at minimum have an example of a financial roadmap if they had the CSWR Group Financial Data. If a competitor obtained the CSWR Group Financial Data, they could freeride on crucial financial information they would otherwise have to obtain by experience at their own cost and risk. If a system owner contemplating sale obtained the CSWR Group Financial Data, it could impact the sales price of the system or other contractual terms, adverse to the interests of CSWR-FL UOC and its affiliates. Similarly, it could potentially be used by suppliers to undermine the Applicant's negotiating position.

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

13. As discussed above, the CSWR Group Financial Data is "information relating to competitive interests, the disclosure of which would impair the competitive businesses of the provider of the information." The data also constitutes trade secrets.

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

"Trade secret" means the whole or any portion or phase of any . . . 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 . . . commercial information, including financial information . . . . 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. (underlining added)

15. 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.*

16. The CSWR Group Financial Data meets all the elements of this test. It is a compilation of “financial information,” which is given as an example in the statute. It is used in the operation of the Applicant’s business, including in this acquisition docket to show the financial ability of the Applicant. It provides an advantage or an opportunity to obtain an advantage, over those who do not know or use it, as shown from the competitive interests discussed above. And finally, the Applicant has taken measures to prevent the CSWR Group Financial Data from becoming public, including by previously filing the Request for Confidential Classification, as well as this Supplemental Memorandum.

WHEREFORE, for the reasons expressed above and in the Request for Confidential Classification filed on August 9, 2021, CSWR-FL UOC respectfully requests that the CSWR Group Financial Data be classified as proprietary confidential business information that is confidential and exempt from disclosure under the Public Records Act, chapter 119, Florida Statutes, and Article I, Section 24(a) of the Florida Constitution.

Respectfully submitted this 7th day of January, 2022.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail on this 7th day of January, 2022, to the following:

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