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May 18, 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. 20220064-WS - Application for transfer of facilities of Tymber Creek Utilities, Inc., Water Certificate No. 303-W, and Wastewater Certificate No. 252-S to CSWR-Florida Utility Operating Company, LLC, in Volusia 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 and the Water 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 Engineering Memo section of each report. A redacted copy of each 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: Stephanie Morse, Esq., Office of Public Counsel (morse.stephanie@leg.state.fl.us)
Tymber Creek Utilities (tymbercreekutil@aol.com)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of water and
wastewater facilities of Tymber Creek
Utilities, Incorporated, and Water Certificate
No. 303-W, and Wastewater Certificate No.
252-S to CSWR-Florida Utility Operating
Company, LLC, in Volusia County.

Docket No.: 20220064-WS

Filed: May 18, 2022

**REQUEST FOR CONFIDENTIAL CLASSIFICATION OF
WASTEWATER AND WATER FACILITY REPORTS**

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 portions of a Wastewater Facility Report and a Water 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 two preliminary engineering reports as Exhibit H.
2. The reports that are the subject of this Request are engineering memos subsequently prepared by Clearpoint Consulting Engineers, P.A. as part of its Wastewater Facility Report and Water Facility Report relating to the condition of the Tymber Creek systems.
3. For purposes of this Request, the Wastewater Facility Report and Water Facility Report will be referred to as the “System Assessment Expert Reports” or as the “Expert Reports.”
4. The Office of Public Counsel requested the Expert Reports in its First Request For Production Of Documents (item 2) and CSWR-Florida UOC also files them to supplement Application Exhibit H.

5. The System Assessment Expert Reports were 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 Tymber Creek will not close unless and until the Commission approves the transfer.

7. The System Assessment Expert Reports contain detailed engineering information relating to Tymber Creek's wastewater and water treatment facilities, 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 wastewater treatment facility system components including age and condition
- Treatment processes
- Permitted flow versus actual/estimated flow
- Effluent limits from permit
- Compliance review
- Wastewater collection system and recommended repairs and improvements
- Capital estimates for both triage repairs and other improvements and repairs

9. The Water System Assessment Expert Report addresses:

- General system information
- Description of wastewater treatment facility system components including age, condition, and permit status
- Water distribution system and recommended repairs and improvements
- Capital estimates for improvements and repairs

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

11. CSWR-Florida UOC accordingly requests that the System Assessment Expert Reports be classified as confidential only until such time as the asset sale closes, at which point the competitive value of the Expert Reports 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 versions of the Expert Reports without it having been publicly disclosed.

12. Pursuant to section 367.156(1), the Expert Reports are 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.

13. 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)

14. The System Assessment Expert Reports are 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 Reports have not been previously disclosed.

15. 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.

16. The System Assessment Expert Reports are trade secret.

17. 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)

18. 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.

19. 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.*

20. The System Assessment Expert Reports are 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”).

21. The System Assessment Expert Reports are used in the operation of CSWR-Florida UOC’s business, including as part of the due diligence process in evaluating Tymber Creek’s systems and by being produced in this acquisition docket.

22. The System Assessment Expert Reports provide an advantage to CSWR-Florida UOC, or opportunity to obtain an advantage, over any competitors interested in acquiring the Tymber Creek systems. The Expert Reports provide comprehensive information relating to the systems that are presently unknown to competitors.

23. 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.

24. In addition to being trade secrets, the Expert Reports include 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.

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

26. In sum, the System Assessment Expert Reports meet 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 Reports is entitled to protection on these bases.

27. CSWR-Florida UOC is not requesting confidential classification of the entirety of the Expert Reports. The Wastewater Facility Report is 466 pages and the Water Facility Report is 139 pages. Pages 2-8 of the Wastewater Facility Report and pages 2-3 of the Water Facility Report comprise the Engineering Memo portion of each report. Confidential classification is requested for only these portions of the reports -- the Engineering Memos. Pursuant to rule 25-22.006(4), Florida Administrative Code, the statutory justifications to protect these portions of the Expert Reports are detailed above.

28. The remaining pages of the Expert Reports -- the "Supporting Documentation" section of each report -- are either publicly available already or are otherwise documents over which the Applicant does not request confidential classification.

29. In compliance with rule 25-22.006(4)(a), Florida Administrative Code, CSWR-Florida UOC has filed redacted copies of each report with the Commission via the online filing portal. In addition, CSWR-Florida UOC will hand deliver to the Commission Clerk's office highlighted copies of the Engineering Memos 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 Reports 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 Tymber Creek Utilities closes.

Respectfully submitted this 18th day of May, 2022.

/s/ Thomas A. Crabb

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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 18th day of May, 2022.

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