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August 19, 2002

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VIA HAND DELIVERY

Blanca S. Bayo  
Division of Commission Clerk and  
Administrative Services  
Florida Public Service Commission  
Capital Circle Office Center  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

RECEIVED FPSC  
02 AUG 19 PM 4:48  
COMMISSION  
CLERK

Re: In Re: Application for Limited Proceeding to Recover Costs of Water  
System Improvements In Marion County By Sunshine Utilities of  
Central Florida, Inc., Docket No. 992015-WU

Dear Ms. Bayo:

Enclosed for filing on behalf of Sunshine Utilities of Central Florida, Inc.  
("Sunshine") are the original and seven (7) copies each of:

1. Sunshine's Notice of Serving Answers to the Citizens' First Set of Interrogatories; 08734-02
2. Sunshine's Responses to the Citizens of the State of Florida's First Request for Production of Documents; and
3. Sunshine's Motion for Temporary Protective Order. 08735-02  
(Confidential - 08736-02)

Forwarded  
to GCL

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Blanca Bayo  
August 19, 2002  
Page 2

For our records, please acknowledge your receipt of this filing on the enclosed copy of this letter. Thank you for your consideration.

Sincerely,

HOLLAND & KNIGHT LLP



Karen D. Walker

KDW:kjg  
Enclosure

cc: Ralph Jaeger  
Stephen C. Reilly

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Application for Limited	)	
Proceeding to Recover Costs of Water	)	Docket No. 992015-WU
System Improvements In Marion County	)	
By Sunshine Utilities of Central Florida,	)	Filed: August 19, 2002
Inc.	)	
<hr/>		

**SUNSHINE UTILITIES OF CENTRAL FLORIDA, INC.'S  
MOTION FOR TEMPORARY PROTECTIVE ORDER  
SEEKING CONFIDENTIAL TREATMENT OF TAX RETURNS**

Sunshine Utilities of Central Florida, Inc. ("Sunshine"), pursuant to Section 367.156, Florida Statutes, and Rule 25-22.006(6)(c), Florida Administrative Code, the Order Establishing Procedure issued in this docket on June 20, 2002, and the First Order Revising Order Establishing Procedure and Controlling Dates, Granting in Part and Denying in Part Expedited Discovery and Setting Uniform Expedited Discovery Deadlines issued in this docket on August 15, 2002, hereby moves the Florida Public Service Commission (the "Commission") to issue a temporary protective order protecting as confidential and exempt from Section 119.07(1), Florida Statutes, Sunshine's responses to the Citizens of the State of Florida's (the "Citizens") First Request for Production of Documents – Requests Nos. 1 and 12 served contemporaneously herewith. In support of this motion Sunshine states:

1. On August 2, 2002, the Citizens served their First Request for Production of Documents on Sunshine.

DOCUMENT NUMBER DATE

08735 AUG 19 02

FPSC-COMMISSION CLERK

2. On August 9, 2002, Sunshine served on the Citizens Sunshine's Objections To, and Requests For Clarification Of, Citizens' First Request for Production of Documents ("Objections"). These Objections reserve to Sunshine the right to seek a protective order with respect to any documents requested by the Citizens.

3. According to the First Order Revising Order Establishing Procedure, Sunshine's response to the Citizens First Request for Production of Documents are due August 19, 2002.

4. Two of the Citizens' requests seek copies of tax returns. Request No. 1 seeks federal income tax returns of Sunshine's president and vice-president, who are also the owners of the utility:

1. Please provide for the years 1999, 2000, and 2001 the federal income tax returns, including all supporting schedules and workpapers of Mr. and Mrs. James Hodges.

Request No. 12 seeks Sunshine's corporate tax returns:

12. Please provide the Utility's tax returns for the years 1999-2001.

5. Federal income tax returns and tax return information is confidential under Section 6013 of the Internal Revenue Code.

Returns and return information shall be confidential, and except as authorized by this title - . . .

- (2) no officer or employee of any State . . . who has or had access to returns or return information . . . shall disclose any return or return information obtained by him or her in any manner in connection with his service as an officer or an employee or otherwise. . . .

26 U.S.C. § 6103(a) (2002).

6. Similarly, State tax returns filed with the Florida Department of Revenue are confidential and exempt from Florida's Public Records Act:

Except as provided [herein], [a]ll information contained in returns, reports, accounts, or declarations received by [the Florida Department of Revenue] including investigative reports and information and including letters of technical advice, is confidential except for official purposes and is exempt from the provisions of s. 119.07(1) . . . .

§ 213.053(2), Fla. Stat. (2001).

7. Section 367.156(2), Florida Statutes, governs the treatment of confidential information requested during discovery in a docket or proceeding involving a water utility:

Upon showing by a utility or other person and a finding by the commission that discovery will require the disclosure of proprietary confidential business information, the commission shall issue appropriate protective orders designating the manner for handling of such information during the course of the proceeding and for protecting such information from disclosure outside the proceeding. Such proprietary confidential business information shall be exempt from 119.07(1). Any records provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the commission and the office of the Public Counsel and any other party subject to the public records act as confidential and shall be exempt from s. 119.07(1), pending a formal ruling on such request by the commission or the return of records to the person providing the records. . .

§ 367.156(2), Fla. Stat. (2001).

8. Proprietary confidential business information is defined 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 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 a private agreement that provides that the information will not be released to the public. . . .

§ 367.156(3), Fla. Stat. (2001).

9. Rule 25-22.006(6)(c) provides for entry of a temporary protective order by the Commission when a utility agrees to allow Public Counsel to inspect or take possession of utility information for the purpose of determining what information is to be used in a proceeding before the Commission. Fla. Admin. Code R. 25-22.006(6)(c).

10. Sunshine's corporate tax returns are confidential proprietary business information. The tax returns are confidential pursuant to federal and Florida law and are treated by Sunshine as private in that disclosure of the information would cause harm to the utility's business operations. The Commission has recognized that tax returns are confidential proprietary business information that satisfy the requirements of Section 367.156, Florida Statutes, and should be classified as confidential and exempt from disclosure. *See In Re: Application for rate increase and increase in service availability charges by Southern States Utilities, Inc. for Orange-Osceola Utilities, Inc. in Osceola County, and in Bradford, Brevard, Charlotte, Citrus, Clay, Collier, Duval, Highlands, Lake, Lee, Marion, Martin, Nassau, Orange, Osceola, Pasco, Putnam, Seminole, St. Johns, St. Lucie, Volusia, and*

*Washington Counties*, 96 F.P.S.C. 6:444, Docket No. 950495-WS, Order No. PSC-96-0823-CFO-WS (June 26, 1996); *In Re: Petition for Interim and Permanent Rate Increase in Franklin County by ST. GEORGE ISLAND UTILITY COMPANY, LTD.*, 94 F.P.S.C. 5:141, Docket No. 940109-WU, Order No. PSC-94-0571-CFO-WU (May 13, 1994); *In re: Application for approval of transfer of Certificates Nos. 187-W and 131-S in Citrus County from Twin County Utility Company to Southern States Utilities, Inc.*, 89 F.P.S.C. 4:97, Docket No. 881339-WS, Order No. 21011 (April 10, 1989).

11. The joint federal income tax returns of Sunshine's president and his wife, who is the utility's vice-president, are also proprietary confidential information. The joint federal income tax returns are confidential pursuant to federal law and are treated by Mr. and Mrs. Hodges as private. The Commission has, in the past, granted motions for protective orders to keep personal federal income tax returns confidential as required by federal law. See *In re: Application of HYDRATECH UTILITIES, INC. for increase in water rates in Martin County*, 89 F.P.S.C. 8:257, Docket No. 880882-WU, Order No. 21701 (Aug. 8, 1989); cf. *In Re: Application for Amendment of Certificates Nos. 298-W and 248-S in Lake County by JJ's Mobile Homes, Inc.; In Re: Investigation into Provision of Water and Wastewater Service by JJ's Mobile Homes to its Certificated Territory in Lake County*, 94 F.P.S.C. 10:504, Docket Nos. 021237-WS, 940264-WS, Order No. PSC-94-1335-CFO-WS (Oct.

31, 1994) (recognizing that individual federal income tax returns are confidential by operation of federal law).

12. Attached hereto is a separate sealed envelope containing one copy of Mr. and Mrs. Hodges federal income tax returns and Sunshine's tax returns for 1999, 2000 and 2001. These tax returns are confidential in their entirety, thus there is no basis for highlighting or redacting confidential information or for articulating a line-by line justification for confidential treatment of the information.

13. Prior to serving its discovery responses on the Citizens and filing this Motion for Temporary Protective Order, Sunshine attempted to avoid the use of Commission resources and the expense of seeking this order from the Commission by presenting Public Counsel with a draft protective agreement under which Sunshine was willing to provide Public Counsel with the tax returns of the utility and its president. However, Public Counsel indicated that it was not willing to sign any form of a protective agreement and that it could only maintain the confidentiality of the tax returns upon issuance of a protective order by the Commission. Accordingly, Sunshine had no choice but to file this motion.

WHEREFORE, Sunshine respectfully requests that the Commission enter a Temporary Protective Order:

- (a) exempting from Section 119.07, Florida Statutes, the tax returns provided by Sunshine to Public Counsel in response to



Requests Nos. 1 and 12 of the Citizens Request for Production of Documents;

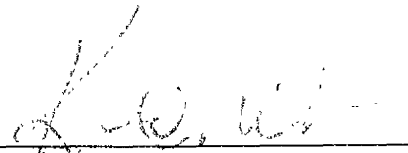
(b) providing that, if any information produced in response to Request Nos. 1 and 12 is used in this proceeding, it will be treated as confidential;

(c) requiring Public Counsel to notify the Prehearing Officer and all parties to this proceeding of its plans to use any of the confidential information at hearing no later than seven days prior to the hearing;

(d) providing that, in accordance with Rule 25-22.006(8)(b), Florida Administrative Code, if confidential information is used at hearing, Sunshine shall file a Request for Confidential Classification with the Commission within 21 days of the conclusion of the hearing in order to maintain continued confidentiality of the information; and

(e) granting such other relief as the Commission deems appropriate.

Respectfully submitted,

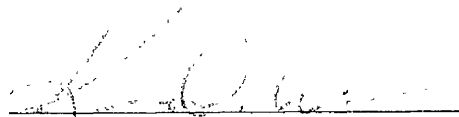


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Tallahassee, Florida 32302  
(850) 224-7000

**Attorneys for Sunshine Utilities of  
Central Florida, Inc.**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by hand delivery to Ralph Jaeger, Esquire, Florida Public Service Commission, Division of Legal Services, Room 370, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850 and Stephen C. Reilly, Associate Public Counsel, Office of Public Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400 all on this 19<sup>th</sup> day of August, 2002.

  
Karen D. Walker