

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for confidential classification of certain workpapers associated with audit on overearnings review for year ended 12/31/02, by Florida Public Utilities Company [Audit Control No. 03-086-4-1].

DOCKET NO. 030965-GU
ORDER NO. PSC-04-0101-CFO-GU
ISSUED: January 28, 2004

ORDER GRANTING CONFIDENTIAL CLASSIFICATION TO DOCUMENTS 08827-03, 09602-03 (X-REF 09601-03), AND 13643-03 (X-REF 13642-03)

On September 12, 2003, copies of certain portions of staff's working papers obtained or prepared during the "Florida Public Utilities Company Earnings Review - Gas Division for the Year Ended December 31, 2002", were delivered to FPUC at the audit exit conference. The utility requested that these materials be exempted from public access in accordance with the provisions of Rule 25-22.006(3)(a)(2), Florida Administrative Code.

On September 17, 2003, staff filed document 08827-03 consisting of those specified portions of the working papers.

On October 3, 2003, FPUC filed a request pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, that selected portions of the staff working papers prepared during the audit receive confidential classification. The utility's request includes redacted copies for public inspection (Document No. 09601-03) and copies in which the confidential information is highlighted (Document No. 09602-03).

On December 31, 2003, after discussions with the staff, the utility modified its request and filed updated redacted copies for public inspection (Document No. 13642-03) and updated highlighted copies (Document No. 13643-03).

Documents 08827-03, 09602-03 and 13643-03, which contain the highlighted confidential information are currently held by the Commission's Division of the Commission Clerk and Administrative Services as confidential pending resolution of the FPUC request for confidential classification.

The information for which FPUC seeks confidential classification falls into three categories. Those categories and FPUC's justification for protecting each is provided below.

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1. Notes taken from the working papers of the FPUC's external auditor

Deloitte and Touche, LLP, is FPUC's external auditor, and FPUC claims that notes from the external auditor's working papers contain information regarding FPUC's transactions, litigation and competitive interests which, if disclosed, would impair the business interests of the Company and provide information beneficial to the company's contractors and vendors. Also, FPUC asserts the information in the working papers is preliminary work for a final report and is not published by the FPUC or the external auditor.

FPUC also asserts that these work papers contain information relating to the audit strategies and work plans of Deloitte and Touche which, if disclosed, would impair the competitive interests of both that company and FPUC.

2. Notes taken from the "Board of Director's Minutes"

During its audit, the Commission staff took notes on the minutes of FPUC's Board of Directors. FPUC characterizes the notes as information on business strategies discussed by the Board, the release of which would cause harm to the company and its customers. FPUC explains that while it must release such information to its shareholders, FPUC prohibits the shareholders from disseminating the information. FPUC further explains:

The company is required to maintain records pursuant to Section 607.1601, [Florida Statutes], and shareholders may for a 'proper purpose' view the minutes but they may not distribute information or records (section 607.1602, Florida Statutes). The minutes of board meetings contain discussions of information which if disclosed would provide information about internal controls, business plans, personnel information and contractual information to competitive interests to the detriment of the company, its customers and investors. Such disclosure would impair the business efforts of the company and harm the operations of the Company which would not be in the best interest of the ratepayers. The Company does not publish

or release its records to the public except upon statutory requirement, and in that event there is a prohibition against further dissemination except for a proper purpose.

3. Notes made from minutes of the Board of Directors' Audit Committee

FPUC asserts these notes disclose discussions with internal and external auditors as to internal audit plans and reports and as such are exempt from disclosure pursuant to section 366.093(3)(b), Florida Statutes.

FPUC explains that the Audit Committee of the Board of Directors has the responsibility for oversight over the audits of the company, including the internal audit function, the annual financial audit, and any special reviews or investigations required by the Audit Committee. In carrying these responsibilities, the Audit Committee hears internal audit reports, discussions of internal auditing controls, and the sensitive audit strategies and work plans presented by the external auditor in response to conditions found within the company.

FPUC notes that the Commission has found that information concerning internal audits be granted confidential classification, see Order No. PSC-93-1631-CFO-EI, issued November 8, 1993, Docket 930834-EI; and, that the Commission has found the competitive audit strategies and the work plans of the external auditor to be valuable and sensitive competitive information that qualifies for confidential classification, see Order No. 25297, issued November 5, 1991, Docket No. 890190-TL. Staff agrees with FPUC that this material reports sensitive internal auditing controls, internal audits and the competitive strategies and work plans of the external auditor and therefore recommends that the material be granted a confidential classification.

Commission access to utility records is set out by Section 366.093, Florida Statutes, which provides:

"The commission shall continue to have reasonable access to all public utility records and records of the utility's affiliated companies, including its parent

company, regarding transactions or cost allocations among the utility and such affiliated companies, and such records necessary to ensure that a utility's ratepayers do not subsidize non utility ratepayers...."

When utility and other records are obtained by the Commission, the information is considered to be accessible to the public unless the utility or provider of this information demonstrates that the materials are "Proprietary Confidential Business Information" as set out by Section 366.093(3) Florida Statutes and Rule 25-22.006, Florida Administrative Code. If the Commission finds that specific information is "Proprietary Confidential Business Information" qualifying for a confidential classification, public access to the information is restricted.

Board of Director's minutes can contain sensitive business plans and strategies concerning contracts or future actions to be undertaken in a competitive marketplace. For contractual information to be granted a confidential classification, such as contract approvals given by the Board, the test is whether the release of the contract information impairs the ability of the utility or its affiliates to contract. For competitive business information to be granted a confidential classification, the test is whether the release of the information harms the competitive business of the utility, its affiliates or the provider of the information.

Pursuant to Section 119.07, Florida Statutes, documents submitted to this Commission are public records. The only exceptions to this law are specific statutory exemptions and exemptions granted by governmental agencies pursuant to the specific items of a statutory provision.

Section 366.093(3), Florida Statutes, provides:

Proprietary confidential business information means 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, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public. Proprietary confidential business information includes, but is not limited to:

(b) Internal auditing controls and the reports of internal auditors....

(d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods and services on favorable terms.

(e) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of that information.

(f) Employee personnel information unrelated to compensation, duties, qualifications or responsibilities.

We find that the information is proprietary confidential business information for the reasons provided by FPUC. The information in Category 1 is confidential under Section 366.093(3)(e). The information in Category 2 is confidential under Sections 366.093(3)(d)(e) and (f). The information in Category 3 is confidential under Sections 366.093(3)(b) and (e).

The table below provides a line-by-line justification for the information granted confidentiality.

Staff Work Paper Number	Page(s)	Lines	Justification for confidential classification
Documents 008827-03 and 09602-03			

Staff Work Paper Number	Page(s)	Lines	Justification for confidential classification
9-1	1-5	All	Information revealing the sensitive competitive audit strategies and work plans of the external auditor and Sensitive information provided by the utility regarding transactions, litigation and competitive interests
Documents 008827-03, 09602-03 and 13643-03			
9-3	1	Handwritten lines 1-3	Notes from the Board of Director's minutes concerning sensitive business plans
9-3	3	Handwritten lines 1-3	Notes from the Board of Director's minutes concerning sensitive business plans
Documents 008827-03, 09602-03 and 13643-03			
9-3	4	Handwritten line 1	Notes from audit committee minutes concerning sensitive internal audit reports and the sensitive competitive work plans and strategies of the external auditor

Staff Work Paper Number	Page(s)	Lines	Justification for confidential classification
9-3	5	Handwritten lines 2-18, 22-30, 31-36	Notes from audit committee minutes concerning sensitive internal audit reports and the sensitive competitive work plans and strategies of the external auditor
9-3	6	Handwritten lines 37-38	Notes from audit committee minutes concerning sensitive internal audit reports and the sensitive competitive work plans and strategies of the external auditor

Chapter 366 provides that confidentiality may be granted for up to 18 months unless there is good cause to lengthen that period. Section 366.093(4), Florida Statutes. Because Sebring has not asked for more than 18 months, the material shall be granted confidentiality for a period of 18 months.

Based on the foregoing, it is


ORDERED by the Florida Public Service Commission that the Request for Confidential Classification filed by Sebring Gas System, Inc. is granted. It is further

ORDERED that pursuant to Section 366.093(4), Florida Statutes, and Rule 25-22.006, Florida Administrative Code, the confidentiality granted to the material specified herein shall expire eighteen (18) months from the date of the issuance of this Order in the absence of a renewed request for confidentiality. It is further

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ORDERED that this Order will be the only notification by the Commission to the parties concerning the expiration of the confidentiality time period.

By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 28th Day of January, 2004.

 for Chairman Braulio L. BAEZ

BRAULIO L. BAEZ
Commissioner and Prehearing Officer

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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, if issued by a Prehearing Officer; (2)

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reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, 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.