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September 3, 1996

VIA HAND DELIVERY

Ms. Blanca Bayo
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Request for Confidential Classification, Docket No. 960502-GU

Dear Ms. Bayo:

Enclosed are the original and 15 copies of City Gas Company of Florida's Request for Confidential Classification of certain audit workpapers. I have also enclosed one set of the confidential documents in a separate envelope. We ask that the Clerk's office maintain the confidential status of these documents.

I have enclosed an extra copy of the Request for you to stamp and return to me. Please contact me if you have any questions. Thank you for your assistance.

Sincerely,

Vicki Gordon Kaufman
Vicki Gordon Kaufman

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LEG _____
- LIN _____
- OPC _____
- RCH _____
- SEC _____
- WAS _____
- OTH _____

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
09308 SEP-3 1996
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of City Gas Company)
of Florida for an Increase in its Rates)
and Charges.)
_____)

Docket No. 960502-GU

Filed: September 3, 1996

**City Gas Company of Florida's Request for
Confidential Classification**

City Gas Company of Florida (City Gas or the Company), pursuant to section 366.093, Florida Statutes, and rule 25-22.006(4), Florida Administrative Code, files this request for confidential classification of certain audit workpapers compiled during the Staff audit in this docket. In support thereof, City Gas states:

Introduction

1. On June 18, 1996, City Gas filed its petition and supporting documentation seeking a rate increase.

2. As part of the Commission's review of the rate case filing, Commission Staff auditors performed an audit of City Gas. During the audit, City Gas provided certain documents containing confidential information which the auditors kept or from which they took notes. On August 12, 1996, following the completion of field work, audit staff notified City Gas of the audit workpapers which had been accorded Temporary Confidential Status.

3. Pursuant to rule 25-22.06(3)(a)2, Florida Administrative Code, City Gas files its Request for Confidential Classification of the Documents identified and discussed below. In addition, in accordance with rule 25-22.006(4)(c), attached hereto as Exhibit A is a line-by-line justification for the requested confidential

treatment of the highlighted portions of these documents.¹

4. The material for which confidential classification is sought is intended to be and is treated by City Gas as private and has not been publicly disclosed.

5. City Gas requests that the information for which it seeks confidential classification not be declassified and that it be returned to City Gas at the conclusion of this docket.

Documents for Which Confidential Classification is Sought

6. The audit documents for which City Gas seeks confidential classification fall into four categories: 1) information taken from internal audit reports; 2) customer specific information; 3) information related to current on-going litigation; and 4) information related to contracts with consultants and stock issuances. Each category of information is discussed below.

Arthur Andersen Materials

7. City Gas seeks confidential classification for materials provided to it by its auditors, Arthur Andersen (5-12, 9-2, 9-2/3, 9-2/4). Pursuant to an agreement City Gas has with Arthur Andersen, it must keep the materials Arthur Andersen provides to it confidential. Thus City Gas, as required by agreement, closely protects this information. § 366.093(3).

Internal Audit Information

8. City Gas seeks confidential classification for the Notes on Internal Audits

¹ City Gas does not seek confidential classification for all the audit workpapers but only those discussed herein.

[9-1]², the List of Internal Audits [9-1/1] and Customer Billing Information from Internal Audits. [41-4/1A].³ These documents contain information which Staff has taken from Internal Audits performed by the Company. Such documents must be protected from public disclosure for several reasons.

9. First, section 366.093(3), Florida Statutes, defines "proprietary confidential business information" as information:

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 . . .

Internal audits clearly fall into this category. City Gas' policy is to keep these audits strictly confidential.

10. Second, section 366.093(3) provides illustrative examples of proprietary confidential information. It states:

Proprietary confidential business information includes, but is not limited to:

. . .

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

(Emphasis supplied). Thus, the statute specifically includes the reports of internal

² Documents for which confidential classification is sought are referenced by their audit workpaper number.

³ In addition, the Customer Billing Information [41-4/1A] contains specific customer information which must also be protected under Section 366.093(3)(e). See discussion under Customer Specific Information, infra.

auditors in the classification of proprietary confidential information. The information in question here is information which was taken from such reports and should likewise be afforded confidentiality.

11. Third, internal audits are reviews which the Company voluntarily undertakes to monitor and improve its performance in various areas. Internal audit documents reveal the detailed inner workings and thought processes of the Company. If information from such internal audits is not kept confidential, it may have a chilling effect on utilities' willingness to perform these kinds of audits and/or to share the results with Staff.

12. The Commission recently granted confidential classification of similar materials for Florida Power and Light Company (FPL). In Docket No. 960001-EI, FPL requested confidential classification for certain portions of Staff's fuel audit. Staff summarized FPL's request as follows:

FPL has requested confidential treatment of the list of internal audits and notes taken from internal audits. FPL argues that this information has not been publicly disclosed, and only a select few FPL employees have seen these documents. FPL asserts that all of the material and the corresponding workpapers were extracted from an internal audit.

Order No. PSC-96-0198-CFO-EI at 2. FPL's request was granted. In the specific listing of documents, confidentiality was granted on the basis that the document "contains information taken directly from internal audits." Id. at 4-5. City Gas' internal audit documents are entitled to the same protection.

Customer Specific Information

13. In their audit workpapers, Staff has included several documents which contain customer specific information, such as the account numbers, names and addresses of customers as well as specific consumption information. [41-4, 41-4/1A and 41-4/1B]. This customer specific information is proprietary confidential business information which is closely guarded by City Gas. Such information should be protected from public disclosure.

14. In addition, this information is proprietary to customers whose competitive posture could be jeopardized by disclosure. The Company carefully guards such information to protect the interests of its customers.

15. Section 366.093(3)(e) exempts from public disclosure "information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information." The gas business is highly competitive; City Gas faces competition from propane, oil and electricity and possibly from direct bypass to the gas pipeline. Public availability of this type of information would enable City Gas's competitors to target the Company's customers and design packages specifically for them. It would, in essence, provide a list of prospective customers. Therefore, disclosure of this information would harm City Gas' ratepayers and its competitive business interests. See, Order No. PSC-96-0449-CFO-TL where the Commission granted GTE's request for confidential classification of customer specific information resulting from an audit of transactions between GTE and its affiliate.

Information Related to On-going Litigation

16. City Gas is engaged in on-going litigation in several venues with former Company executives regarding a variety of matters. These vigorously contested proceedings are of a highly sensitive nature; this is especially the case since they involve former City Gas executives.

17. Staff has included in its audit workpapers a letter from NUI's General Counsel [8-1]. This letter discusses the facts related to the litigation in some detail.

18. City Gas considers this information to be confidential proprietary business information within the meaning of section 366.093(3). It is held strictly confidential within the Company and its disclosure could cause harm to the ratepayers and the Company if the information becomes available to adverse parties involved in the litigation.

19. Further, this type of information is entitled to protection on the same basis as are internal audits discussed above. The information results from reviews which the Company or others have performed. If such information becomes public, it could have a chilling effect on the willingness of the Company to gather such information in the future.

Information Related to Consultant Contract and Stock Issuances

20. In their workpapers, the auditors have included information related to City Gas' contract with a consultant [66-3/2, 66-3/4-26] and information on restricted stock issuances for NUI employees. [66-3/4-26]. City Gas considers this information to be confidential proprietary business information. It is information which if publicly

disclosed "would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms," section 366.093(3)(d) and "would impair the competitive business" of City Gas. Section 366.093(3)(e).

21. Public disclosure of the compensation which City Gas has agreed to pay the consultant would hinder City Gas' ability to negotiate consultant contracts in the future because the compensation terms of the agreement would be public knowledge and might be used by others as a basis for negotiation of similar arrangements.

22. Similarly, disclosure of stock compensation for NUI employees would hinder City Gas' ability to hire and design compensation packages for future employees because knowledge of current compensation arrangements would be in the public domain.

WHEREFORE, City Gas requests that the Commission enter an order classifying the documents described in the body of this motion as confidential.


Joseph A. McGlothlin
Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas
117 S. Gadsden Street
Tallahassee, Florida 32301
(904) 222-2525

Attorneys for City Gas Company
of Florida

EXHIBIT "A"
CITY GAS COMPANY OF FLORIDA
 List of Staff Audit Workpapers for which
 Confidential Treatment is Requested, together with Justification

| Audit Workpaper Number | Page | Lines | Justification (See "Notes" Below) |
|-------------------------------|-------------|--------------|--|
| 5-12 | 1-2 | All | (5) |
| 8-1 | 1-3 | All | (3) |
| 9-1 | 1-12 | All | (1) |
| 9-1/1 | 1-2 | All | (1) |
| 9-2 | 1-5 | All | (5) |
| 9-2/3 | 1-5 | All | (5) |
| 9-2/4 | 1-13 | All | (5) |
| 41-4 | 1-4 | All | (2) |
| 41-4/1A | 1-6 | All | (1), (2) |
| 41-4/1B | 1-13 | All | (2) |
| 66-3/2 | 1 | 28-29 | (4) |
| 66-3/4-26 | 4 | 4-7, 28, 32 | (4) |
| | 7 | 33 | (4) |
| 66-3/4-26 | 48 | 11-15 | (4) |
| 66-3/4-30/4 | 1 | 6-30 | (4) |

Notes to Exhibit "A" Regarding Justification:⁴

- (1) This information was obtained from Company Internal Audits. As such it is protected by §366.093(3). Release of this information would have a chilling effect and discourage the Company from performing such audits and/or revealing such audits to Staff.

⁴ This chart is a summary of City Gas' justification of its request. See the body of the motion for detailed explanation.

- (2) This information is customer specific information. As such it is protected by §366.093(d)(e) because release would interfere with the Company's ability to contract and would also impair City Gas' ability to compete.
- (3) This information relates to sensitive on-going litigation involving former Company executives. As such, it is protected by §366.093(3) as making it public could cause harm to the Company's ratepayers and the Company's business operations. Further, it is protected for the same reasons internal audit information is confidential.
- (4) This information deals with a consultant contract and with employee stock issues. It is protected pursuant to §§366.093(3)(d),(e). Disclosure would affect City Gas' ability to contract and would impair its competitive business interests.
- (5) This is information from City Gas' auditors, Arthur Andersen. City Gas has an agreement with Arthur Andersen to keep this information confidential. Thus, City Gas closely guards this information. § 366.093(3).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of City Gas Company of Florida's Request for Confidential Classification has been furnished by hand delivery (*) or U. S. Mail to the following parties of record this 3rd day of September 1996:

* Vicki Johnson
Staff Attorney
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Vicki Gordon Kaufman
Vicki Gordon Kaufman

1 **AUDIT DISCLOSURE NO. 12**

2 **SUBJECT: ALLOCATIONS FROM NUI**
3 **CONTRACT WITH JOHN KEAN, SR.**

4 **STATEMENT OF FACTS:** On March 24, 1995 NUI entered into a
5 consulting contract with John Kean, Sr. The terms are as follows:

6 **Period of Contract:** April 1, 1995 through March 31, 1998.

7 **Position and Duties:** Chairman of the Board.

8 **Place of Performance:** Office for the Consultant at executive
9 headquarters in Bedminster, New Jersey and an office in the Company's
10 Southern Division should be available. Part of the allocated expenses from
11 NUI is a rental for an office in Vero Beach in the amount of [REDACTED]. The
12 amount allocated to City each month is [REDACTED].

13 **Annual Fee:** At least [REDACTED] per annum or at a greater rate
14 as Board shall determine. This is [REDACTED] per month. The amount
15 allocated to City Gas is [REDACTED] per month.

16 **Monthly Availability:** The Consultant shall make himself available for
17 up to 110 hours in any calendar month.

66-34-26

**Arthur Andersen - NUI Corporation/Industry Risks, pp. 1-2.
Confidentiality is requested for entire document.**

August 5, 1996 letter from James R. Van Horn to Kathy Welch, pp. 1-3. Confidentiality is requested for entire document. (Audit Workpapers 8-1).

Review of internal Audit Workpapers, 09/30/95, pp. 1-12.
Confidentiality is requested for entire document. (Audit
Workpapers 9-1).

**Audit Reports 1993-1996, as of May 14, 1996, pp. 1-2.
Confidentiality is requested for entire document. (Audit
Workpapers 9-1/1).**

52A 50110W 8198B

2001HAKENCO 024

2001B 24W 8104D

**Review of External Auditors' Workpapers, Test Year-
September 30, 1995, pp. 1-5. Confidentiality is requested
for entire document. (Audit Workpaper 9).**

328 COLLOE EIBER
SOUTHMOETH COV 24
20016 2176 3040

**March 4, 1996 correspondence from Arthur Andersen
regarding consolidated financial statements, pp. 1-5.
Confidentiality is requested for entire document.**

**Arthur Andersen Industry Overview, September 30, 1995,
pp. 1-13. Confidentiality is requested for entire document.**

SPX COTTON FIBER

20TH HANCOCK ST. NEW

YORK STATE BOARD

5289 001011 11354

2011/08/31 11:35:41

1005 2.076 10010

**Customer Billing Information, 08/01/31, pp. 1-4.
Confidentiality is requested for entire document. (Audit
Workpapers 41-4).**

Customer Billing Information, 02/29/96, pp. 1-6.
Confidentiality is requested for entire document. (Audit
Workpapers 41-4/1A).

STATE STAR BOARD

AMERICAN STAR

INSURANCE CO. OF N.Y.

Customer Billing Information, pp. 1-13. Confidentiality is requested for entire document.

1 COMPANY:
2 TITLE:
3 PERIOD:
4 DATE:
5 AUDITOR:

CITY GAS CO
SAMPLE RESULTS
OCT THRU MARCH 98
JULY 19, 1998
RK

fw 8/18/96

(X) This worksheet contains sample items that was questionable from the sample on lab-3. The entire sample is on 66-3.

6 WP
7 Source: Invoices

ITEM NO
66-3

AMOUNT wp66-3/4 RC CODE wp66-3/1 % TO CITY CITY AMOUNT VENDOR DESCRIPTION

| ITEM NO | AMOUNT | wp66-3/4 RC CODE | wp66-3/1 % TO CITY | CITY AMOUNT | VENDOR DESCRIPTION |
|--|------------|------------------|--------------------|-------------|---|
| 10 164 11 12 | 1,575.30 | 467 | 22.52% | 354.76 | Energy Market Economics Inc. What is this bill for? How does it relate to City Gas? See 165 above. |
| 13 160 | 1,250.00 | 422 | 15.75% | 196.91 | Towers Perrin - What is the Fundamental |
| 14 161 | 1,100.00 | 422 | 15.75% | 173.28 | Modular Series Seminar cover? What area of investment? Series of seminary for two HRD employees. Benefit Plans, 401K plans. Qualified Plans, Plan Disclosures, Welfare Plans. |
| 15 16 17 18 | | | | | |
| 19 158 20 21 22 23 24 25 26 27 | 5,000.00 | 461 | 22.46% | 1,124.00 | Michael Manning Consultant What is the total paid to this consultant in test year plus one, from Oct to March. What amount is budgeted in test year plus one? from April thru Sept 98. What is amount included in Projected test year? Establishing a New Retail Business. Is this Talked to Sam about this. See co answer on 66-3/2-1pg 4 and invoice on 66-3/4-38 |
| 28 157 29 30 | [REDACTED] | 401 | 18.65% | [REDACTED] | Consulting Agreement with John Kaen, Sr. Contract says [REDACTED] per month Disclosure contract. Disclosed wp66-3/4-26 |
| 31 50 32 33 34 35 36 37 | 4,665.70 | 540 | 21.09% | 981.89 | Westvaco - Why are these allocated to City when they appear to be for ETown, Gas division. See WP No.66-3/2-2, for Company response. This applies to items No. 43,44,50,51 Also see invoices on 66-3/4-33. |
| 38 57 39 40 41 42 43 | 3,705.89 | 540 | 21.09% | 781.57 | Hitachi Oats Systems Is this for rental? If not, why aren't you capitalizing these charges? The company answer show this is an operating lease. see 66-3/4-37. |
| 44 167 45 46 47 | 4,050.51 | 105 | 18.65% | 795.93 | New York Stock Exchange. Invoice provided is for \$16,202. Amount in GI is \$4080.21. Explain. 16,202 amortized over 12 months. Annual fee for listing of NUJ stock over NYSE |
| 48 133 49 50 51 52 | 4,200.00 | 401 | 18.65% | 825.30 | L. Gaygo -8600 fees for 7 directors. Why is check going to one person instead of each one. Per TB. Each of these persons also received 3600 separately. Explain. See wp no.66-3/4-38 for explanation. |
| 53 30 54 55 | 22,902.12 | 101 | | | medical payments that are later reclassified to the different rc's. |

Below reclassified to differ rc's & the allocated

pg 1

fbc

AUDIT REQUEST 11 (2)

CONSULTING AGREEMENT
BETWEEN
JOHN KEAN, CHAIRMAN OF THE BOARD
AND
NUI CORPORATION

DATED: MARCH 24, 1995

AS AMENDED NOVEMBER 28, 1995

① 8/12

66-3
4-26

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Subject

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CONSULTING AGREEMENT made this 24th day of March 1995 by and between NUI CORPORATION, a New Jersey corporation (the "Company"), a multi-state natural gas distribution company with offices located in Bedminster, New Jersey and John Kean (the "Consultant"), an individual residing in Vero Beach, Florida.

WITNESSETH

WHEREAS, the Consultant has been employed by the Company for more than thirty nine (39) years and is currently its Chief Executive Officer; and

WHEREAS, the Consultant possesses an intimate knowledge of the business and affairs of the Company, its policies, methods, personnel and projects; and

WHEREAS, the Company considers the stability and continuity of its management to be essential for the protection and enhancement of the best interests of the Company and the Company's shareholders; and

WHEREAS, the Board of Directors of the Company (the "Board") has determined that the Consultant's contribution to the Company has been substantial and desires to assure the Company of the Consultant's continued help and assistance and to compensate him therefor; and

WHEREAS, the Consultant is willing to serve the Company as Chairman of the Board and to perform the other duties hereinafter set forth during such periods and on such terms and conditions as are required to perform the duties thereof;

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, it is agreed as follows:

1. **RETENTION.** The Company hereby agrees to retain the Consultant as a consultant and the Consultant hereby agrees to serve the Company on the terms and conditions set forth herein for a period commencing on April 1, 1995 (the "Effective Date") and expiring on March 31, 1998 (unless extended or sooner terminated as hereinafter set forth).

2. **POSITION AND DUTIES.** The Consultant shall serve as Chairman of the Board as long as Consultant shall be elected to the Board. The Consultant shall report directly to the Board. The Consultant shall serve as Chairman of the Board during the term of the Consultant's contract and shall have such other powers and duties as may from time to time be prescribed by the Board, provided that such duties are consistent with the Consultant's position. Subject to Paragraph 4(e), the Consultant shall devote sufficient time and effort to perform the duties assigned by the Company and or the Board. With the prior consent of the Consultant, the Consultant also shall serve, if elected or appointed thereto, as a director of any of the Company's subsidiary affiliates or divisions.

3. **PLACE OF PERFORMANCE**

During the term of the Consultant's contract, the Company shall maintain an office for the Consultant in the Company's Southern Division and shall make an office available for the Consultant at the principal executive headquarters of the Company in Bedminster, New Jersey. The Company shall not, without the written consent of the Consultant, relocate or transfer the Consultant's office.

where?

Staff new office @ NUI HQ in Bedminster

4. COMPENSATION AND BENEFITS

During the term of the Consultant's contract:

(a) Annual Fee. The Consultant shall receive an annual fee at the rate of at least [redacted] or at such greater rate as the Board shall from time to time determine (the "Annual Fee") payable in substantially equal monthly installments on the 15th day of each month. Any increase in this Annual Fee or other compensation shall in no way limit or reduce any other obligation of the Company hereunder and, once established at an increased specified rate, the Annual Fee hereunder shall not thereafter be reduced.

(b) Other Compensation. The Board may from time to time, in its sole discretion, award the Consultant such other compensation as it deems appropriate.

(c) Expenses. The Company shall promptly pay (or reimburse the Consultant for) all reasonable expenses incurred by him in the performance of his duties hereunder. The Company shall provide the Consultant with the same vehicular transportation provided to the Consultant during the period that he served as Chief Executive Officer of the Company.

(d) Benefit Plans and Arrangements. The Consultant shall be entitled to participate in or receive benefits under the health and medical plans of the Company in effect from time to time (including any health or medical plans made available to executives and key management employees) and the \$500,000 life insurance policy which was in effect upon the Consultant's retirement from the Company shall be continued. The Company agrees that it will not make any changes in such plans, or arrangements, which would affect the Consultant's rights or benefits whereunder in a manner inconsistent with the treatment of the Company's executives and key management employees. The Board may permit the Consultant to participate in or receive benefits under any benefit plan made available by the Company in the future to its executives and key management employees, subject to and on a basis consistent with the terms, conditions and overall administration of such plans and arrangements. No amount paid to the Consultant under any benefit plan, or arrangement, presently in effect or made available in the future, shall be deemed to be in lieu of compensation to the Consultant hereunder.

(e) Monthly Availability. In the performance of his duties under the Contract, the Consultant shall make himself available to the Company on a mutually convenient basis for up to 110 hours in any calendar month.

(f) Working Facilities. The Consultant shall be furnished with a private office, stenographic and other necessary secretarial assistance and such other facilities, amenities and services as are appropriate for Consultant's position as Chairman of the Board and adequate for the performance of his duties hereunder.

(g) Extension. Notwithstanding anything to the contrary herein contained, in the event of a "Change in Control" (as hereinafter defined) of the Company: (i) the term of this Agreement shall be extended for a period of three years from the date of such Change in Control; and (ii) Consultant shall be compensated and shall receive the benefits provided in this Section 4.

5. UNAUTHORIZED DISCLOSURE. During the period of this contract, the Consultant shall not, except as required by any court, supervisory authority or administrative agency, without the written consent of the Board or a person authorized thereby, disclose to any person, other than an employee of the Company or a person to whom disclosure is reasonably necessary or appropriate in connection with the performance by the Consultant of his duties as Chairman of the Board, any confidential information obtained by him while in the employ of the Company prior to this contract or during the term hereof, provided, however, that confidential information shall not include any information known generally to the public (other than as a result of unauthorized disclosure by the Consultant). In addition, for two years following the termination of employment hereunder, the Consultant shall not disclose any confidential information of the type described above except as required by any court, supervisory authority or administrative agency or with the consent of the Board, which shall not be unreasonably withheld.

6. TERMINATION.

(a) Death. The agreement shall terminate upon the death of the Consultant. For purposes of this Agreement, the death of the Consultant shall be treated as termination of the contract by the Consultant.

(b) Disability. If, as a result of Consultant's incapacity due to physical or mental illness, the Consultant shall be unable to perform his duties hereunder for six consecutive months and, within 30 days after written Notice of Termination is given, shall not have returned to the performance of his duties hereunder, the Company may terminate the Consultant's contract.

(c) Cause. The Company may terminate the Consultant's contract for Cause. For the purposes of this Agreement, the Company shall have "Cause" to terminate the Consultant's contract hereunder upon (i) the willful failure by the Consultant to substantially perform his duties under Paragraph 5 hereof or (ii) the willful engaging by the Consultant in conduct which is demonstrably and materially injurious to the Company, monetarily or otherwise, including, but not limited to, personal dishonesty, incompetence, misconduct, breach of fiduciary duty involving personal profit, or violation of any law, rule or regulation (other than traffic violations or similar offenses) or final cease and desist order (other than any such failure resulting from his incapacity due to physical or mental illness, or any such actual or anticipated failure after the issuance of a Notice of Termination by the Consultant for Good Reason, as such terms are defined in Subparagraphs 6(e) and 6(d) hereof, respectively). For purposes of this Paragraph, no act, or failure to act, on the Consultant's part shall be considered "willful" unless done, or omitted to be done, by him not in good faith and without reasonable belief that his action or omission was in the best interest of the Company. Notwithstanding the foregoing, the Consultant shall not be deemed to have been terminated for Cause unless and until there shall have been delivered to the Consultant a certified copy of a resolution, duly adopted by the affirmative vote of not less than three-quarters of the entire membership of the Board at a meeting of the Board called and held for that purpose (after reasonable notice to the Consultant and an opportunity for him, together with his counsel, to be heard before the Board), finding that, in the good faith opinion of the Board, the Consultant was guilty of conduct set forth above in clause (i) or (ii) of this Subparagraph 6(c), and specifying the particulars thereof in detail.

(d) Termination by the Consultant. The Consultant may terminate his contract hereunder (i) for Good Reason, (ii) if his health should become impaired to an extent that makes the continued performance of his duties hereunder hazardous to his physical or mental health or his life, or (iii) at any time by giving thirty (30) days' written notice to the Company of his intention to terminate. For purposes of this Agreement, "Good Reason" shall mean, after a Change in Control (as hereinafter defined)

of the Company: (A) any assignment to the Consultant of any duties other than those contemplated by, or any limitation of the powers of the Consultant in any respect not contemplated by, Paragraph 2 hereof, (B) any removal of the Consultant from or any failure to re-elect the Consultant in any positions indicated in Paragraph 2 hereof, except in connection with termination of the Consultant's contract for Cause, disability, or by the Consultant other than for Good Reason, or as a result of the Consultant's death, (C) any failure by the Company to comply with Sector's 3 or 4 hereof, or (D) failure of the Company to obtain the assumption of the agreement to perform this Agreement by any successor as contemplated in Paragraph 8 hereof.

(e) Notice of Termination. Any termination by the Company pursuant to subsection (b) or (c), above, or by the Consultant pursuant to subsection (d) above, shall be communicated by written Notice of Termination to the other party hereto. For purposes of this Agreement, a "Notice of Termination" shall mean a notice which shall indicate the specific termination provision in this Agreement relied upon and shall set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Consultant's contract under the provision so indicated. For the purposes of this Agreement, no such termination shall be effective without such Notice of Termination.

(f) Date of Termination. "Date of Termination" shall mean (i) if the Consultant's contract is terminated by death, the date of his death, (ii) if the Consultant's contract is terminated pursuant to Subparagraph (b) above, 30 days after Notice of Termination is given (provided that the Consultant shall not have returned to the performance of his duties during such 30-day period), (iii) if the Consultant's contract is terminated pursuant to Subparagraph (c) or (d), above, the date specified in the Notice of Termination, and (iv) if the Consultant's contract is terminated for any other reason, the date on which a Notice of Termination is given; provided, however, that in the case of a termination pursuant to clause (iv), if within 60 days after any Notice of Termination is given the party receiving such Notice of Termination notifies the other party that a dispute exists concerning that termination, the Date of Termination shall be the date on which the dispute is finally resolved, either by mutual written agreement of the parties, by a binding and final arbitration award or by a final judgement, order or decree of a court of competent jurisdiction (the time for appeal therefrom having expired and no appeal having been perfected). For the purposes hereof, if a Notice of Termination is given during the term of this Agreement, the Date of Termination shall be treated as having occurred during such term, notwithstanding the resolution of any disputes after the conclusion of such term.

(g) Continued Retention: Nonwaiver. The continuation of the Consultant's contract during the term of this Agreement, and subsequent to an event constituting Good Reason hereunder, shall not constitute consent to such event or a waiver of any rights the Consultant may have under this Agreement.

(i) For purposes of this Agreement, a "Change in Control" shall mean, unless the Board otherwise directs by resolution approved by a three-fourths vote of the entire membership thereof adopted prior thereto, (ii) a Change in Control of the Company occurring after the date hereof of a nature that would be reported by the Company as a Change in Control in response to Item 1(a) of a Current Report on Form 8-K pursuant to the Securities and Exchange Act of 1934 ("Exchange Act"), as in effect on the date hereof; or (iii) if any person or entity acquires conclusive or rebuttable control of the Company, (iv) any "person" (as that term is used in Sections 13(d) and 14(d) (2) of the Exchange Act), other than a trustee or other fiduciary holding securities under an employee benefit plan of the Company, is or becomes the beneficial owner (as that term is used in Section 13(d) of the Exchange Act), directly or indirectly, of 25 percent or more of the capital stock entitled to vote in the election of directors of the Company or their successors ("Voting Stock"); or (v) during any period of two consecutive years, individuals who at the beginning of such period constitute the Board of Directors of the Company (the "Incumbent Board") cease

1 for any reason, other the death, disability or any mandatory retirement policy applicable to Incumbent
 2 Board members, to constitute at least a majority thereof provided, however, that any person becoming a
 3 director of the Company after the beginning of such period whose election was approved by a vote of at
 4 least three-quarters of the directors comprising the Incumbent Board shall for the purposes hereof, be
 5 considered as though such person were a member of the Incumbent Board; or (vi) there shall occur the sale
 6 of all or substantially all of the assets of the Company. No merger, consolidation, combination or
 7 corporate reorganization in which the owners of the Voting Stock prior to said merger, consolidation,
 8 combination or corporate reorganization own 75 percent or more of the resulting entity's Voting Stock shall
 9 be considered a Change in Control for the purposes of this Agreement, nor shall any purchases or
 10 contributions of Voting Stock made to, by or on behalf of the Employee Stock Ownership Plan, the Profit-
 11 Sharing Plan (401K) or any grantor trust established by the Company in connection with any of its excess
 12 benefit or deferred compensation plans, constitute a Change in Control for purposes of this Agreement.
 13 Notwithstanding anything in the foregoing to the contrary, no Change in Control of the employer shall be
 14 deemed to have occurred for purposes of this Agreement by virtue of any transaction or series of
 15 transactions which results in the Consultant, or any group (other than the group consisting of all
 16 shareholders of the Company), or other organization of persons related to, including or acting in concert
 17 with the Consultant, acquiring, directly or indirectly, control of the Company.

18
 19 **7. COMPENSATION UPON TERMINATION**

20 (a) **Death.** If the Consultant's contract shall be terminated by reason of the
 21 Consultant's death, the Company shall pay, within 90 days thereof, to the Consultant's estate, as a lump
 22 sum, an amount equal to the Annual Fee through the end of the month in which such death shall have
 23 occurred, not yet paid through the date of the Consultant's death. This amount shall be exclusive of and in
 24 addition to any payments the Consultant's widow, beneficiaries or estate may be entitled to receive (whether
 25 in his capacity as a former employee of the Company or pursuant to this contract) pursuant to any pension,
 employee benefit plan or life insurance policy or program maintained by the Company.

26 (b) **Disability.** During any period that the Consultant fails to perform his duties
 27 hereunder as a result of incapacity due to physical or mental illness, the Consultant shall continue to receive
 28 his full Annual Fee until the Consultant's contract is terminated pursuant to Paragraph 6(b) hereof, or until
 29 Consultant terminates his contract pursuant to paragraph 6(d) (ii) hereof, whichever first occurs. After
 30 termination, the Consultant shall be paid 100 percent of his Annual Fee at the rate then in effect for one
 31 year and thereafter an annual amount equal to 75 percent of his Annual Fee at the rate then in effect less, in
 32 each case, any disability payments otherwise payable by or pursuant to plans provided by the Company
 33 and actually paid to the Consultant (but not less than an aggregate annual amount of [redacted] in
 34 substantially equal monthly installments until the first to occur of the expiration of the term hereof, or the
 35 Consultant's death.

36 (c) **Cause.** If the Consultant's contract shall be terminated for Cause the Company
 37 shall pay the Consultant his full Annual Fee through the Date of Termination at the rate in effect at the time
 38 Notice of Termination is given and the Company shall have no further obligation to the Consultant under
 39 this Agreement.

40 (d) **Other.** If the Company shall terminate the Consultants's contract other than
 41 pursuant to Paragraph 6(b) or (c) hereof or if the Consultant shall terminate his contract for Good Reason,
 42 then:

(i) the Company shall pay to the Consultant in a single lump sum on the 30th day following the Date of Termination or, at the Consultant's election, provided such election is made by written notice to the Company at least 90 days prior to the Date of Termination, in substantially equal monthly installments over 36 months:

(A) his full Annual Fee through the Date of Termination at the rate in effect at the time the Notice of Termination was given.

(B) an amount equal to all payments which would otherwise be payable to Consultant from the Date of Termination through the termination of this Consulting Agreement (as set forth in Section 1) as if Consultant had remained a consultant through the expiration of the Consulting Agreement.

(C) In the event that any payments made to the Consultant under this Agreement or otherwise ("Payments") are subject to the excise tax imposed by Section 4999 of the Internal Revenue Code ("Code") ("Excise Tax"), then the Company shall pay the Consultant an additional amount ("Gross Up") such that the net amount retained by the Consultant after deduction of any Excise Tax on the Payments (prior to the payment of any Excise Tax) and any Federal, State and local income taxes and Excise Tax upon the Payments (after the payment of any Excise Tax) shall be equal to the Payments (prior to the payment of any Excise Tax). For purposes of determining the amount of the Gross Up, the Consultant shall be deemed to pay Federal, State and local income taxes at the highest marginal rate of taxation in the calendar year in which the Payment is to be made. State and local income taxes shall be determined based upon the state and locality of the Consultant's domicile on the Date of Termination. The determination of whether such Excise Tax is payable and the amount thereof shall be based upon the opinion of tax counsel selected by the Company and reasonably acceptable to the Consultant. If such opinion is not finally accepted by the Internal Revenue Service upon audit, then appropriate adjustments shall be computed (without interest but with Gross Up, if applicable) by such tax counsel based upon the final amount of the Excise Tax so determined. The amount shall be paid by the appropriate party in one lump cash sum within 30 days of such computation; and

(ii) The Company shall maintain in full force and effect for the continued benefit of the Consultant for the full term of this Agreement all employee benefit plans and programs in which the Consultant was entitled to participate immediately prior to the date Notice of Termination was given, including, without limitation, life, disability, accident and health insurance plans or policies, provided that the Consultant's continued participation is possible under the general terms and provisions of such plans and programs. In the event that the Consultant's participation in any such plans or programs is prohibited by operation of law or by the terms of such plans or programs as in effect immediately preceding the date Notice of Termination is given, the Company shall arrange to provide the Consultant with benefits substantially similar to those provided under such plans and programs. Except for any insurance policy purchased by the Company in accordance with Subparagraph (v) below or used by the employer to fund its excess benefit and deferred compensation plans under any grantor trust arrangement, at the end of the period of coverage, the Consultant shall have the option to have assigned to him at no cost and with no apportionment of prepaid premiums, any assignable insurance policy owned by the Company and relating specifically to the Consultant; and

(iii) The Company shall continue to fund or pay the premiums applicable to the Consultant for any executive life insurance policy, death benefit contract or agreement in effect on the date immediately preceding the date Notice of Termination was given through the term of this Agreement. In the alternative, the Company may pay a single premium sufficient to fund the policy until the term of this Agreement shall have expired. Nothing contained in this Subparagraph (v) shall entitle the Consultant or his estate to death benefits or life insurance proceeds under any such executive life insurance policy, death benefit contract or agreement other than as may be provided under such policy, contract or agreement; and

(iv) There shall be no requirement that the Consultant mitigate the amount of any payment provided for in this Paragraph 7 by seeking other employment or otherwise, nor shall the amount of any payment provided for in this Paragraph 7 be reduced by any compensation earned by the Consultant or benefits, including retirement benefits, as the result of employment by any other employer after the Date of Termination or otherwise; and

(v) The Company shall reimburse Consultant for all legal fees and expenses incurred by him as a result of termination hereunder (including all such fees and expenses, if any, incurred in contesting or disputing any such termination, in seeking to obtain or enforce any right or benefit provided by this Agreement or in connection with any tax audit or proceeding to the extent attributable to the application of Section 4999 of the Code to any payment or benefit hereunder); provided, that the Company shall only be obligated to so reimburse the Consultant if the Consultant is successful in the legal actions or other proceedings in which such fees and expenses were incurred. Reimbursement of such fees and expenses shall be made by the Company at the conclusion of the legal action or proceedings upon the Consultant's presentation to the Company of a statement of such fees and expenses prepared by Consultant's counsel under standard and customary methods; and

(vi) should the Consultant elect to receive payments hereunder in installments over 36 months, the amount of the outstanding obligation shall be credited with interest on a monthly basis at a rate equal to the then current rate for one-year insured certificates of deposit at Citibank.

8. SUCCESSORS: BINDING AGREEMENT

(a) The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company by agreement in form and substance reasonably satisfactory to the Consultant, to expressly, absolutely and unconditionally assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. Any such assumption shall not relieve Company of any of its obligations hereunder. Failure of the Company to obtain such agreement prior to the effectiveness of any such succession shall constitute Good Reason for termination of the contract by the Consultant. As used in this Agreement, "Company" shall mean the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid which executes and delivers the agreement provided for in this Paragraph 8 or which otherwise becomes bound by all the terms and provisions of this Agreement by operation of law.

(b) This Agreement and all rights of the Consultant hereunder shall inure to the benefit of and be enforceable by the Consultant's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees. If the Consultant should die while any amounts would still be payable to him hereunder if he had continued to live, all such amounts, unless otherwise provided herein, shall be paid in accordance with the terms of this Agreement to the Consultant's devisee, legatee, or other designee or, if there be no such designee, to the Consultant's estate.

9. **NOTICES.** For the purposes of this Agreement, notices and all other communications provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered or mailed by United States registered mail, return receipt requested, postage prepaid, addressed as follows: If to the Consultant:

John Kean
176 North Shore Point
Vero Beach, FL 32963

If to the Company:

NUI Corporation
550 Route 202-206
P.O. Box 760
Bedminster, NJ 07921
Attention: Corporate Secretary

or to such other address as any party may have furnished to the other in writing in accordance herewith, except that notices of change of address shall be effective only upon receipt.

10. **MISCELLANEOUS.** No provisions of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing signed by the Consultant and such officer as may be designated by the Board. No waiver by either party hereto at any time of any breach by the other party hereto of, or in compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time. No agreements or representations, oral or otherwise, express or implied, with respect to the subject matter hereof have been made by either party which are not set forth expressly in this Agreement. It is intended that the benefits payable hereunder shall be considered paid to the Consultant for past services to the Company and continuing services from the date hereof. Any payment provided for hereunder shall be paid net of any applicable income tax withholding required under Federal, State or local laws.

11. **VALIDITY.** The invalidity or unenforceability of any provision or provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect. Notwithstanding the termination of this Agreement, the parties shall be required to comply with any provisions hereof which contemplate compliance by one or both parties subsequent to such termination; and such termination shall not affect any liability or other obligation which shall have accrued prior to such termination.

12. **COUNTERPARTS.** This agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument.

13. **ARBITRATION.** Any dispute or controversy arising or in connection with this Agreement shall be settled exclusively by arbitration in the State of New Jersey in accordance with the rules of the American Arbitration Association then in effect. Notwithstanding the pendency of any such dispute or controversy, the Company will, to the extent provided in subparagraph 6(f) & (g), continue to pay the Consultant's full compensation in effect when the Notice giving rise to the dispute was given

(including, but not limited to, the Annual Fee) and, to the extent permitted by law, continue Consultant as a participant in all benefit and insurance plans in which the Consultant was participating when the Notice giving rise to the dispute was given, until the dispute is finally resolved. Amounts paid under this paragraph are in addition to all other amounts due under this Agreement and shall not be offset against or reduce any other amounts due under this Agreement. Judgment may be entered on the arbitrator's award in any court of competent jurisdiction.

14. **CONSTRUCTION.** The validity, interpretation, construction and performance of this Agreement shall be governed by the substantive laws of the State of New Jersey. The Consultant hereby submits and consents to the exclusive jurisdiction of the State and Federal courts of New Jersey in connection with all lawsuits arising out of this Agreement.

15. **CAPTIONS.** The paragraph captions in this Agreement are for convenience of reference only and do not define, limit or describe the scope or intent of this Agreement or any part hereof and shall not be considered in any construction hereof.

16. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement, and supersedes all prior agreements and undertakings, both written and oral, between the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date and year first above written.

Attest:

NUI Corporation

Corporate Secretary

By _____

John Kean

DISTRIBUTION ELECTION

I hereby revoke all prior distribution elections under this Agreement. All amounts payable to me in accordance with Paragraph 7(d) of this Agreement shall be payable as follows (initial only one item):

_____ in a single lump sum payment;

_____ in substantially equal monthly installments over 36 months.

Dated:

Signature

(12/7/12)

MEMORANDUM

September 3, 1996

TO: _____ DIVISION OF APPEALS
_____ DIVISION OF AUDITING AND FINANCIAL ANALYSIS
_____ DIVISION OF COMMUNICATIONS
XX _____ DIVISION OF ELECTRIC AND GAS
_____ DIVISION OF RESEARCH
_____ DIVISION OF WATER AND WASTEWATER
_____ DIVISION OF LEGAL SERVICES

FROM: DIVISION OF RECORDS AND REPORTING (SANDERS)

RE: CONFIDENTIALITY OF CERTAIN INFORMATION

DOCUMENT NO: 09309-96

DESCRIPTION: Certain audit workpapers compiled during
staff audit.

SOURCE: City Gas Company of Florida

DOCKET NO.: 960502-GU

The above material was received with a request for confidentiality (attached). Please prepare a recommendation for the attorney assigned to the case by completing the section below and forwarding a copy of this memorandum, together with a brief memorandum supporting your recommendation, to the attorney. Copies of your recommendation should also be provided to the Division of Records and Reporting and to the Division of Appeals.

Please read each of the following and check if applicable.

___ The document(s) is (are), in fact, what the utility asserts it (them) to be.

___ The utility has provided enough details to perform a