



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: January 12, 2004
TO: Office of General Counsel (Stern)
FROM: Division of Auditing and Safety (Freeman, Vandiver) *F OV JMA*
RE: Docket 030965-GU, Recommendation concerning Florida Public Utilities Company' (FPUC'), request for confidential classification concerning a portion of the staff's working papers obtained during the preparation of "Florida Public Utilities Company Earnings Review - Gas Division for the Year Ended December 31, 2002", Audit Control No. 03-086-4-1, Documents Numbered 08827-03, 09602-03 and 13643-03

On September 12, 2003, when 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 temporarily exempted from public access in accordance with the provisions of Rule 25-22.006(3)(a)(2), Florida Administrative Code (FAC).

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 (F.S.), and Rule 25-22.006, FAC, 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 09601-03) and highlighted copies (document 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 13642-03) and updated highlighted copies (Document 13643-03).

Documents 08827-03, 09602-03 and 13643-03 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.

Pursuant to Section 119.07, F.S., 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. Subsection 366.093(3)(b)(d)(e)and(f), F.S. provide the following exemptions:

DOCUMENT NUMBER - DATE

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FPSC-COMMISSION CLERK

“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....

(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.”

According to Section 366.093, F.S., and Rule 25-22.006, FAC, the utility has the burden of demonstrating that materials qualify for confidential classification. According to Rule 25-22.006, FAC, the utility must meet this burden by demonstrating that the information is proprietary confidential business information, the disclosure of which will cause the utility, the provider of the information or the ratepayer harm.

Staff Analysis of the Request

Reading the FPUC filing reveals the sensitive materials consist of:

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

FPUC asserts these notes from the 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.

Gail Ray is a director of Deloitte and Touche, LLP, which is the external auditor of the utility. Ms. Ray asserts the Deloitte and Touche working papers contain information relating to the competitive interests of Deloitte and Touch and FPUC, the release of which would impair the competitive business of these companies. Ms. Ray asserts this information is proprietary confidential business information of FPUC and Deloitte and Touch within the meaning of Section 366.093(3)(e), Florida Statutes.

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

FPUC asserts "these minutes memorialize discussion and decisions of the Board on a variety of matters including business plans, personnel, acquisitions, internal controls and others....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." FPUC asserts certain portions of the notes taken by the staff from the Director's Minutes contain discussions of business strategies the release of which would cause harm to the company and its customers. FPUC further asserts "Such information is not released...."

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 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.

3. Notes made from minutes of the Board's 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.

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 out such a function, the Audit Committee would hear 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. In the past, the Commission has found that information concerning internal audits be granted a confidential classification, See Commission Order PSC-93-1631-CFO-EI, issued November 8, 1993, Docket 930834-EI. The Commission has also found that the competitive audit strategies and the work plans of the external auditor are also valuable and sensitive competitive information that qualifies for a confidential classification, See Commission Order 25297, dated November 5, 1991, Docket 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.

Duration of the Confidential Classification Period

Ms. Ray, Director of the external auditor, Deloitte and Touche, LLP, requests that this material be granted a confidential classification for not less than 18 months and that the information be returned to FPUC as soon as the Commission no longer needs the information to conduct Commission business. We note the Commission staff's audit working papers for this type of audit are retained on file by the Commission for 25 years.

According to the provisions of Section 366.093(4), F.S., absent good cause shown, confidential classification is limited to 18 months. Without cause shown for a longer period, we recommend that the period of confidential classification be set as 18 months. As deemed necessary, the utility may request an extension of the confidential classification before the period tolls.

Close the Docket

Once any Commission order concerning this request becomes final, the docket may be closed.

Staff Recommendation

Based upon reading the filing, and for the reasons presented above, we recommend the utility's request be granted, as found, and that the identified material be granted a confidential classification for 18 months. A detailed recommendation regarding the material follows:

Detailed Recommendation. As Found

Staff Work Paper Number	Page(s)	Lines	Recommend	Type of Information Classified Confidential
Documents 008827-03 and 09602-03				
9-1	1-5	All	Grant	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

Staff Work Paper Number	Page(s)	Lines	Recommend	Type of Information Classified Confidential
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
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	Grant	Notes from audit committee minutes concerning sensitive internal audit reports and the sensitive competitive work plans and strategies of the external auditor

A temporary copy of this recommendation will be held at I:09602-03.fpuc.raf.wpd for a short period.

CC: Division of Auditing and Safety (Welch)
 Division of Commission Clerk and Administrative Services (Flynn)