

COMMISSIONERS:
BRAULIO L. BAEZ, CHAIRMAN
J. TERRY DEASON
LILA A. JABER
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

STATE OF FLORIDA



ORIGINAL

OFFICE OF THE GENERAL COUNSEL
RICHARD D. MELSON
GENERAL COUNSEL
(850) 413-6199

RECEIVED-TPSC

OCT -7 AM 10:39

COMMISSION
CLERK

Public Service Commission

October 7, 2004

Norman H. Horton, Jr., Esquire
215 S. Monroe Street, Suite 701
P. O. Box 1876
Tallahassee, FL 32302-1876

RE: Docket 040216-GU, September 3, 2004, Request for confidential classification concerning staff audit report and working papers prepared during "Florida Public Utilities Company Rate Case for the Projected Test Year Ended December 31, 2003," Audit Control No. 04-168-4-1, Confidential Documents 09134-04 and 09724-04

Dear Mr. Horton:

Staff has reviewed the September 3, 2004, Florida Public Utilities Company (FPUC) request for confidential classification of certain staff working papers and find the following perceived deficiencies:

Item 1 -- Staff Working Paper 8, 6 pages, "Board of Director's Minutes"

Subsections 366.093(3)(d) and (e), Florida Statutes (F.S.), allow the Commission to provide a confidential classification to: "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 or services on favorable terms," and "Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information." However, in interpreting Subsection 366.093(3)(f), F.S., the Commission has found that charges and other information pertaining to utility operations concerning employee salaries, other compensation, names, duties, disciplinary reports, job qualifications, or job responsibilities are not eligible for a confidential classification. Finally, Section 366.093, F.S., provides that information which is granted a confidential classification may not have been disclosed to the public, except under certain prescribed conditions.

Within staff working paper 8, 6 pages, FPUC requests a confidential protection for all information found in the Board of Director's minutes. Part of this information apparently has been disclosed to the public such as: knowledge of major transactions which have been approved by the board and are complete; names of directors; authorized dividends which have been announced or paid; executed compensation decisions or announced compensation plans; information which is approved by the Board and publicly filed, released or known; descriptions of actions concerning general

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD • TALLAHASSEE, FL 32399-0850

An Affirmative Action / Equal Opportunity Employer

PSC Website: <http://www.floridapsc.com>

Internet E-mail: contact@psc.state.fl.us

DOCUMENT NUMBER - DATE
10795 OCT-7 04

CMP _____
COM _____
CTR _____
ECR _____
GCL _____
OPC _____
MMS _____
RCA _____
SCR _____
SEC 1
OTH _____

oversight of the Board; and committee memberships. For that type of information, staff does not believe that the Commission should afford confidential treatment.

Please review staff working paper 8, 6 pages, to determine what information has been disclosed to the public, and whether release of any of the information would cause harm. At this time, Staff does not believe that all of the Board of Director's minutes should be classified confidential, and requests FPUC to provide additional information as to why the entire Board of Director's minutes should be treated as confidential.

Item 2 -- Staff working paper 8-1, 5 pages, Audit Committee Charter

As stated above, Section 366.093(3), F.S., provides that information which is granted a confidential classification can not have been disclosed to the public. Because FPUC is a public company, its audit committee charter is disclosed in proxy statements for the annual meeting of the Company in at least one of the last three years. Such a filing with the Securities and Exchange Commission and "security holders" is considered public disclosure, and, therefore, staff does not believe that the Company's audit committee charter qualifies for a confidential classification.

Item 3 --Staff working paper 8-3, 3 pages, "Audit Committee Meeting"
--Staff working paper 9-2, 2 pages, "Adjusting Journal Entries"
--Staff working paper 9-3, 2 pages, "Proposed Adjusting Journal Entries"

Each of these three working papers listed above describe transactions that may affect the company's books and records, which could affect proper regulatory accounting. These adjustments are considered to report general transactions of the utility and must be individually justified as to whether they report sensitive contractual or competitive business interests, and are appropriately granted confidential classification in accordance with Subsections 366.093(3)(d) and (3)(e), F.S.

Staff's only concern is with public reporting of the type and amount of utility transactions or transactions which affect utility ratemaking. Staff recognizes that identification of a vendor or customer associated with a transaction may qualify for a confidential classification, while the associated reporting of the general nature and amount associated with the transaction itself might not be appropriate for a confidential classification.

Staff believes that there are two types of adjusting entries identified by an external auditor. The first type of adjusting entry is accepted by the utility and becomes part of the general records of the utility. The second type of adjusting entry is not recorded in the utility's books and records and becomes part of the follow up system for such transactions and will be reported as unrecorded in management representations to its auditor and subsequently discussed with the FPUC audit committee. In any case, the information concerning either type of adjusting entry becomes part of the utility's books and records.

Please review information reported on these three sets of working papers and provide additional justification as to why any reported adjusting entries qualify for a confidential classification.

Item 4 -- Staff working paper 9-12, 4 pages, "Issuance of Shares"

In interpreting Section 366.093(3)(f), F.S., the Commission has found that charges and other information pertaining to utility operations concerning employee salaries, other compensation, names, duties, disciplinary reports, job qualifications, or job responsibilities are not eligible for a confidential classification. The information reported in staff working paper 9-12, 4 pages, concerns information about the employee stock option plan (ESOP). As such, it appears to staff that the information would be considered employee compensation information and would not be eligible for a confidential classification.

However if the ESOP information is reported in a format designed by the external auditor, the information could be the unique work plan and strategy of the external auditor which is competitively valuable. Please indicate if this information is presented in a format designed by the external auditor. If this is information from utility source records, please explain why this information, which appears to address employee compensation, should be treated as confidential information.

To summarize

As noted above, staff has questions about whether the above-noted working papers should be afforded confidential classification. In response to these questions, the utility may provide additional justification as to why the Commission should grant the above material a confidential classification. If the utility has not provided additional information to staff within 14 days from the date of this letter or has not modified its pleading, justification, redacted or highlighted copies, staff will present its recommendation and proposed order to the prehearing officer based upon the existing record.

If you have any questions concerning this matter, please contact Mr. Freeman at 850-413-6485 for technical matters, or me at 850-413-6234. Also, you may e-mail Mr. Freeman at bfreeman@psc.state.fl.us, or me at rjaeger@psc.state.fl.us.

Sincerely,



Ralph R. Jaeger
Senior Attorney

RRJ:jb

cc: Division of Regulatory Compliance and Consumer Assistance (Freeman)
Division of the Commission Clerk and Administrative Services (Docket file)