

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for rate increase by City Gas
Company of Florida.

DOCKET NO. 030569-GU
ORDER NO. PSC-04-0731-CFO-GU
ISSUED: July 29, 2004

ORDER GRANTING CONFIDENTIAL TREATMENT TO
DOCUMENT NO. 11851-03 [X-REF DN 11120-03]

I. BACKGROUND

On October 31, 2003, copies of certain portions of staff's working papers obtained or prepared during the "City Gas Company of Florida Rate Case Audit for the Year Ended September 30, 2002, and for the Projected Test Year Ended September 2004," were delivered to City Gas Company of Florida (City Gas or utility) 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 (F.A.C.). On November 21, 2003, City Gas filed a request pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006(3)(a)2. and (4), F.A.C., that selected portions of the staff working papers prepared during the audit receive confidential classification (Document No. 11120-03). The utility's request includes redacted copies for public inspection (Document No. 11852-03) and copies in which the confidential information is highlighted (Document No. 11851-03). On January 16, 2004, after discussions with the staff, City Gas withdrew its request that Working Paper No. 48-15/2 (one page) and Working Paper 49-4/7-2 (pages 2-3) be given a confidential classification.

II. STANDARD FOR GRANTING CONFIDENTIALITY

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 specific items of a statutory provision. Subsections 366.093(3)(b), (d), and (e), Florida Statutes, provide the following exemptions:

(3) 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:

DOCUMENT NUMBER-DATE

08219 JUL 29 04

FPSC-COMMISSION CLERK

* * *

(b) Internal auditing controls and 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 or services on favorable terms.

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

* * *

According to Section 366.093, Florida Statutes, and Rule 25-22.006, F.A.C., the utility has the burden of demonstrating that materials qualify for confidential classification. According to Rule 25-22.006, F.A.C., 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.

III. UTILITY'S REQUEST AND ANALYSIS

The information for which City Gas seeks confidential classification falls into nine categories. Those categories with reference to the specific working paper number (WP No.), and City Gas's justification for protecting each is provided below.

1. Notes Taken From Director's Minutes – WP No. 8

City Gas argues that portions of the notes taken from the Director's minutes concerning plans and strategies, bids for contractual services, and other competitive information would cause harm to the competitive interests of the utility if disclosed. Accordingly, City Gas seeks confidential treatment for the highlighted portions of WP No. 8. In support of its argument, City Gas relies on Commission Order No. PSC-00-1529-CFO-GU, issued August 23, 2000, in Docket No. 000616-GU, In re: Request for confidentiality of documents and information provided during staff surveillance audit for historical 12-month period ended September 30, 1999, by City Gas Company of Florida (Audit Control No. 00-013-4-1). A review of that Order and the relevant documents shows that the highlighted information under this category contains proprietary confidential business information as defined by Paragraph 366.093(3)(e), Florida Statutes, because it consists of sensitive business strategies that have not been released to the public.

2. Notes Taken From Internal Audit Report – WP No. 9-1

City Gas uses an outside accounting firm to perform internal audits. The utility asserts notes taken from an internal audit qualify for a confidential classification on the basis that internal audits are set out as a type of confidential information listed within Section

366.093(3)(b), Florida Statutes. All the documents in this category pertain to an internal audit of the utility, in particular notes taken from internal audit reports and associated materials, and, therefore, qualify for confidential treatment pursuant to Section 366.093(3)(b), Florida Statutes.

3. Audit Strategies and Work Plans of the Company's External Auditor – WP No. 9-2

City Gas seeks confidential treatment for the work papers of the utility's external auditor because they reveal work plans and audit strategies that the audit firm considers to be confidential work product. According to City Gas, the Commission has a long-standing policy to treat such information as proprietary confidential business information under Section 366.093, Florida Statutes. In support of this argument, City Gas cites Commission Order No. PSC-01-1038-CFO-EI, issued April 30, 2001, in Docket No. 000814-EI, In re: Request for confidentiality of documents and information provided to Florida Public Service Commission in connection with audit of 1999 earnings (Audit Control No. 00-054-4-2), by Florida Public Utilities Company, and Order No. 25297, issued November 5, 1991, in Docket No. 890190-TL, In re: Petition of Citizens of State of Florida to investigate Southern Bell Telephone and Telegraph Company's cost allocation procedures. Because disclosing the external auditor's work plans and audit strategies could harm the external auditor's competitive interests, all of the information in WP No. 9-2 is determined to be proprietary confidential business information and qualifies for a confidential classification pursuant to Section 366.093(3)(e), Florida Statutes.

4. Notes Taken From the Working Papers of the Company's External Auditor for WP Nos. 9-4 Through 9-7, 9-9, and 9-11 (Page 1, Lines 1-3) Pertaining to Sensitive Competitive Business Strategies

City Gas asserts that the notes taken from the working papers of the Company's External Auditor for WP Nos. 9-4 through 9-7, 9-9, and 9-11 (page 1, lines 1-3), concerning assessment of liabilities from injury and damage claims, internal business plans and strategies, and assessment of pending litigation and obtained by its external auditor contain sensitive information which if released would harm City Gas, or, ultimately, the ratepayer due to the resultant higher business costs and charges. For the purposes of granting a confidential classification, the Commission does not consider these client documents as part of the external auditor's strategies and work plan. To obtain a confidential classification for this type of sensitive material, the company must show that release of this material would otherwise cause harm. A review of the utility's request and the information in this category shows that these documents contain information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information. Therefore, because the information in this category contains information relating to competitive interests, it qualifies for confidential treatment pursuant to the provisions of Sections 366.093(3)(e), Florida Statutes.

5. Notes Taken From the Working Papers of the Company's External Auditor for WP Nos. 9-8, 9-10, and 9-11, Page 1 (Lines 4-18) Pertaining to Sensitive Contractual Information

City Gas asserts that the notes taken from the working papers of the Company's External Auditor for WP Nos. 9-8, 9-10, and 9-11 (page 1, lines 4-18), concerning financing of a meter lease and potential financing plans, contain contractual information the disclosure of which would impair the ability of the utility or an affiliate to contract for goods or services.

A review of the utility's request and the information in this category shows that these documents contain contractual information the disclosure of which would impair the ability of the utility or an affiliate to contract for goods or services. Therefore, the information in this category contains contractual data that qualifies for confidential treatment pursuant to the provisions of Sections 366.093(3)(d), Florida Statutes.

6. The External Auditor's Detailed Audit Fee Estimate – WP No. 9-14

The information in this category contains contractual information concerning estimated costs for performing the external financial audit. The cost estimates are not publicly released, and City Gas claims release of this information would harm the ability of the utility to contract for audit services on favorable terms. Because the information in this category contains contractual data, it qualifies for confidential treatment pursuant to the provisions of Section 366.093(3)(d), Florida Statutes.

7. Actuarial Analysis – WP Nos. 48-15/2-5 and 49-4/9-1

City Gas asserts that the letter report from the company's actuary firm and attached exhibit presents an analysis of Pension Plan and Retirement Medical Plan budget projections and liability estimates. City Gas further alleges that the information relates to internal business planning and strategies, the release of which would harm the business interests of the company. City Gas then notes that the Commission has previously afforded confidential treatment to such information and cites Commission Order No. PSC-01-2475-PCO-EI, issued December 19, 2001, in Docket No. 000824-EI, In re: Review of Florida Power Corporation's earnings, including effects of proposed acquisition of Florida Power Corporation by Carolina Power & Light. Although Section 366.093(3)(f), Florida Statutes, provides that compensation information may not be granted a confidential classification, the information presented here consists of planning documents as opposed to the reporting of actual implemented decisions. Therefore, the information in this category reveals business strategies and information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information, and qualifies for confidential treatment pursuant to the provisions of Section 366.093(3)(e), Florida Statutes.

8. NUI Corporation's Utilities Business Services (UBS) – WP No. 52-1/6

City Gas asserts that the highlighted information concerns identification of clients and rates charged for an unregulated subsidiary – UBS. City Gas further alleges that such information is customer specific, and proprietary to the customers and NUI Corporation, and release of such information would cause competitive harm to the NUI Corporation by potentially allowing competitors to meet or beat the rates charged by UBS. Therefore, the information in this category reveals information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information, and qualifies for confidential treatment pursuant to the provisions of Section 366.093(3)(e), Florida Statutes.

9. State and Federal Income Tax Returns – WP Nos. 54-4 and 54-5

City Gas seeks confidential treatment of its utility tax returns. It is the Commission's policy to keep federal and state tax returns confidential. See Order No. PSC-99-0462-CFO-EI, issued March 5, 1999, in Docket No. 981743-EI, In re: Request for confidential classification of certain material provided in connection with Grey Tax Audit (Audit Control No. 98-190-4-1) by Florida Power & Light Company, and Order No. PSC-92-1073-CFO-WS, issued September 29, 1992, in Docket No. 920199-WS, In re: Application for rate increase in Brevard, Charlotte/Lee, Citrus, Clay, Duval, Highlands, Lake, Marion, Martin, Nassau, Orange, Osceola, Pasco, Putnam, Seminole, Volusia, and Washington Counties by Southern States Utilities, Inc.; Collier County by Marco Shores Utilities (Deltona); Hernando County by Spring Hill Utilities (Deltona); and Volusia County by Deltona Lakes Utilities (Deltona). This policy is consistent with the IRS's treatment of federal tax returns under 26 U.S.C. Section 6103(a), and the Florida Department of Revenue's treatment of state tax returns under Section 213.053(2), Florida Statutes. As such, I find that City Gas's request for confidential treatment of tax returns shall be granted, and the redacted information is exempt from Section 119.07(1), Florida Statutes, and not subject to disclosure pursuant to Section 366.093(3), Florida Statutes.

IV. CONCLUSION

Based upon a review of the utility's filing, and noting the withdrawal of the requests for Working Paper 48-15/2 and Working Paper 49-4/7-2, for the reasons presented above, I find that the utility's request, as modified, shall be granted. The information as listed below shall be granted a confidential classification for the reasons as indicated:

Staff Work Paper Number	Page(s)	Lines	Type of Information Classified Confidential
8	1	1-14	Sensitive unreleased business strategies contained in notes taken from Board of Director's minutes – Section 366.093(3)(e), F.S.
8	2	1-9	Sensitive unreleased business strategies contained in notes taken from Board of Director's minutes – Section 366.093(3)(e), F.S.
8	3	1-11	Sensitive unreleased business strategies contained in notes taken from Board of Director's minutes – Section 366.093(3)(e), F.S.
8	4	1-10	Sensitive unreleased business strategies contained in notes taken from Board of Director's minutes – Section 366.093(3)(e), F.S.
8	6	1	Sensitive unreleased business strategies contained in notes taken from Board of Director's minutes – Section 366.093(3)(e), F.S.
8	7	1-2	Sensitive unreleased business strategies contained in notes taken from Board of Director's minutes – Section 366.093(3)(e), F.S.
8	8	1-4	Sensitive unreleased business strategies contained in notes taken from Board of Director's minutes – Section 366.093(3)(e), F.S.
8	9	1-7	Sensitive unreleased business strategies contained in notes taken from Board of Director's minutes – Section 366.093(3)(e), F.S.
8	10	1-5	Sensitive unreleased business strategies contained in notes taken from Board of Director's minutes – Section 366.093(3)(e), F.S.
8	11	1-6	Sensitive unreleased business strategies contained in notes taken from Board of Director's minutes – Section 366.093(3)(e), F.S.
8	12	1-5	Sensitive unreleased business strategies contained in notes taken from Board of Director's minutes – Section 366.093(3)(e), F.S.
9-1	32	All	Internal Auditor's Report – Section 366.093(3)(b), F.S.
9-2	1-3	All	External auditor's work plans and strategies – Section 366.093(3)(e), F.S.

Staff Work Paper Number	Page(s)	Lines	Type of Information Classified Confidential
9-4	1	1-17	Sensitive assessment of injury and damage claims – Section 366.093(3)(e), F.S.
9-5	1	1-45	Sensitive assessment of injury and damage claims – Section 366.093(3)(e), F.S.
9-5	2	1-10	Sensitive assessment of injury and damage claims – Section 366.093(3)(e), F.S.
9-6	1	1-36	Sensitive assessment of injury and damage claims – Section 366.093(3)(e), F.S.
9-7	1	1-15	Sensitive assessment of injury and damage claims – Section 366.093(3)(e), F.S.
9-8	1	1-3	Sensitive information concerning financing of a meter lease – Section 366.093(3)(d), F.S.
9-9	1	1-14	Sensitive information concerning internal business plans and strategies – Section 366.093(3)(e), F.S.
9-9	2	1-4	Sensitive information concerning internal business plans and strategies – Section 366.093(3)(e), F.S.
9-9	2	1-4	Sensitive information concerning internal business plans and strategies – Section 366.093(3)(e), F.S.
9-9	3	1-3	Sensitive information concerning internal business plans and strategies – Section 366.093(3)(e), F.S.
9-10	1	1-2	Sensitive potential financing arrangements – Section 366.093(3)(d), F.S.
9-11	1	1-3	Sensitive assessment of pending litigation – Section 366.093(3)(e), F.S.
9-11	1	4-18	Sensitive potential financing arrangements – Section 366.093(3)(d), F.S.
9-14	4	1	Estimate of audit fees from the external auditor – Section 366.093(3)(d), F.S.
48-15/2-5	1-6	All	Sensitive pension plan and retirement medical plan projections and estimates – Section 366.093(3)(e), F.S.
49-4/9-1	1	1-8	Letter report from actuarial firm discussing budget projections for internal plan purposes – Section 366.093(3)(e), F.S.
49-4/9-1			Letter report from actuarial firm discussing budget projections for internal plan purposes – Section 366.093(3)(e), F.S.
52-1/6	1	1-20	Customer names and rates charged for a non utility

Staff Work Paper Number	Page(s)	Lines	Type of Information Classified Confidential
			business service – Section 366.093(3)(e), F.S.
54-4	1-17	All	State income/franchise tax returns – Section 366.093(3), F.S.
54-5	1-179	All	Federal tax returns – Section 366.093(3), F.S.

City Gas requests that this material be granted a confidential classification for at least 18 months. Staff's audit working papers are retained on file for 25 years. According to the provisions of Section 366.093(4), Florida Statutes, absent good cause shown, confidential classification is limited to 18 months. Because the utility has not shown cause for a longer period, the period of confidential classification shall be set at 18 months. As deemed necessary, the utility may request an extension of the confidential classification before the period ends.

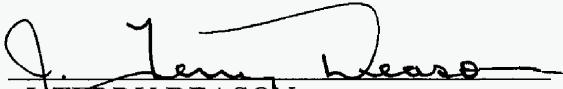
Based on the foregoing, it is

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that the revised request of City Gas Company of Florida for Confidential Classification, as set out above, 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 for the material specified above shall expire eighteen months from the date of the issuance of this Order in the absence of a renewed request for confidentiality. It is further

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 J. Terry Deason, as Prehearing Officer, this 29th day of July, 2004.


J. PERRY DEASON
Commissioner and Prehearing Officer

(S E A L)

RRJ

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; or (2) 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.