

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for rate increase by Florida
Public Utilities Company.

DOCKET NO. 040216-GU
ORDER NO. PSC-05-0317-CFO-GU
ISSUED: March 21, 2005

ORDER GRANTING CONFIDENTIAL TREATMENT TO
DOCUMENT NO. 09724-04 [X-REF DN 09134-04]

I. BACKGROUND

On August 13, 2004, copies of certain portions of staff's working papers obtained or prepared during the "Florida Public Utilities Company Rate Case Audit for the Projected Year Ended December 31, 2005" were delivered to Florida Public Utilities Company (FPUC or Company) at the audit exit conference. The Company 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 September 3, 2004, FPUC filed a request pursuant to Section 366.093, F.S., 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. 09134-04). The Company's request includes redacted copies for public inspection (Document No. 09723-04), and copies on which the confidential information is highlighted (Document No. 09724-04). On October 21, 2004, after discussions with Commission staff and having received a letter dated October 7, 2004 concerning perceived deficiencies, FPUC withdrew its request concerning Workpaper (WP) 8 (six pages); WP 8-1 (five pages); WP 8-3 (three pages); WP 9-2 (two pages); WP 9-3 (two pages); and WP 9-12 (four pages).

II. STANDARD FOR GRANTING CONFIDENTIALITY

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 specific items of a statutory provision. Subsections 366.093(3)(b), (d), and (e), F.S., 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

02731 MAR 21 05

FPSC-COMMISSION OF PUBLIC UTILITIES

* * *

(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, F.S., 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 ratepayers harm.

III. COMPANY'S REQUEST AND ANALYSIS

The information for which FPUC seeks confidential classification falls into six categories. These categories, with reference to the specific working paper number (WP No.) and FPUC's justification for protecting each, are discussed below.

1. Information from the external auditor's working papers concerning discussion of material found, audit recommendations, and actions by the company --
 - a. WP 9, eight pages, entitled "External audit work papers"
 - b. WP 9A, 12 pages, entitled "General risk assessment summary report"
 - c. WP 9-1, five pages, entitled "External audit work papers"
2. Information from the external auditor's working papers concerning plans and actions of the company --
 - a. WP 9-4, two pages, entitled "External audit working papers"
 - b. WP 9-5, ten pages, entitled "Trial balance"
 - c. WP 9-9, 22 pages, entitled "FASB 109"
 - d. WP 9-10, three pages, entitled "Customer deposit"
 - e. WP 9-11, three pages, entitled "Accounts payable search for unusual items"

For the external auditor materials listed above, FPUC states that the “information contained in the documents identified in this request are intended to be and are treated by the Company as private in that disclosure of the information would cause harm to the ratepayers and/or the business operations of the Company. Moreover, FPUC has requested protection for these materials because they report accountant–client communications between FPUC and its external auditor. Also, FPUC asserts these materials contain internal auditing controls, and, therefore, qualify for confidential classification as provided by Section 366.093(3)(b), F.S. Lastly, FPUC requests that these materials be considered as sensitive competitive business information, the release of which would harm the competitive business of the provider of that information, pursuant to the exemption provided by Section 366.093(3)(e), F.S.

This Commission has not extended the confidentiality treatment prescribed for internal audits to external audits. See, Order No. 25297, issued November 11, 1991, in Docket 890190-TL, In re: Petition of the Citizens of the State of Florida to investigate Southern Bell Telephone and Telegraph Company’s cost allocation procedures. There is no reason to change this practice here.

However, it is appropriate to look at the content of the materials. Here, the materials reveal the competitive business strategies and work program of the external auditor. Also, some of the materials consist of documents and information belonging to the Company which concern non-residential gas service. Because non-residential gas service is subject to competition, release of this material may harm the competitive business of FPUC and its affiliates. Therefore, all the above material shall be granted a confidential classification on the basis of the exemption provided by Section 366.093(3)(e), F.S., in that the material is sensitive competitive business information the release of which would harm the provider of the information.

3. Audit opinion letter from attorneys to the Company -- WP 9-6, eight pages, entitled “Threatened or pending litigation”

FPUC asserts the audit opinion letter should be granted confidentiality on the basis that the information is subject to the attorney-client privilege. FPUC also asserts that: “Knowledge of counsel’s assessments of suits, plans and options would be of value to parties, competitors, and contractors, both present and future and such information is exempt from disclosure pursuant to Section 366.093(3)(d) and (e), Florida Statutes.”

The Company’s argument that the above-noted opinion letter should be granted a confidential classification on the basis that the material reports attorney-client information is rejected because the utility did not raise the privilege when the material was provided. Extremely sensitive information such as trial strategies should not have been released by the Company. Nonetheless, release of the information would impair the ability of the company to contract and impair the competitive business of the company which could ultimately harm the ratepayer. Therefore, pursuant to subparagraphs 366.093(3)(d) and (e), F.S., the opinion letter shall be granted confidential treatment.

4. Information from the external auditor's working papers concerning construction projects -- WP 9-15, 71 pages, entitled "Construction work in progress"

FPUC asserts the information drawn from the external auditors working papers reports activities associated with construction projects, including non-regulated projects and contractual information, which could be used to identify customers and business plans should be granted confidential treatment.

Release of this information would allow identification of Company customers and future business plans and would impair the ability of the company to contract in the future and impair the competitive business of the company which could ultimately harm the ratepayer. Therefore, pursuant to subparagraphs 366.093(3)(d) and (e), F.S., the information from the external auditor's working papers shall be granted confidential treatment.

5. Communications between the external auditor and the Company discussing the Company, its operations, internal controls and overall characteristics -- WP 9-16, 13 pages, entitled "Related parties"

FPUC states this document is a memorandum prepared by external auditors consisting of a series of questions and answers discussing and describing: the Company, its operations, internal controls, and overall characteristics. FPUC argues that such information would be of value to contractors, competitors and potential bidders, and, if disclosed, would impair the ability of the Company to contract and would impair the competitive business of the Company.

Information regarding related party transactions of a utility is reported to the Commission each year pursuant to Rule 25-7.135, F.A.C. In addition, the impact of related party transactions is also reported anytime a gas utility requests an increase in rates under Rule 25-7.039, F.A.C. This information is available to the public, and is generally not granted confidential treatment.

The Company's assertion that the release of this related party information may "harm the ratepayers and the business operations of the company" hinges upon the question of whether disclosing the business organization of the Company beyond what is already reported publicly would harm the competitive business of the Company. The Company has not described how revealing this additional information would cause harm. Although the Company has not adequately described why release of this related party information would harm the Company, it appears that such release might harm the business of the external auditor because it reports a part of the proprietary work program and strategy of the external auditor in assessing the impact that related party transactions have upon the external audit. This information is a valuable competitive method developed by the external auditor. Release of such information could harm the competitive business of the external auditor. Therefore, pursuant to subparagraph 366.093(3)(e), F.S., this information shall be granted confidential treatment.

6. Information from the external auditor’s working papers discussing the Company’s internal auditing process -- WP 9-17, one page, entitled “Customer Advances”

FPUC asserts a memorandum prepared by the Company’s external auditors discussing the internal audit process of the Company should qualify for a confidential classification because Section 366.093(3)(b), F.S., allows protection for internal auditing controls and reports of internal auditors.

The cited information discusses internal auditing processes or concerns regarding internal auditing controls or reports. Therefore, pursuant to subparagraph 366.093(3)(b), F.S., this information shall be granted a confidential classification.

IV. CONCLUSION

Based upon a review of the utility’s filing, and noting the withdrawal of the requests for Workpapers: 8, six pages; 8-1, five pages; 8-3, three pages; 9-2, two pages; 9-3, two pages; and 9-12, four pages, 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	Description	Page(s)	Line(s)	Type of Information Classified Confidential
9	External audit work papers	1-8	All	Sensitive competitive business information – Section 366.093(3)(e), F.S.
9A	General risk assessment summary report	1-12	All	Sensitive competitive business information – Section 366.093(3)(e), F.S.
9-1	External audit work papers	1-5	All	Sensitive competitive business information – Section 366.093(3)(e), F.S.
9-4	External audit working papers	1-2	All	Sensitive competitive business information – Section 366.093(3)(e), F.S.
9-5	Trial balance	1-10	All	Sensitive competitive business information – Section 366.093(3)(e), F.S.
9-6	Pending or threatened litigation	1-8	All	Sensitive contractual and competitive business information – Sections 366.093(3)(d) & (e), F.S.

Number	Description	Page(s)	Line(s)	Type of Information Classified Confidential
9-9	FASB 109	1-22	All	Sensitive competitive business information – Section 366.093(3)(e), F.S.
9-10	Customer deposit	1-3	All	Sensitive competitive business information – Section 366.093(3)(e), F.S.
9-11	Accounts payable search for unusual items	1-3	All	Sensitive competitive business information – Section 366.093(3)(e), F.S.
9-15	Construction work in progress	71	All	Sensitive contractual and competitive business information – Sections 366.093(3)(d) & (e), F.S.
9-16	Related parties	1-13	All	Sensitive contractual and competitive business information – Sections 366.093(3)(d) & (e), F.S.
9-17	Customer advances	1	All	Internal auditing controls and reports of internal auditors – Section 366.093(3)(b), F.S.

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. Because the Company has not shown good cause for a longer period, the period of confidential classification shall be set at 18 months. As deemed necessary, the Company may request an extension of the confidential classification before the period ends.

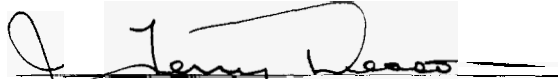
Based on the foregoing, it is

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that the revised request of Florida Public Utilities Company 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 21st day of March, 2005


J. TERRY DEASON
Commissioner and Prehearing Officer

(SEAL)

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.