

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for rate increase by City Gas Company of Florida.) DOCKET NO. 960502-GU
) FILED: OCTOBER 3, 1996

MOTION TO COMPEL DISCOVERY

The staff of the Florida Public Service Commission by and through its undersigned counsel move the Commission to compel City Gas Company of Florida (City Gas) to respond to Staff's Second Request for Production of Documents to City Gas Company of Florida. (No. 15) pursuant to Rule 1.380, Florida Rules of Civil Procedures, Rule 25-22.034, Florida Administrative Code and Section 120.58(1)(b), Florida Statutes.

1. On August 9, 1996, the staff of the Florida Public Service Commission served City Gas with Staff's Second Request for Production of Documents to City Gas Company of Florida (No. 15). Staff requested a copy of the investigative report prepared by Pitney, Hardin, Kipp, and Szuch concerning the relationship between Jack Langer and Edgar Ball.

ACK _____
AFA 1 2. On September 15, 1996, City Gas filed its objections to
APP _____ Staff's Second Request for Production of Documents to City Gas
CAF _____ Company of Florida (No. 15). City Gas declined to provide the
CMU _____ report because it asserts the report is protected by attorney-
CTR _____ client privilege and work product privilege. The Company stated
EAG 1 that "Pitney, Hardin, Kipp and Szuch is a law firm that was
LEG 5 retained by NUI to provide legal counsel regarding matters related
LIN _____ to Jack Langer."
OPC _____
RCH _____
SEC 1
WAS _____
OTH _____

DOCUMENT NUMBER-DATE
10595 OCT-3-96
FPSC-RECORDS/REPORTING

3. Edgar Ball is an officer of Medley Construction, Inc. (Medley). Medley received a contract from City Gas to perform construction services.

4. Jack Langer is a former officer of City Gas. Mr. Langer also had a personal business relationship with Edgar Ball.

5. This proceeding involves City Gas' request for an increase in its rates. The Company's requested revenue requirement includes an approximately \$9 million increase in the Company's rate base. The increase in rate base includes the Company's \$4.6 million investment in infrastructure to serve its franchise in the City of Port St. Lucie.

6. Pursuant to Section 366.06, Florida Statutes, in fixing fair, just and reasonable rates, the Commission shall investigate and determine the actual legitimate costs of property of the utility.

7. Staff needs the investigative report to determine that the amounts paid by City Gas to Medley are legitimate costs which are appropriate for recovery from City Gas' ratepayers.

8. The information contained in Staff's Second Request for Production of Documents to City Gas Company of Florida (No. 15) is relevant and clearly falls within the scope of discovery for this docket. Rules 1.280 and 1.350 of the Florida Rules of Civil Procedure allow the discovery of any document relevant to the subject matter of a pending action. See Bystrom v. Whitman, 488 So.2d 520, 523 (Fla. 1986). The rules pertaining to discovery

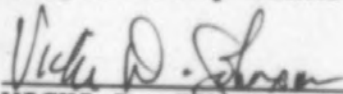
should be broadly interpreted. See Jones v. Seaboard Coast Line Rr. Co., 297 So.2d 861 (Fla. 2nd DCA 1974)

9. City Gas has the burden of establishing the requested document is protected by attorney-client privilege. Southern Bell Telephone & Telegraph Company v. Deason, 632 So.2d 1377, 1383 (Fla. 1994). In Deason, the Court set forth criteria for determining whether a corporation's communications are protected by attorney-client privilege. Included in those criteria is the requirement that the communication would not have been made but for the contemplation of legal services. (emphasis supplied)

10. Where a document is created for a business purpose, as well as a legal purpose, that document is not protected by either the attorney-client privilege or the work product doctrine. First Chicago International v. United Exchange Co. Ltd., 125 F.R.D. 55 (S.D.N.Y 1989), Soeder v. General Dynamics Corporation, 90 F.R.D. 253 (D.Nev. 1980).

WHEREFORE, staff moves the Florida Public Service Commission for an order compelling City Gas Company of Florida to produce the documents requested in Staff's Second Request For Production of Documents to City Gas Company of Florida No. 15.

Respectfully submitted,



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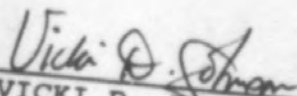
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that one true and correct copy of Staff's Motion to Compel has been furnished by U. S. Mail to Mr. Joseph McGlothlin, McWhirter Reeves McGlothlin Davidson Rief and Bakas, 117 South Gadsden Street, Tallahassee, Florida 32301, on behalf of City Gas Company of Florida and that one true and correct copy has been furnished by U. S. Mail this 3rd day of October, 1996, to the following:

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