

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for rate) DOCKET NO. 960502-GU
increase by City Gas Company of) ORDER NO. PSC-96-1534-CFO-GU
Florida.) ISSUED: December 17, 1996
_____)

ORDER GRANTING CONFIDENTIALITY OF CERTAIN AUDIT WORKPAPERS

Pursuant to Section 366.093, Florida Statutes and Rule 25-22.006, Florida Administrative Code, on September 3, 1996, City Gas Company of Florida (City Gas or Company) requested confidential treatment of certain audit workpapers compiled during the staff audit conducted in this docket. In support of that request, the Company submitted a copy of the audit workpapers which was designated as Document No. 09309-96. On October 16, 1996, staff notified the Company by letter, that its request was facially deficient. On October 21, 1996, the Company filed an amended request to correct the deficiencies. The Company withdrew Document No. 09309-96 and replaced it with another set of the relevant workpapers (Document No. 11210-96). This Order addresses Document No. 11210-96 and Document No. 08597-96 which contains the original staff workpapers.

At the outset, it is found that the Company's amended request is considered to be timely filed since the Company's original request was filed within 21 days of the exit meeting as required by Rule 25-22.006, Florida Administrative Code.

Florida law presumes that documents submitted to governmental agencies shall be public records. The only exceptions to this presumption are the specific statutory exemptions provided in the law and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. This presumption is based on the concept that government should operate in the "sunshine." It is the company's burden to demonstrate that the documents fall into one of the statutory examples set out in Section 366.093, Florida Statutes, or to demonstrate that the information is proprietary confidential information, the disclosure of which will cause the Company or its ratepayers harm.

In order to establish that material is proprietary confidential business information under Section 366.093(3) Florida Statutes, a utility must demonstrate (1) that the information is intended to be and is treated as confidential, and (2) that the disclosure of the data would cause harm to the utility or its ratepayers.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

City Gas seeks to protect workpapers that contain three categories of information. The Company asserts that all the material included in this request is intended to be and is treated by City Gas as private and has not been publicly disclosed.

City Gas requests confidential classification for workpapers which contain information obtained from the Company's internal audits. City Gas argues that the information is entitled to protection because it discusses the internal controls and inner workings of the Company. The Company also asserts that disclosure of this information may have a chilling effect on utilities' willingness to perform such investigations or share the results with staff. Section 366.093(3)(b), Florida Statutes, specifically exempts information found in internal auditing controls and in reports of internal auditors from public disclosure. The Commission granted confidential classification to similar materials for Florida Power & Light Company by Order No. PSC-96-0198-CFO-EI.

City Gas asserts that several documents in the workpapers contain customer-specific information, such as account numbers, names and addresses of customers and specific consumption data. According to the Company, this information is proprietary to the customer whose competitive posture could be jeopardized by disclosure. The Company also states that it closely guards this information because public availability of this data would enable its competitors to target the customers. Section 366.093(3)(e), Florida Statutes, exempts from public disclosure information relating competitive interests, the disclosure of which would impair the competitive business of the provider of the information. The Commission has consistently found that disclosure of customer-specific usage data may harm the customer or the utility's competitive interests, therefore, it is entitled to confidential treatment.

City Gas has also requested confidential classification of a letter from the Company's attorney which discusses the facts related to on-going litigation. City Gas contends that these proceedings are being vigorously contested and are of a sensitive nature because they involve former Company executives. City Gas argues that if the information becomes available to adverse parties involved in the litigation, it would cause harm to the utility, and ultimately to ratepayers. The utility's request for confidential protection of sensitive information related to litigation seems to meet the definition of "proprietary confidential business information" set forth in Section 366.093(3), Florida Statutes in that the information is held strictly private and could cause harm to the utility in the future. It is noted that, pursuant to Section 119.07(1)(1), Florida Statutes, a public record prepared by

a agency attorney, for or in anticipation of litigation, which reflects a mental impression, conclusion, litigation strategy or legal theory, are exempt from public disclosure until the litigation is concluded. The material at issue here, is similar to the types of materials covered under Section 119.07(1) (1).

Upon consideration, I find that City Gas' request for confidential treatment shall be granted. The specific audit workpaper numbers and lines relating to the documents that petitioner has requested confidential treatment, along with my findings, are listed in the table which follows:

Documents 08597-96 and 11210-96				
Workpaper Number	Pages	Lines	Finding	Reason
8-1	1-3	All	Grant	Reports Company's Impressions Regarding Ongoing Litigation
9-1	1-12	All	Grant	Reports Information Obtained from Company Internal Audits
9-1/1	1-2	All	Grant	Reports Information Obtained from Company Internal Audits
41-4/1A	1-6	All	Grant	Reports Information Obtained from Company Internal Audits and Reports Customer-Specific Usage Information

Documents 08597-96 and 11210-96				
Workpaper Number	Pages	Lines	Finding	Reason
41-4/1B	1-13	All	Grant	Reports Customer-Specific Usage Information

City Gas has requested that the material not be declassified and that it be returned to the Company at the conclusion of the rate case. Section 366.093(4), Florida Statutes, provides that confidential material shall be returned to the utility when the Commission no longer needs the information to conduct its business. Document No. 11210-96 presents copies of the audit work papers filed by the utility in explanation of its filing. These documents shall be returned to the utility after the assigned confidential period has expired. The related document numbered 08597-96, however, presents the original audit work papers and shall be retained in accordance with the regular retention of staff work papers. These papers record work performed, record staff observations during fieldwork, and form the basis for subsequent staff audits. Should City Gas desire continued confidential treatment of the original work papers, it must request an extension of the period before the conclusion of the period assigned herein. This treatment is consistent with the Commission's policy. See Order No. PSC-96-0198-CFO-EI, issued February 13, 1996.

Section 366.093(4), Florida Statutes, also provides that the duration for confidential protection shall be limited to 18 months unless good cause is shown to allow a longer period. City Gas has not shown good cause for a confidentiality period greater than the period specified in Section 366.093(4). Thus, it is found that Document Nos. 08597-96 and 11687-96 shall be kept confidential for a period of 18 months.

Based on the foregoing, it is

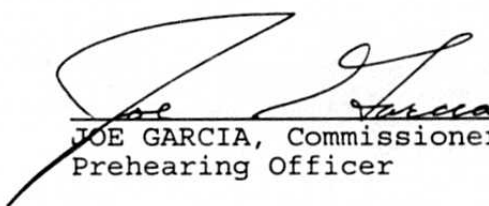
ORDERED by Commissioner Joe Garcia, as Prehearing Officer, that City Gas Company of Florida's request for confidential treatment of Document Nos. 08597-96 and 11210-96 is granted as set forth in the body of this Order. It is further

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ORDERED that this information shall remain confidential for the period of time set forth in the body of this Order. It is further

ORDERED that this Order will be the only notification by the Commission to the parties concerning the expiration of the confidentiality period.

By ORDER of Commissioner Joe Garcia, as Prehearing Officer, this 17th day of December, 1996.



JOE GARCIA, Commissioner and
Prehearing Officer

(S E A L)

VDJ

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

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, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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

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the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, 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.