

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for confidential classification of audit workpapers pertaining to Commission staff's 1996 earnings review for potential overearnings in gas and electric divisions by Florida Public Utilities Company.

DOCKET NO. 970893-PU
ORDER NO. PSC-97-1096-CFO-PU
ISSUED: September 23, 1997

Order Granting Florida Public Utilities Company's
Request for Confidential Classification

On July 15, 1997, Florida Public Utilities Company (FPU), pursuant to Section 366.093, Florida Statutes and Rule 25-22.006(4), Florida Administrative Code, filed a request for confidential classification of portions of staff's audit workpapers pertaining to the 1996 Earnings Review for Potential Earnings of FPU's gas and electric divisions. The documents specified are Document Nos. 06930-97 and 07053-97.

Documents submitted to governmental agencies in Florida are public records. The only exceptions 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 is based on the concept that government should operate in the "sunshine". Rule 25-22.006(4), Florida Administrative Code, provides that 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.

Section 366.093(3), Florida Statutes, provides the following definition for proprietary confidential business information:

The term "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

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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.

Rule 25-22.006(4)(c), Florida Administrative Code, requires that the company demonstrate by a line-by-line or field-by field justification how the information asserted to be confidential qualifies as one of the statutory examples listed in Section 366.093(3), Florida Statutes. If no statutory example is applicable, then the company shall include a statement explaining how the ratepayers or the company's operations will be harmed by disclosure.

Examination of the company's filing reveals the confidential material in the listed documents to consist of a report to Commission auditors regarding aspects of litigation involving the company including internal correspondence regarding invoices paid to date and copies of invoices sent from the company's lawyers to the company. These materials include "the names of present and potential consultants and witnesses, a description of each task that FPU's attorneys have performed on behalf of FPU in the FEC litigation, the strategies and options that have been considered and addressed by the attorneys and the amounts that FPU has expended to date to pursue the litigation." The utility states that this material "... is attorney-client work product that is proprietary and confidential".

Disclosure of this information could weaken the company's position in this litigation and ultimately increase the cost of service and harm the utility or the ratepayers.

In view of the above, it is

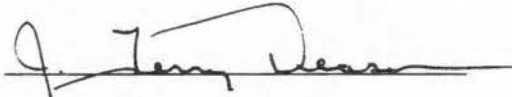
ORDERED by the Commissioner J. Terry Deason, as Prehearing Officer, that the request of Florida Public Utilities Company for confidential classification of Document Nos. 06930-97 and 07053-97 is granted. It is further

ORDERED that pursuant to Section 366.093, Florida Statutes and Rule 25-22.006, Florida Administrative Code, the period of confidential classification shall expire eighteen (18) months from the date of issuance of this Order in the absence of a renewed

request for confidentiality pursuant to Section 366.093. 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 23rd day of September, 1997.



J. TERRY DEASON, Commissioner
and Prehearing Officer

(S E A L)

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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.

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 25-22.038(2), 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 the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of

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 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.