

State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

### -M-E-M-O-R-A-N-D-U-M-

**DATE:** November 5, 1998

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

**FROM:** DIVISION OF LEGAL SERVICES (G. JAYE) *⑩ RVE a*  
DIVISION OF AUDITING AND FINANCIAL ANALYSIS (D. VANDIVER, REVELL) *JS DM*  
DIVISION OF ELECTRIC AND GAS (BULECZA-BANKS) *REB RET 102*

**RE:** DOCKET NO. 981039-GU - REQUEST FOR AUTHORIZATION, PURSUANT TO RULE 25-7.015, F.A.C., TO KEEP RECORDS OUT OF STATE, BY CITY GAS COMPANY OF FLORIDA.

**AGENDA:** 11/17/98 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\LEG\WP\981039.RCM

#### CASE BACKGROUND

Pursuant to Rule 25-7.015, Florida Administrative Code, City Gas Company of Florida, an operating division of NUI Corporation (NUI/City Gas or Company), filed a Request for Authorization to Keep Records Out-Of-State on August 17, 1998. NUI/City Gas observed in its filing that Rule 25-7.015, Florida Administrative Code:

[A]llows a utility to keep records out-of-state when so authorized by the Florida Public Service Commission. The Rule also provides that such records shall be open for inspection by the Commission, and that any utility authorized to keep its records outside of the state shall

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reimburse the Commission for its reasonable travel expenses for any out-of-state audit.

NUI/City Gas stated in its request that it is undergoing organizational restructuring designed to improve efficiency. As a part of this reorganization, the Company has centralized all accounting and bookkeeping functions for NUI's various operating divisions "so that these functions will no longer be performed at the location of the operating divisions." (Request at 2) NUI/City Gas' Request asserts that the bookkeeping and accounting functions will now be performed at NUI headquarters in New Jersey. According to the Request, Commission approval of the Request would result in permanent removal of these records from Florida to New Jersey.

#### **DISCUSSION OF ISSUES**

**ISSUE 1:** Should City Gas Company of Florida, a Division of NUI Corporation, be ordered to show cause why it should not be fined for apparent failure to comply with Rule 25-7.015, Florida Administrative Code, in that it removed its records from Florida before seeking authorization to do so?

**RECOMMENDATION:** No. Even though City Gas Company of Florida's records were moved to NUI's New Jersey home offices before City Gas sought permission to do so pursuant to Rule 25-7.015, Florida Administrative Code, staff believes that a show cause order should not be issued. (JAYE, VANDIVER)

**STAFF ANALYSIS:** Staff learned that NUI/City Gas had moved relevant records regarding checks and billing information to its New Jersey office without first seeking permission of the Commission to do so as required by Rule 25-7.015, Florida Administrative Code. The rule was enacted to ensure that records would be available to Commission audit staff in carrying out required audits of regulated companies.

Commission audit staff has found it increasingly difficult to audit City Gas from the Hialeah location, however, the one audit conducted of the parent company's records in New Jersey by Commission auditors was successful. Staff believes that, because of the reorganization of City Gas under its parent company, NUI,

future audits can be successfully conducted in New Jersey at City Gas Company's expense.

In its Request City Gas asserts that:

Improvements in efficiency, and resulting cost savings will be achieved if NUI Corporation is able to keep the records of its Florida, North Carolina, Maryland, Pennsylvania, New York, and New Jersey operating divisions at a single, central location.

City Gas assures the Commission that all records will be:

open for inspection by the Commission, and the Company will provide reimbursement for all travel expenses incurred by the Commission or its authorized representatives to inspect records or perform out-of-state audits. Past audits conducted by Commission Staff at NUI headquarters in New Jersey under this procedures have proven expedient and satisfactory to the Company and Commission Staff.

By virtue of this petition, City Gas has sought to comply with the requirements of Rule 25-7.015, Florida Administrative Code. City Gas/NUI appears to have violated Rule 25-7.015(1), Florida Administrative Code, by failing to obtain the permission of the Commission before moving its records out of state. While we have no reason to believe that the utility intended to violate this rule, utilities are charged with knowledge of Commission rules and statutes. Furthermore, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Pursuant to Section 366.095, Florida Statutes, such action is "willful." See Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, In Re: Investigation into the Proper Application of Rule 25-14.003, F.A.C., Relating to Tax Savings Refund for 1988 and 1989 for GTE Florida, Inc. In that Order, the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

In this case, as soon as staff brought Rule 25-7.015(1), Florida Administrative Code, to City Gas/NUI's attention, the company immediately filed for permission to move its records out of state. Staff does not believe, therefore, that the violation of Rule 25-7.015(1), Florida Administrative Code, rises to the level

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of warranting initiation of a show cause proceeding. In addition, one purpose of show cause actions is to ensure compliance with Commission rules. By the filing of its request in this docket, the utility has complied with the Commission's rules. Therefore, staff recommends that City Gas/NUI not be ordered to show cause for its apparent violation of Rule 25-7.015(1), Florida Administrative Code. See Order No. PSC-98-1388-FOF-WS, issued October 15, 1998, in Docket No. 971456-WS; and, Order No. PSC-98-1432-FOF-WS, issued October 23, 1998, in Docket NO. 980972-WS.

Based on the utility's assertions, staff believes that the problems its auditors have had in the past in retrieving records needed from New Jersey to perform audits in Hialeah have been corrected. City Gas and NUI staff met with Commission staff and outlined how the recent reorganization of NUI will lead to better communications between staff and the company. NUI stated in its petition that it welcomes staff auditors to come to New Jersey to perform audits at NUI's expense as contemplated by Section 366.05(11), Florida Statutes and Rule 25-7.015, Florida Administrative Code.

**ISSUE 2:** Should the Commission authorize City Gas to keep its accounting records out-of-state?

**STAFF RECOMMENDATION:** Yes, the Commission should approve City Gas' request to keep its records out-of-state. (Vandiver)

**STAFF ANALYSIS:** Rule 25-7.015(1), Florida Administrative Code, states "all records that a utility is required to keep, by reason of these or other rules prescribed by the Commission, shall be kept at the office or offices of the utility within the state, unless otherwise authorized by the Commission." In the filing for this docket, City Gas states that

as part of a reorganization process designed to improve efficiency, all accounting and bookkeeping functions for NUI's various operating divisions have been centralized....These bookkeeping and accounting functions will be performed at NUI headquarters in New Jersey. As part of this process, NUI Corporation, upon receiving Commission authorization, plans to keep the records of City Gas Company of Florida at its corporate headquarters in New Jersey.

The utility states that combining its record keeping for Florida, North Carolina, Maryland, Pennsylvania, New York, and New Jersey in a single location will improve its efficiency and result in cost savings.

Staff notes that the utility has already moved its Florida records to New Jersey. The past few audits for the purchased gas and energy conservation cost recovery clauses have documented this change. The utility estimated that the annual cost savings of moving its records to New Jersey at \$177,172.00. While staff has not verified this estimate, staff agrees that, in principle, centralization of records should result in improved efficiency and cost savings.

Section 366.05(11), Florida Statutes, states that the "commission has the authority to assess a public utility for reasonable travel costs associated with reviewing the records of the public utility and its affiliates when such records are kept out of state," Florida Statutes. Rule 25-7.015(2), Florida Administrative Code, further defines reasonable travel expenses as "those travel expenses that are equivalent to travel expenses paid by the Commission in the ordinary course of its business." Subsection 366.05(11)(a), Florida Statutes, also states that the "utility shall remit reimbursement for out-of-state travel expenses

within 30 days from the date the Commission mails the invoice." The utility's filing confirms the utility's awareness of this statute and rule by stating that the utility will provide reimbursement for all travel expenses incurred to inspect records or perform out-of-state audits. The utility further states that "past audits conducted by the Commission Staff at NUI headquarters in New Jersey under this procedure have proven expedient and satisfactory to the Company, and Commission staff." Commission staff has not had the same expedient and satisfactory experience the Company describes, however, staff has met with officials of the company and has received their assurances that positive change is in the offing. The utility also states its belief that the cost savings from centralized record keeping will offset the utility's reimbursement of Commission travel expenses.

The audit staff has only visited the New Jersey site once to conduct an audit. That audit was to review the parent company allocations and was prior to the local City Gas records being moved to New Jersey. Therefore, while the objective of that audit was slightly different, its success may prove indicative of the New Jersey staff's willingness to cooperate upon personal audit visits.

The recent trouble the auditors have experienced primarily stem from the records being in New Jersey and the City Gas contact person and the Commission auditors in Hialeah. Communications between the auditors, the local contact person and the New Jersey staff have prolonged even simple audit requests. When staff suggested that they travel to New Jersey to complete the audit, they were strongly discouraged from doing so. In the recent meeting between utility representatives and Commission staff, the utility expressed the commitment to staff that this would not happen in the future.

Staff believes that City Gas has corrected some problems and is working to correct other problems which led to difficulties in performing PGA audits of City Gas. These difficulties included inability of staff to get the appropriate information from City Gas in a timely manner and one instance of being discouraged from coming to NUI headquarters for an audit.

The utility met with staff and described its new organization chart and identified a specific individual to interact with the auditors and described the other individuals who could provide information to staff during an audit. The utility and staff discussed staff's expectations for response time to staff requests. Most audits will have an introductory two week notice before field work begins. The auditors will identify at the beginning of the two weeks the documents that the utility should prepare for the

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start of field work. After the two week notice period, most audit requests should have a quicker turn around time, based upon the type of request. These response times may be more immediate for verbal requests to describe or reconcile a document to approximately three days for providing copies of invoices. The utility agreed that these would be reasonable time frames. The utility representatives also agreed that they would make sure that utility staff in New Jersey and Florida understood the priority to be placed on responding to staff's audit requests.

Based on the utility's assertions, staff believes that the problems its auditors have had in the past in retrieving records needed from New Jersey to perform audits in Hialeah have been corrected. City Gas and NUI staff met with Commission staff and outlined how the recent reorganization of NUI will lead to better communications between staff and the company. NUI stated in its petition that it welcomes staff auditors to come to New Jersey to perform audits at NUI's expense as contemplated by Section 366.05(11), Florida Statutes and Rule 25-7.015, Florida Administrative Code.

Therefore, staff recommends that the Commission authorize City Gas to keep its records out-of-state. Staff agrees that the centralization of the records should result in improved efficiency and cost savings. Because the Commission rule requires the utility to reimburse the commission for reasonable travel costs associated with reviewing the records kept out of state, the Commission should not be substantially affected by this change.

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**ISSUE 3:** Should this docket be closed?

**RECOMMENDATION:** Yes. This docket should be closed if no person whose substantial interests are affected by the proposed action files a protest within the 21-day protest period. (JAYE)

**STAFF ANALYSIS:** This docket should be closed pursuant to Rule 25-22.029(4), Florida Administrative Code, which states that any person whose substantial interests are affected by the proposed agency action shall have 21 days after the issuance of the Order to file a protest. If no timely protest is filed, the docket should be closed.