

M E M O R A N D U M

DECEMBER 7, 1998

98-1 AM 1038

10/10/98

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (JAYE ^W) *10/10/98*

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

98-1594-FOF-GU

Attached is a NOTICE OF PROPOSED AGENCY ACTION ORDER GRANTING
REQUEST TO KEEP RECORDS OUT OF STATE to be issued in the above-
referenced docket. (Number of pages in order - 6)

GAJ/js

Attachment

cc: Division of Electric and Gas (Bulecza-Banks)

Division of Auditing and Financial Analysis (Vandiver, Reveil)

I:981039or.gaj

*boxed - Y1
mailed -*

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for authorization, pursuant to Rule 25-7.015, F.A.C., to keep records out of state, by City Gas Company of Florida.

DOCKET NO. 981039-GU
ORDER NO. PSC-98-1594-FOF-GU
ISSUED: December 1, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING REQUEST TO KEEP RECORDS OUT OF STATE

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Pursuant to Rule 25-7.015, Florida Administrative Code, City Gas Company of Florida, an operating division of NUI Corporation (City Gas or Company), filed a Request for Authorization to Keep Records Out-Of-State on August 17, 1998. 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 reimburse the Commission for its reasonable travel expenses for any out-of-state audit.

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

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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) 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.

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.

Commission staff learned that 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.

By virtue of its petition, City Gas has sought to comply with the requirements of Rule 25-7.015, Florida Administrative Code. City Gas 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.

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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, having found that the company had not intended to violate the rule, nevertheless we 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 Rule 25-7.015(1), Florida Administrative Code, was brought to the attention of City Gas, the Company immediately filed for permission to move its records out of state. We do not believe, therefore, that the apparent violation of Rule 25-7.015(1), Florida Administrative Code, warrants 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, City Gas has complied with the Commission's rules.

Based on the utility's assertions, we believe that the problems our 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.

As noted, the utility has already moved its Florida records to New Jersey. The utility estimated that the annual cost savings of moving its records to New Jersey is \$177,172.00. We agree 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 does not report the same expedient and satisfactory experience the Company describes; however, Commission staff's meetings with officials of the Company have assured us 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.

We believe 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 the inability of Commission 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 our 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 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.

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Based on the utility's assertions, we believe that the problems staff auditors have had in the past in retrieving records needed from New Jersey to perform audits in Hialeah have been corrected. Therefore, we authorize City Gas to keep its records out-of-state. We agree that the centralization of the records should result in improved efficiency and cost savings.

Based upon the foregoing, it is therefore,

ORDERED by the Florida Public Service Commission that City Gas Company of Florida, a Division of NUI Corporation's request to keep records out-of-state is granted. It is further

ORDERED that City Gas Company of Florida abide by all provisions of Rule 25-7.015, Florida Administrative Code, in conducting its business from New Jersey. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 1st day of December, 1998.



KAY FLYNN, Chief
Bureau of Records

(S E A L)

GAJ

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.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on December 22, 1998.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.