



Public Service Commission
-M-E-M-O-R-A-N-D-U-M-

DATE: January 27, 2003
TO: Office of General Counsel (Stern) *W* *F*
FROM: Division of Auditing and Safety (Vandiver, Freeman)
RE: Docket 010906-GU, Request for approval of depreciation study for five year period 1996 through 2000 by Sebring Gas System, Inc., Request for confidential classification for documents prepared during "Sebring Gas System, Inc. Earnings Surveillance Report Review for the Year Ended December 31, 2001", Audit Control No. 02-167-3-1, Documents 13022-02 and 13539-02

On November 20, 2002, when copies of certain portions of staff's working papers prepared during "Sebring Gas System, Inc. Earnings Surveillance Report Review for the Year Ended December 31, 2001", were delivered to the utility at the audit exit conference, the utility requested that these materials be temporarily exempted from public access in accordance with the provisions of Rule 25-22.006(3)(a)(2), Florida Administrative Code (FAC).

On November 26, 2002, staff filed document 13022-02 consisting of these materials.

On December 11, 2002, the utility filed a request pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, FAC, that certain portions of the audit working papers prepared by the staff receive a confidential classification. The utility request includes redacted copies for public inspection (document 13538-02) and copies with the sensitive information highlighted (document 13539-02).

Documents 13022-02 and 13539-02 are currently held by the Division of Commission Clerk and Administrative Services in a temporary confidential classification pending resolution of the Sebring Gas request.

In accordance with Section 119.07, F.S., documents submitted to this Commission are public records. The only exceptions to this law are specific statutory exceptions and exemptions granted by governmental agencies pursuant to the terms of a statutory provision. Subsection 366.093(3) (f) provides the following exception:

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FPSC-CC, PUBLIC CLERK

“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 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 a private agreement that provides that the information will not be released to the public. Proprietary confidential business information includes but is not limited to:....

(f) Employee personnel information unrelated to compensation, duties, qualifications or responsibilities.”

According to Section 366.093, F.S., and Rule 25-22.006, FAC, the utility has the burden of demonstrating the materials qualify for confidential classification. According to Rule 25-22.006 FAC, the utility must meet this burden by demonstrating that the information is proprietary confidential business information, the disclosure of which will cause the utility, the provider of the information or the ratepayer harm.

Staff Analysis of the Request

Reading the Sebring Gas filing reveals the sensitive material consists of:

A) Employee W-2 forms, and

The utility identifies as sensitive information reported upon the W-2 forms as:

- (A) Employee home address,
- (B) Total salary,
- (C) Total compensation,
- (D) Personal withholding information, and
- (E) Social security number and social security account information.

B) Information compiled from those W-2 forms

Total salary charged and subsequent calculation testing the reasonableness of the cost allocation between the utility and its affiliate, Coker Gas.

Impact of Federal law

Federal law concerning federal income taxes, specifically 26 USC 6103 provides:

Returns and return information shall be confidential...no officer or employee of any state...who has or had access to returns or return information...shall disclose any return or return information obtained by him in any manner in connection with his service....

Since federal law provides that W-2 information is confidential, staff recommends the W-2 information provided by Sebring Gas and its affiliates be granted a confidential classification.

Impact of Prior Public Service Commission Decisions

Generally, social security numbers of employees have been granted a confidential classification, see Commission Order 24457, dated May 1, 1991, Docket 890190-TL.

The Commission has specifically held that compensation of employees does not qualify for a confidential classification, see Commission Order PSC-92-1280-CFO-WS, dated November 10, 1992, docket 911188-WS and Commission Order PSC-95-0503-CFO-WS, dated April 24, 1995, docket 950318-WS. Nevertheless, when compensation information is in the form of a W-2, Federal Statutes provide that W-2 information is confidential. Notes taken from W-2 forms and used in subsequent calculations would also qualify for confidential protection.

Length of the Classification Period

Audit reports and related audit working papers of this nature are retained by the Commission for 25 years. Section 366.093(4), F.S., limits the length of any confidential classification to 18 months unless cause is shown for allowing a longer period of protection. Since cause has not been shown for a longer period of protection within this filing, we recommend any confidential classification be limited to 18 months. If the utility finds additional confidential protection is needed, an extension may be filed before any granted protection period tolls.

STAFF RECOMMENDATION

Staff's reading of the sensitive materials discloses it is either W-2 forms of utility employees or notes and subsequent calculations made using the information reported upon the W-2 forms. We therefore recommend the utility's request for confidential classification be granted for 18 months as discussed above. A detailed recommendation is provided below:

DETAILED STAFF RECOMMENDATION

Staff Work Paper	Page(s)	Line(s)	Recommend	Type of Information Classified confidential
44-2	1	9-11	Grant	Notes taken from W-2 Information
44-2/1	1	Boxes 1,2,3,4,5,6,12; Area D; Area E, line 2	Grant	W-2 Information
44-2/2	1	Boxes 2,4,6; Area D; Area E, line 2	Grant	W-2 Information
44-2/3	1	Boxes 2,4,6; Area D; Area E, line 2	Grant	W-2 Information

A temporary copy of this recommendation will be kept at I:13539-02.raf for a short time.

cc: Bureau of Records and Hearing Services (Flynn)