

State of Florida



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

DATE March 25, 2003
TO: Office of General Counsel (Brown) *a*
FROM: Division of Auditing and Safety (Vandiver, Freeman) *F* *AMT*
RE: Docket 021133-EI, Recommendation concerning Florida Public Utilities Company's (FPUC's) request for confidential classification for materials gathered during audit No. 02-149-4-1, entitled "FPUC Earnings Surveillance Audit for the 12 Months ended December 31, 2001", documents 10557-02 and 12266-02

On September 18, 2002, and on October 24, 2002, when copies of certain portions of staff's working papers and audit report prepared during FPUC's Earnings Surveillance Audit for the 12 Months Ended December 31, 2001, were delivered to FPUC 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 October 1, 2002, staff filed document 10557-02 consisting of these materials.

On November 7, 2002, FPUC filed a request pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006(3)(a)2. And (4), FAC, that certain portions of the audit working papers prepared by the staff receive a confidential classification. The utility request includes copies with the sensitive information highlighted (document 12266-02). The utility explains that since all lines on the staff working papers are requested as confidential a redacted copy for public use is not filed.

On March 17, 2003, after discussions with the staff, the FPUC reduced the amount of material for which a confidential classification was requested. This recommendation discusses the FPUC's request as amended.

Documents 10557-02 and 12266-02 are currently held by the Division of Commission Clerk and Administrative Services in a temporary confidential classification pending resolution of FPUC's 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 specific items of a statutory provision. Subsections 366.093(3)(a)(b)(c), F.S., provides the following exemptions:

DOCUMENT NUMBER: DATE

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FPSC-COMMISSION 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, and order of a court or administrative body, or private agreement that provides that the information will not be released to the public. The term includes, but is not limited to:

- (a) Trade secrets.
- (b) Internal auditing controls and reports of internal auditors.
- (c) Security measures, systems or procedures. . . .”

According to Section 366.093, F.S., and Rule 25-22.006, FAC, the utility has the burden of demonstrating that 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 FPUC filing reveals the sensitive materials consist of:

1. Working papers or notes taken from the working papers of FPUC’s external auditor Deloitte & Touche.

FPUC reports these working papers were prepared by Deloitte & Touche during the company’s annual audit. These papers contain notes and discussions regarding gas purchase arrangements, asset purchases, non regulated and consolidated operations, and internal procedures and other matters, which, if disclosed would harm the company and its customers or impair the efforts of the company to conduct its business and are exempt from disclosure pursuant to section 366.093(3)(a)(b)(c), Florida Statutes.

Analysis: There is not enough information provided with this request to show whether the information provided is a trade secret, internal auditing control, internal auditor’s report, or a security measure, system or procedure. The information identified is the working papers and PSC staff’s notes taken from the working papers obtained from an external auditor who performed the annual financial audit of the company. The Commission in the past has granted a confidential classification to the external auditor’s working papers where release of this information would reveal the proprietary audit procedures and strategies of the external auditor, thus harming the external auditor’s competitive business (See Commission order 25297, dated November 5, 1991, Docket 890190-TL). Our reading of the documents identified in this request, as modified, reveals they would disclose the competitive procedures and strategy of the external auditor.

2. Contractual information regarding the negotiations to purchase a utility, South Florida Natural Gas, in 2001.

FPUC states disclosure of these initial and final negotiations between FPUC and the utility being sold would enable competitors or other parties to gather information relative to the negotiations which could be of value to them in future business activities and contrary to the interests of FPUC and its customers.

Analysis: Once a utility is purchased or sold, that information regarding the sales contract and associated information is used to determine rate base of the acquiring utility. The Commission has decided that this type of information is not eligible for a confidential information (See Commission order PSC-98-0039-CFO-WU, dated January 6, 1998, Docket 970164-WU). The material at the subject of FPUC's request concerns the initial and final negotiations to purchase a utility. FPUC asserts release of this negotiating information and strategy would harm FPUC in future utility purchases. When a utility is purchased, the buyer wants to acquire the utility at the lowest possible price maximizing its investment and the seller wants to sell at the highest possible price. Generally speaking, negotiations to purchase a utility are a competitive activity – many different parties may purchase a utility. It is when the sale is concluded that the sales price and details concerning the sale of a utility has a regulatory interest. FPUC reports its efforts to purchase South Florida Natural Gas are valuable and proprietary information. We agree the negotiations and the process used to purchase a utility would have proprietary and competitive value up to, but short of, the point when a sale occurs and a sales contract is executed.

Length of the Classification Period

FPUC has not requested a specified length of time for the classification period for this material.

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 should be limited to 18 months. If the utility finds additional protection is needed, a request for extension may be filed before any granted protection period tolls.

STAFF RECOMMENDATION

Staff's reading of the sensitive material reveals it discloses information regarding: (1) proprietary strategies and procedures of the external auditor release of which would harm the competitive business of that auditor or (2) details regarding the negotiations concerning the purchase of South Florida Gas ending at the point when a final sales contract was executed. We therefore recommend the utility's request for confidential classification be granted for 18 months. A detailed recommendation is provided below.

Close the Docket

When any order granting a confidential classification becomes final, the docket may be closed.

Detailed Staff Recommendation

Staff Work Paper	Page(s)	Lines(s)	Recommend	Type of Information Classified Confidential
Documents 10557-02 and 12266-02				
9-1	1-3	All	Grant	External auditor's proprietary procedures and strategies, release of which would harm the competitive business of that auditor
25-1	1-2	All	Grant	Negotiations for the purchase of a regulated utility up until the point where a sales contract is executed.
25-2	1-4	All	Grant	Negotiations for the purchase of a regulated utility up until the point where a sales contract is executed.

A temporary copy of this recommendation will be kept at I:12266-02.raf.wpd for a short time.

CC: Bureau of Records and Hearing Services (Flynn)
Bureau of Auditing (Welch)