

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for confidential classification of certain audit workpapers provided in connection with earnings surveillance audit for period ending 12/31/01 (Audit Control No. 02-1149-4-1) by Florida Public Utilities Company.

DOCKET NO. 021133-EI
ORDER NO. PSC-03-0781-CFO-EI
ISSUED: July 1, 2003

ORDER GRANTING REQUEST FOR CONFIDENTIAL CLASSIFICATION

On September 18, 2002, and October 24, 2002, Florida Public Utilities Company (FPUC) received copies of staff's working papers and audit report prepared during FPUC's Earnings Surveillance Audit for the 12 Months ended December 31, 2001. At the audit exit conference, FPUC requested that certain parts of the working papers and audit report be temporarily exempted from public access in accordance with the provisions of Rule 25-22.006(3)(a)(2), Florida Administrative Code. On October 1, 2002, staff filed document 10557-02 consisting of those materials. Thereafter, on November 7, 2002, pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, FPUC filed a formal request for confidential classification of the materials. FPUC's request included copies with the sensitive information highlighted (document 12266-02). The utility explained that since it requested that all lines on the staff working papers be classified as confidential, it did not file a redacted copy for public use. On March 17, 2003, after discussions with the staff, the FPUC filed an amended request for confidential classification which withdrew the request for confidential classification of several documents. 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. As explained below, and as specifically identified in the chart (Attachment A), attached to and incorporated in this Order, I grant confidential treatment for the remaining documents in FPUC's amended request.

The information for which FPUC requests confidential classification consists of working papers or notes taken from the working papers of FPUC's external auditor Deloitte & Touche, and

DOCUMENT NUMBER-DATE

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

Pursuant to Section 366.093, Florida Statutes, any records received by the Commission which are shown to be proprietary confidential business information shall be kept confidential and exempt from the public access requirements of Section 119.07(1), Florida Statutes. Pursuant to Rule 25-22.006, Florida Administrative Code, the petitioner has the burden of demonstrating that the materials qualify for confidential classification. That rule also requires the petitioner to demonstrate that the information falls into one of the categories set forth in Section 366.093.

Section 366.093, Florida Statutes, defines "proprietary confidential business information" as;

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

- (a) Trade secrets.
- (b) Internal auditing controls and reports of internal auditors.
- (c) Security measures, systems, or procedures.
- (d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods and services on favorable terms.
- (e) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

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A review of the documents identified in FPUC's amended request indicates that they would disclose the competitive procedures and strategy of the external auditor and thus harm the auditor's competitive business. Confidential classification is appropriate for that information. Confidential classification is also appropriate to protect information regarding the negotiations between FPUC and South Florida Natural Gas - up to the point that a contract to purchase South Florida Natural Gas was executed. FPUC asserts that disclosure of its negotiation methods would harm the ability of the company to negotiate competitively for the purchase of other utility systems in the future. That is grounds for confidential treatment under section 366.093, Florida Statutes. Accordingly, FPUC's request for confidential classification is hereby granted for a period of 18 months from the issuance date of this Order.

Based on the foregoing, it is

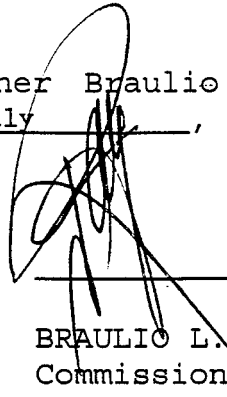
ORDERED by Commissioner Braulio Baez, as Prehearing Officer, that Florida Public Utility Company's request for Confidential Classification of Materials Pursuant to Audit No. 02-149-4-1 is granted for a period of 18 months from the issuance date of this Order. It is further

ORDERED that this Order shall be the only notification by the Commission to the parties of the expiration of the confidentiality time period. It is further

ORDERED that this docket shall be closed.

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By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 1st Day of July, 2003.


for Commissioner Braulio L. Baez

BRAULIO L. BAEZ
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.

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.

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 25-22.0376, 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

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reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, 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.

ATTACHMENT A

Staff Work Paper	Page(s)	Lines(s)	Decision	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.