



ORIGINAL
Public Service Commission

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

RECEIVED FPSC
03 SEP 16 AM 11:38
COMMISSION CLERK

DATE: September 12, 2003
TO: Office of General Counsel (Fleming)
FROM: Division of Auditing and Safety (Freeman, Vandiver)
RE: Docket 030003-GU, Recommendation concerning Florida Public Utilities Company's (FPUC's) request for confidential classification concerning a portion of the staff's working papers obtained during the preparation of "Florida Public Utilities Purchased Gas Adjustment Audit for the Twelve Months Ended December 31, 2002", Audit Control No. 03-063-4-2, Documents Numbered 05793-03 and 06351-03

On June 25, 2003, when copies of certain portions of staff's working papers obtained or prepared during the "Florida Public Utilities Purchased Gas Adjustment Audit for the Twelve Months Ended December 31, 2002", 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 June 30, 2003, staff filed document 05793-03 consisting of those specified portions of the working papers.

On July 16, 2003, FPUC filed a request pursuant to Rule 25-22.006(3)(a)(2.) And (4), FAC, and Section 366.093, Florida Statutes (F.S.), that selected portions of the staff working papers prepared during the audit receive confidential classification. The utility's request includes redacted copies for public inspection (Document 06352-03) and highlighted copies (document 06351-03).

Documents 05793-03 and 06351-03 are currently held by the Commission's Division of the Commission Clerk and Administrative Services as confidential pending resolution of FPUC's request for confidential classification.

Pursuant to Section 119.07, F.S., documents submitted to this Commission are public records. The only exceptions to this law are specific statutory exemptions and exemptions granted by governmental agencies pursuant to the specific items of a statutory provision. Subsection 366.093(3)(d), F.S. provides the following exemption:

- AUS
CAF
CMP
COM
CTR
ECR
GCL
OPC
MMS
SEC
OTH

DOCUMENT NUMBER-DATE

08744 SEP 16 8

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, 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:....

(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...."

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. Sensitive information concerning customers, pool managers, accounts, locations, usage and revenues; and

FPUC asserts this is "proprietary confidential business information" disclosure of which would provide information concerning competitive interests and impair the ability of FPUC to contract on favorable terms.

2. Copies of agreements and agreement exhibits which contain customer, account, usage and revenue information.

FPUC asserts this information would be of value to competitors because it is contractual information which if disclosed would interfere with the ability to FPUC to contract on favorable terms.

FPUC further asserts disclosure of the information described above would enable competitors and vendors to discern information about FPUC which could be used to the disadvantage of FPUC and its customers. FPUC states this information is treated as confidential and proprietary and the information has not been disclosed.

Section 366.093(3)(d), F.S., provides an exemption from public access for sensitive contractual information release of which would impair the public utility or its affiliates to contract for goods and services.

**Duration of the Confidential Classification Period**

FPUC requests that this material be treated as confidential pursuant to Section 366.093, Florida Statutes. The utility request does not specify the length of the term for which this information is to be held confidential by the Commission. We note the Commission staff's audit working papers for this type of audit are retained on file by the Commission for 25 years.

According to the provisions of Section 366.093(4), F.S., absent good cause shown, confidential classification is limited to 18 months. Without cause shown for a longer period, we recommend that the period of confidential classification be set as 18 months. As deemed necessary, the utility may request an extension of the confidential classification before the period tolls.

**Staff Recommendation**

Based upon reading the filing, and for the reasons presented above, we recommend, as found, the utility's request be granted and that the identified material be granted a confidential classification for 18 months. A detailed recommendation regarding the material follows:

**Detailed Recommendation, as found**

Staff Work Paper Number	Page(s)	Lines	Recommend	Type of Information Classified Confidential
Documents 05793-03 and 06351-03				
41-5/1	1	Col A-B,E,G,I,K,M, Lines 1-5;  Col D,J,L,N, Lines 1-5,16;  Col F,H, Lines 1-5,16,17	Grant	Sensitive contractual information
45-5/2	1	Col A, Lines 1-19;  Col B, Lines 1-4;  Col C-D, Lines 5-19;  Col E-F, lines 5-14	Grant	Sensitive contractual information

Staff Work Paper Number	Page(s)	Lines	Recommend	Type of Information Classified Confidential
41-5/2-1	1-7	All lines	Grant	Sensitive contractual information
Documents 05793-03 and 06351-03				
41-5/2-2	1	Col A, Line 1;  Col B, Lines 2,5,8,11, 14,17,20,13;  Col C, Lines 2-25;  Col E, Lines 4,7,10, 13,16,19,22,25;  Col I-K, Lines 2,5,8, 11,14,17,20,23	Grant	Sensitive contractual information
41-5/2-2	2	Col B, Lines 1,4;  Col C, Lines 1-6;  Col E, Lines 3,6;  Col I-K, Lines 1,4,7,8	Grant	Sensitive contractual information

Staff Work Paper Number	Page(s)	Lines	Recommend	Type of Information Classified Confidential
41-5/2-2/1	1	Col A-B, Lines 4-15; Col C, Lines 2-15; Col D, lines 1,2,4-15; Col E, Lines 4-15; Col F, Lines 1,4-15; Col G, Lines 4-15	Grant	Sensitive contractual information
Documents 05793-03 and 06351-03				
41-2/2-2/2	1	Col A-B, Lines 4-15; Col C, Lines 2-15; Col D, lines 1,2,4-15; Col E, Lines 4-15; Col F, Lines 1,4-15; Col G, Lines 4-15	Grant	Sensitive contractual information

Staff Work Paper Number	Page(s)	Lines	Recommend	Type of Information Classified Confidential
41-5/2-2/3	1	Col A-B, Lines 4-15; Col C, Lines 2-15; Col D, Lines 1,2,4-15; Col E, Lines 4-15; Col F, Lines 1,4-15; Col G, Lines 4-15	Grant	Sensitive contractual information
41-5/2-3	1	Col A. Line 1; Col B, Lines 2,5,8,11,15,18,20; Col C-D, Lines 3,6,9,12-13,16,19,22-24; Col E, Lines 3-4,6-7,9-10,12-14,16-17,19-20,22-24; Col F, Lines 4,7,10,14,17,20,24; Col G, Lines 3-4,6-7,9-10,12-14,16-17,19-20,22-24; Col H-J, Lines 4,7,10,14,17,20,24	Grant	Sensitive contractual information
41-5/2-4	1	All Lines	Grant	Sensitive contractual information
41-5/2-5	1	All Lines	Grant	Sensitive contractual information

Staff Work Paper Number	Page(s)	Lines	Recommend	Type of Information Classified Confidential
41-5/3	1	All Lines	Grant	Sensitive contractual information

A temporary copy of this recommendation will be held at l:06351-03.fpuc.raf.wpd for a short period.

CC: Division of Auditing and Safety (Welch)  
Division of Commission Clerk and Administrative Services (Flynn)