

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: February 12, 2004

TO: Office of General Counsel (Fleming)

FROM: Division of Auditing and Safety (Freeman, Vandiver)

RE: Docket 030438-EI, Recommendation concerning Florida Public Utilities Company (FPUC) request for confidential classification of a portion of the staff's working papers obtained during the preparation of "Florida Public Utilities Company Electric Division Rate Case Audit for the Year Ended December 31, 2002 and for the Projected Test Year Ended December 2004", Audit Control No. 03-274-4-1, Documents Numbered 13206-03 and 00551-04

On December 23, 2003, when copies of certain portions of staff's working papers obtained or prepared during the "Florida Public Utilities Company Electric Division Rate Case Audit for the Year Ended December 30, 2002 and for the Projected Test Year Ended December 2004", 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 December 19, 2003, staff filed document 13206-03 consisting of those specified portions of the working papers.

On January 13, 2004, FPUC filed a request pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, FAC, 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 00550-04) and highlighted copies (Document 00551-04).

Documents 13206-03 and 00551-04 are currently held by the Commission's Division of Commission Clerk and Administrative Services as confidential pending resolution of the 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 specific items of a statutory provision. Subsections 366.093(3)(b),(d), and (e), F.S., provide the following exemptions:

DOCUMENT NUMBER-DATE

02058 FEB 13 3

FPSC-COMMISSION CLERK

“(3) 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:

....

(b) Internal auditing controls and reports of internal auditors.

....

(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 or 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....”

According to Section 366.093, F.S., and Rule 25-22.06, 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 Gas filing reveals the sensitive materials consist of:

1. Notes taken from Director’s Minutes concerning a discussion of business and financing matters.
2. Notes taken from Director’s Minutes concerning sensitive internal controls, business plans and contractual information.

FPUC asserts release of sensitive information discussed in Director’s Board meetings would be to the detriment of the FPUC, its customers and investors. FPUC states “Such disclosure would impair the business efforts of the Company and harm the operations of the Company which would not be in the best interests of the ratepayers.”

FPUC reports that it treats information reported within its director's minutes as private. The Company acknowledges that it must maintain director's minutes pursuant to Section 607.1601, F.S., and that shareholders may for a "proper purpose" view the minutes but they may not distribute information or records (Section 607.1602, F.S.). Previously, the Commission has found that part of the contents of director's minutes qualify for a confidential classification because certain topics discussed by the company directors contain information which if released would harm the ability of a utility to contract or compete. See Commission Order No. PSC-00-1529-CFO-GU.

3. Notes from Board of Director's Audit Committee regarding discussions with internal and external auditors about internal audit plans and reports.
4. Staff's notes concerning internal audit activities.

Section 366.093(3)(b), F.S., provides an exemption for internal auditing controls and reports of internal auditors. Commission Order No. PSC-93-1631-CFO-EI, issued November 8, 1993, in Docket 930834-EI granted an exemption to notes taken by PSC staff auditors concerning internal audits of a utility: "The staff work papers for which confidentiality is requested are covered by Section 366.093(3)(b) because they consist of notes taken by staff from the utility's internal audits. Therefore they will be classified as confidential pursuant to this statutory provision."

We have examined the material in this case and agrees it discloses the contents and observations from this company's internal audit program to include internal auditing reports, controls and FPUC internal audit planning. We therefore recommend that this material be granted a confidential classification based upon the exemption listed in 366.093(3)(b), Florida Statutes.

5. Notes taken from the audit working papers of FPUC's external auditor, Deloitte and Touche, describing sensitive transactions, litigation and competitive interests.

Section 366.093(3)(d), F.S., provides an exemption for 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 or services on favorable terms. Section 366.093(3)(e), F.S., provides an exemption for sensitive business information if release of the information would harm the competitive business of the provider of this information. FPUC asserts release of this type of information within the working papers of FPUC's external auditor would impair its business and benefit its contractors and vendors.

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Duration of the Confidential Classification Period

NUI/City Gas requests that this material be granted a confidential classification. Staff's audit working papers for this type of audit are retained on file 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. If necessary, the utility may request an extension of the confidential classification before the period ends.

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 concerning the material follows:

Detailed Recommendation

Staff Work Paper Number	Page(s)	Lines	Recommend	Type of Information Classified Confidential
Documents 13206 03 and 00551-04				
WP 8	2	1-3	Grant	Sensitive competitive business information
WP 8	3	1		Information concerning internal auditing controls and reports of internal auditors
WP 8	4	1-17, 21-30, 31-36		Information concerning internal auditing controls and reports of internal auditors
WP 8	5	1,2		Information concerning internal auditing controls and reports of internal auditors
WP 9	1-5	All		Information concerning sensitive contractual and competitive business information
WP 9	6	All		Information concerning internal auditing controls and reports of internal auditors
WP 9	14-16	All		Information concerning internal auditing controls and reports of internal auditors

A temporary copy of this recommendation will be held a I:00551-04.fpucraf.doc for a short period.

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