

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 11, 2004
TO: Office of General Counsel (Jaeger)
FROM: Division of Auditing and Safety (Freeman, Vandiver) *AWA*

RE: Docket 030569-GU, Recommendation concerning City Gas Company of Florida, a Division of NUI Corporation (NUI/City Gas), request for confidential classification a portion of the staff's working papers obtained during the preparation of "City Gas Company of Florida Rate Case Audit for the Year Ended September 30, 2002 and for the Projected Test Year Ended September 2004", Audit Control No. 03-252-4-1, Documents Numbered 11120-03 and 11851-03

On October 31, 2003, when copies of certain portions of staff's working papers obtained or prepared during the "City Gas Company of Florida Rate Case Audit for the Year Ended September 30, 2002 and for the Projected Test Year Ended September 2004", were delivered to NUI/City Gas 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 11, 2003, staff filed document 11120-03 consisting of those specified portions of the working papers.

On November 21, 2003, NUI/City Gas filed a request pursuant to Section 366.093, Florida Statutes (F.S.), and Rules 25-22.006(3)(a)2. and (4), 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 11852-03) and highlighted copies (Document 11851-03).

On January 16, 2004, after discussions with the staff, NUI/City Gas reduced the amount of material for which a confidential classification was requested.

Documents 11120-03 and 11851-03 are currently held by the Commission's Division of Commission Clerk and Administrative Services as confidential pending resolution of the NUI/City Gas' 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:

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“(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 NUI/City Gas filing reveals the sensitive materials consist of:

1. Notes taken from Director’s minutes concerning internal business plans and strategies, contractual bids, and other competitive information;

NUI/City Gas points out that 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.

2. Notes taken from an internal audit report;

NUI/City Gas uses an outside accounting firm to perform internal audits. The utility asserts notes taken from an internal audit qualify for a confidential classification on the basis that internal audits are set out as a type of confidential information listed within Section 366.093(3)(b), F.S. The utility also asserts notes taken from the internal audit reveal competitive strategies and audit work program of the accounting firm who prepared the internal audit.

Lastly, the utility cites Commission Order PSC-00-1529-CFO-GU as a precedent that the strategies and work plan of an external auditor were granted a confidential classification on the basis that release of this competitive work program and audit strategy would harm the competitive business of that auditor. Staff notes Commission Order 25297 is also descriptive concerning which materials prepared by an outside accounting firm would qualify for a confidential classification.

If this internal audit was considered only upon the basis that an outside auditing firm performed the work, materials provided by the utility that had audit value but did not reveal the competitive work program and competitive audit strategies of that accounting firm would not be considered competitively sensitive. However, because the information pertains to an internal audit(s) of the utility, in particular notes taken from internal audit reports and associated materials, all the material associated with the internal audit may be granted a confidential classification on the basis that it reports the findings of an internal audit and the associated internal auditing controls which is identified as qualifying for a confidential classification by Section 366.093(3)(b), Florida Statutes.

3. Audit strategies and work plans of the company's external auditor;

NUI/City Gas cites Commission Order No. PSC-01-1038-CFO-EI as precedent for its request that the audit work program and audit strategies of the external auditor be granted a confidential classification. Here again staff notes Commission Order No. 25297 is also descriptive of which materials from an external auditor qualify for a confidential classification. We agree the external auditor's work plans and audit strategies are sensitive information which qualify for a confidential classification.

4. Notes taken from the working papers of the company's external auditor concerning assessment of liabilities from injury and damage claims, financing of a meter lease, internal business plans and strategies, potential financing plans, and assessment of pending litigation;

External auditors obtain, read, and retain key client documents during the course of an audit. For the purposes of granting a confidential classification, the Commission does not consider these client documents as part of the external auditor's strategies and work plan. To obtain a confidential classification for this type of sensitive material, the company must show that release of this material would otherwise cause harm. NUI/City Gas asserts materials in the hands of its external auditor contain sensitive information which if released would harm NUI/City Gas or ultimately the ratepayer due to the resultant higher business costs and charges. More specifically, Section 366.093(3)(e), F.S., provides that sensitive competitive business information release of which would harm the provider of that information may be granted a confidential classification. Section 366.093(3)(d), F.S. provides that sensitive contractual information release of which would impair the ability of the utility or an affiliate to contract also may be granted a confidential classification.

5. The external auditor's detailed audit fee estimate;

This contractual information concerns estimated costs for performing the external financial audit. The cost estimates are not publicly released and NUI/City Gas claims release of this information would harm the ability of the utility to contract for audit services.

6. Actuarial analysis of pension plans, medical plans, and related liability interests;

NUI/City Gas asserts that its business assessment, strategies and reports concerning pension plans is sensitive competitive business information. We note that Section 366.093(3)(f), F.S. provides that compensation information may not be granted a confidential classification. The information presented here is the planning and business information used in making decisions regarding which compensation could be offered in a range of possibilities. Once this decision is made, the results of such employee compensation decisions are not eligible for a confidential classification. The material here consists of planning documents as opposed to the reporting of actual implemented decisions. We therefore recommend that the Commission find that these planning documents reveal business strategies and therefore grant this material a confidential classification.

7. Identification of clients and rates charged for an unregulated subsidiary;

NUI/City Gas asserts this information concerns non utility operations, is customer specific, and release of such information would be harmful to that unregulated business.

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8. State of Florida Income Tax and Franchise Returns and Federal Tax Returns.

In support of the request for confidential treatment of utility tax returns NUI/City Gas points to two prior orders of the Commission which allowed income tax returns a confidential classification. In Order No. PSC-99-0462-CFO-EI, the commission stated;

...It is the commission's policy to afford confidential treatment to Federal Income Tax Returns and related correspondence....Moreover since this information relates to the utility's competitive interest, and disclosure would impair...competitive business, this information is exempt pursuant to Section 366.093(3)(e), F.S.

In Order No. PSC-92-1073-CFO-WS, the commission stated;

"...tax returns are appropriate for confidential treatment. Federal income tax returns are generally kept confidential by the IRS, 26 U.S.C. Section 6103(a), and the same is true with state income tax returns and the Florida Department of Revenue, Section 213.053(2), Florida Statutes. The Commission has traditionally afforded a utility's income tax returns the same confidential treatment. I also agree that any related correspondence should also be treated as confidential."

Duration of the Confidential Classification Period

NUI/City Gas requests that this material be granted a confidential classification for at least 18 months. 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. As deemed 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, as found, and that the identified material be granted a confidential classification for 18 months. A detailed recommendation concerning the material follows:

Detailed Recommendation, as Found

Staff Work Paper Number	Page(s)	Lines	Recommend	Type of Information Classified Confidential
Documents 11120-03 and 11851-03				
8	1	1-14	Grant	Sensitive unreleased business strategies Contained in notes taken from Board of Director's minutes
8	2	1-9	Grant	Sensitive unreleased business strategies Contained in notes taken from Board of Director's minutes
8	3	1-11	Grant	Sensitive unreleased business strategies Contained in notes taken from Board of Director's minutes
8	4	1-10	Grant	Sensitive unreleased business strategies Contained in notes taken from Board of Director's minutes
8	6	1	Grant	Sensitive unreleased business strategies Contained in notes taken from Board of Director's minutes
8	7	1-2	Grant	Sensitive unreleased business strategies Contained in notes taken from Board of Director's minutes
8	8	1-4	Grant	Sensitive unreleased business strategies Contained in notes taken from Board of Director's minutes
8	9	1-7	Grant	Sensitive unreleased business strategies Contained in notes taken from Board of Director's minutes
8	10	1-5	Grant	Sensitive unreleased business strategies Contained in notes taken from Board of Director's minutes
8	11	1-6	Grant	Sensitive unreleased business strategies Contained in notes taken from Board of Director's minutes
8	12	1-5	Grant	Sensitive unreleased business strategies Contained in notes taken from Board of Director's minutes
9-1	32	All	Grant	Internal Auditor's Report
9-2	1-3	All	Grant	External auditor's work plans and strategies
9-4	1	1-17	Grant	Sensitive assessment of injury and damage Claims

Staff Work Paper Number	Page(s)	Lines	Recommend	Type of Information Classified Confidential
Documents 11120-03 and 11851-03				
9-5	1	1-45	Grant	Sensitive assessment of injury and damage Claims
9-5	2	1-10	Grant	Sensitive assessment of injury and damage Claims
9-6	1	1-36	Grant	Sensitive assessment of injury and damage Claims
9-7	1	1-15	Grant	Sensitive assessment of injury and damage Claims
9-8	1	1-3	Grant	Sensitive information concerning financing of a meter lease
9-9	1	1-14	Grant	Sensitive information concerning internal business plans and strategies
9-9	2	1-4	Grant	Sensitive information concerning internal business plans and strategies
9-9	3	1-3	Grant	Sensitive information concerning internal business plans and strategies
9-10	1	1-2	Grant	Sensitive potential financing arrangements
9-11	1	1-3	Grant	Sensitive assessment of pending litigation
9-11	1	4-18	Grant	Sensitive potential financing arrangements
9-14	1-3	1	Grant	Estimate of audit fees from the external auditor
48-15/2-5	1-6	All	Grant	Sensitive pension plan and retirement medical plan projections and estimates
49-4/9-1	1	1-8	Grant	Letter report from actuarial firm discussing Budget projections for internal plan purposes
49-4/9-1	2	1-13	Grant	Letter report from actuarial firm discussing Budget projections for internal plan purposes
52-1/6	1	1-20	Grant	Customer names and rates charged for a non utility business service
54-4	1-17	All	Grant	State income/franchise tax returns
54-5	1-179	All	Grant	Federal tax returns

A temporary copy of this recommendation will be held a I:11851-03.cgcrf.doc for a short period.

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