

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: Bureau of Records and Hearing Services (Flynn)
FROM: Division of Auditing and Safety (Freeman, Vandiver) *W. A. Smith*
RE: Docket 030569-GU, City Gas Company of Florida, a Division of NUI Corporation (NUI/City Gas), modified request for confidential classification for 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 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 6, 2004, staff notified NUI/City Gas that portions of the material requested to be treated as confidential did not appear to qualify for a confidential classification.

On January 16, 2004, the utility notified the staff that it wished to reduce the size of its request.

Attached are copies of that correspondence.

CC: Office of General Counsel (Jaeger)

DOCUMENT NUMBER-DATE

02060 FEB 13 3

FPSC-COMMISSION CLERK

STATE OF FLORIDA

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DIVISION OF AUDITING & SAFETY
DANIEL M. HOPPE, DIRECTOR
(850) 413-6480

Public Service Commission

January 6, 2004

Gary V. Perko, Esq.
Hopping, Green & Sams, P.A.
P.O. Box 6526
Tallahassee, Florida 32314

Regarding: Docket 030569-GU, City Gas Company of Florida Rate Case, Concerning a Request for Confidential Classification of certain materials in connection with Audit No. 03-252-4-1, City Gas Company Rate Case for the Year Ended September 30, 2002 and Projected Year ended September 30, 2004

Dear Mr. Perko:

On November 21, 2003, City Gas filed a request that certain materials obtained from the utility during staff audit 03-252-4-1 be granted a confidential classification. We have reviewed the request and find the following perceived deficiencies:

1. Working Paper 48-15/2, (one page) Restricted Stock Grants
2. Working Paper 49-4/7-2, (pages 2 and 3) Consulting Agreement Between John Kean and NUI Corporation

Section 366.093(3)(f), Florida Statutes, provides that compensation paid to utility employees does not qualify for a confidential classification. The above-listed working papers appear to report compensation to employees, directors or officers and charged to the ratepayer. The utility contends disclosure of this information would harm the company in obtaining and retaining employees and executive services. Commission Order No. PSC-92-1280-CFO-WS, issued November 11, 1992, in Docket No. 911188-WS, denied confidentiality to employee compensation rejecting the argument that the information was a trade secret and competitively sensitive.

Gary V. Perko. Esq.
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January 6, 2004


Cited by City Gas, Commission Order PSC-02-1755-CFO-GU provided that a consultant's comparative planning information prepared for decision-making by a Board of Directors receive a confidential classification. The reasoning applied by the Commission was that the comparative information prepared by a consultant and collected from many companies revealed strategy used by the Board of Directors to make a sensitive business decision.

Staff agrees with the reasoning that sensitive business strategies can be granted a confidential classification, but once a compensation decision is made, the results of that decision – the compensation paid or planned with respect to a projected test year – should be public record. Because the information here appears to be the actual compensation paid or reported as planned, staff does not believe that a confidential classification should be granted.

You may respond to this letter by revising your request, justification table, or highlighted or redacted copies with the Bureau of Records and Hearing Services by January 20, 2004. If a response is not received, staff will draft an order for the prehearing officer's signature based upon the record.

If you have any technical questions regarding this matter please call me at (850) 413-6485. If you have any procedural questions or if you would like to discuss this matter with a staff attorney, please call Ralph Jaeger at (850) 413-6234.

Sincerely,


Robert Freeman
Government Analyst II

cc: Office of General Counsel (Jaeger)
Division of Auditing and Safety (Vandiver)
Miami District Audit Office (Welch)

Hopping Green & Sams

Attorneys and Counselors

Writer's Direct Dial No.
(850) 425-2359

January 16, 2004

BY FAX & U.S. MAIL

Mr. Robert Freeman
Government Analyst II
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

**Re: Docket 030569-GU - Application for Rate Increase by City Gas Company of Florida
Request for Confidential Classification in connection with Audit No. 03-252-4-1**

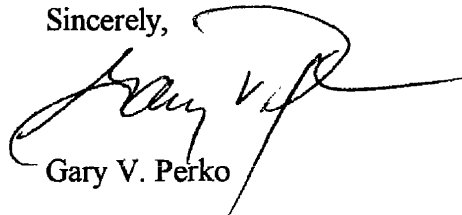
Dear Mr. Freeman:

In response to your letter of January 6, 2004, City Gas Company of Florida ("City Gas") has decided to withdraw its request for confidential classification as to the information discussed in your letter. The specific documents are Working Paper 48-15/2 (one page) and Working Paper 49-4/7-2 (pages 2-3).

Please note that City Gas continues to seek confidential classification for all other items identified in its Request for Confidential Classification.

Please give me a call if you have any questions or comments at 425-2359.

Sincerely,



Gary V. Perko

cc: Ralph Jaeger, Esq. (PSC/OGC)
Ms. Gloria Lopez (City Gas)

RECEIVED

JAN 20 2004

Florida Public Service Commission
Division of Auditing and Safety