

ORIGINAL

Hopping Green & Sams

Attorneys and Counselors

Writer's Direct Dial Number
(850) 425-2359

September 23, 2004

COMMISSION
CLERK

SEP 23 AM 11:29

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BY HAND DELIVERY

Blanca Bayó
Director, Office of the Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

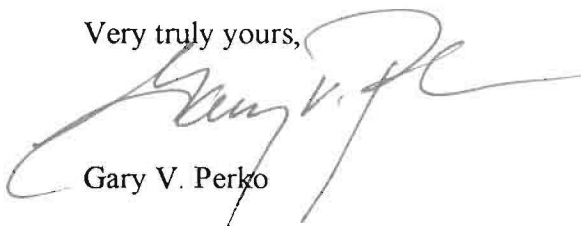
Re: Docket 040003-GU

Dear Ms. Bayó:

Enclosed for filing are the original and seven copies of City Gas Company of Florida's Supplement to Request for Confidential Classification of Staff's Audit Workpapers in the above docket.

Please stamp and return the enclosed extra copy of this filing. If you have any questions regarding this filing, please give me a call at 425-2359.

Very truly yours,



Gary V. Perko

- CMP _____
- COM _____ GVP/mee
- CTR _____ Enclosure
- ECR _____ cc: Certificate of Service
- GCL 1
- OPC _____
- MMS _____
- RCA 1
- SCR _____
- SEC 1
- OTH 1 com records

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(ROR 10225-04)
DOCUMENT NUMBER-DATE

10320 SEP 23 04

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Purchased Gas Adjustment)
(PGA) True-Up)
_____)

Docket No. 040003-GU

Filed: September 23, 2004

**SUPPLEMENT TO CITY GAS COMPANY OF FLORIDA'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION
OF STAFF'S AUDIT WORKPAPERS**

City Gas Company of Florida, a division of NUI Utilities, Inc. ("NUI/City Gas" or "Company"), hereby supplements its Request for Confidential Classification of Staff's Audit Workpapers in this docket, and states:

1. In connection with the Staff's audit, the Company provided numerous documents to the Staff containing information that is "proprietary business information" under Section 366.093(3), F.S. All items for which the company is requesting confidentiality were included with the audit workpapers filed with the Commission, and have been held confidential.

2. By letter dated August 31, 2004, the Commission's Audit Manager advised NUI/City Gas that Rule 25-22.006, F.A.C., required that any request to maintain confidential treatment of the audit workpapers be filed within twenty one days.

3. The Company and undersigned counsel worked diligently to prepare the necessary line-by-line justifications for confidential treatment of the numerous confidential workpapers. The original of the request, the line-by-line justifications, and the redacted and highlighted versions of the workpapers required under Rule 25-22.006(4), F.A.C., were fully prepared at approximately 11:30 a.m. on September 21, 2004, which, in undersigned counsel's experience normally provides more than sufficient time to complete the copying process to ensure filing by 5:00 p.m. However, due to unforeseen copying problems that necessitated voluminous handwritten entries (i.e., line numbers in the margins) on certain copies of the

redacted documents, the required number of copies was not ready for filing until approximately 4:30 p.m. Furthermore, as stated in the attached affidavit, the messenger sent to deliver the materials for filing encountered unusual traffic due to road maintenance. By his clock, the messenger arrived at the Division of the Commission Clerk and Administrative Services (“Division”) at 5:00 p.m., but was told that the Division was closed and that he could not submit the materials for filing.

4. At 7:45 a.m. on September 22, 2001, before the Division’s official office hours had begun, undersigned counsel personally filed the confidentiality request and related exhibits with the Division. Moreover, as stated in the certificate of service attached to transmittal letter for the confidentiality request, copies of the request were served on counsel for all other parties on September 21, 2004. Thus, no other party was prejudiced. However, for the reasons discussed in the confidentiality justifications included in Exhibit A to the confidentiality request, NUI/City Gas and its customers would be prejudiced if the request is not accepted and considered on its merits.

5. In the case of confidential audit workpapers, Rule 25-22.006(3)(a)2., F.A.C., indicates that, upon a showing of good cause, the late filing of a confidentiality request does not result in waiver of confidentiality. In Order No. PSC-96-0407-CFO-WS (March 21, 1996), for example, the Prehearing Officer held that a confidentiality request filed seven days late due to “inadvertent clerical error” did not constitute waiver of confidentiality. See also, Order No. PSC-04-0857-CFO-EI (September 1, 2004) (accepting confidentiality request filed seventeen days late). Here, the filing was less than 13 hours late due to the unusual and unforeseen circumstances described above. Indeed, no business hours passed between the filing deadline of 5:00 p.m. and the actual filing at 7:45 a.m. the next morning.

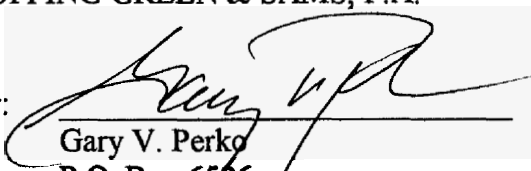
6. Based on the foregoing, the Company has demonstrated good cause under Rule 25-22.006(3)(a)2. Accordingly, its confidentiality request should be considered on its merits without any suggestion of waiver. As one court has explained, “[w]here inaction results from clerical or secretarial error, reasonable misunderstanding, a system gone awry or any other of the foibles to which human nature is heir, then upon timely application accompanied by a reasonable and credible explanation the matter should be permitted on the merits.” Lloyd’s Underwriters v. Ruby, Inc., 801 So.2d 138, 139 (Fla. 4th DCA 2001) (quoting Shurgard Storage Ctrs., Inc. v. Parker, 755 So.2d 695, 696 (Fla. 4th DCA 1999) and Gateway Am. Bank of Fla. v. Lucky Jet Corp., 720 So.2d 1141, 1142 (Fla. 4th DCA 1998)). See also, Hamilton County Bd. of County Comm’rs v. Department of Env’tl. Regulation, 587 So.2d 1378 (Fla. 1st DCA 1991) (DER erred in striking untimely exceptions to recommended order without considering party’s claim of excusable neglect).

WHEREFORE, NUI/City Gas respectfully requests that the Prehearing Officer accept for filing and grant its Request for Confidential Classification of Staff’s Audit Workpapers.

Respectfully submitted, this 23rd day of September, 2004.

HOPPING GREEN & SAMS, P.A.

By:


Gary V. Perko
P.O. Box 6526
Tallahassee, FL 32314
(850) 222-7500

Attorneys for NUI/City Gas

AFFIDAVIT

STATE OF FLORIDA)
)
COUNTY OF LEON)

BEFORE ME, the undersigned authority, this day personally appeared
CHRISTOPHER AUSTIN LAING, who deposes and says:

1. I, CHRISTOPER AUSTIN LANG, am an employee of the law firm of
Hopping Green & Sams, P.A., whose offices are located at 123 South Calhoun Street,
Tallahassee, Florida 32301.

2. On Tuesday, September 21, 2004, I left the firm’s offices at approximately
4:30 p.m. to deliver a pleading entitled “City Gas Company of Florida’s Request for
Confidential Classification of Staff’s Audit Workpapers” (and associated exhibits) for
filing with the Florida Public Service Commission’s Division of the Commission Clerk
and Administrative Services (“Division”).

3. On my way the Division’s office, I encountered unusually heavy traffic
due at least in part to the diversion of traffic associated with road painting being
conducted by road maintenance workers. As a result, I arrived at the Division’s office at
5:00 p.m. according to the clock in my car. In the parking lot, employees of the Division
advised me that the Division’s office was closed and that I could not file the above-
described documents.

FURTHER AFFIANT SAYETH NAUGHT.


CHRISTOPHER AUSTIN LAING

Sworn to (or affirmed) and subscribed before me this 21st day of September
~~January~~, 2004, by CHRISTOPHER AUSTIN LAING.



Lou Ann Kuehlke

Name: Ann Kuehlke

Notary Public, State of Florida

Commission No.: _____

My Commission Expires: _____

Personally Known X OR Produced Identification _____

Type of Identification Produced _____

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to the following this 23rd day of September, 2004.

Katherine E. Fleming (*)
Staff Attorney
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399

Brian J. Powers
Indiantown Gas Company
P.O. Box 8
Indiantown, FL 34956

Thomas A. Geoffrey
Chesapeake Utilities
P.O. Box 960
Winter Haven, FL 33883-0960

Stuart L. Shoaf
St. Joe Natural Gas Company
P.O. Box 549
Port St. Joe, FL 32457

Mr. John T. English
Florida Public Utilities
P.O. Box 3395
West Palm Beach, FL 33402-3395

Thomas Kaufmann
NUI City Gas Company of Florida
One Elizabethtown Plaza
Union, NJ 07083-1975

Norman Horton
Messer Law Firm
P.O. Box 1876
Tallahassee, FL 32302-1876

James Beasley
Lee Willis
Ausley Law Firm
P.O. Box 391
Tallahassee, FL 32302

Jerry Melendy
Sebring Gas System, Inc.
3515 U.S. Highway 27 South
Sebring, FL 33870-5452

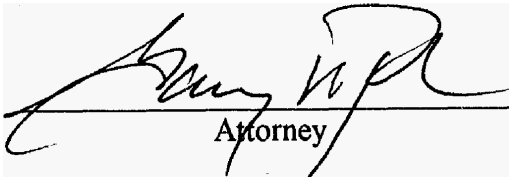
Gloria Lopez
NUI City Gas Company of Florida
955 East 25th Street
Hialeah, FL 33013-3498

Angela Llewellyn
Peoples Gas System
P.O. Box 2562
Tampa, FL 33601-2562

Robert D. Vandiver
Office of Public Counsel
c/o The Florida Legislature
111 W. Madison Street
Tallahassee, FL 32399-1400

Matthew R. Costa
Peoples Gas System
P.O. Box 111
Tampa, FL 33601-0111

Macfarlane Ferguson Law Firm
Ansley Watson, Jr.
P.O. Box 1531
Tampa, FL 33601-1531



Attorney