

State of Florida



ORIGINAL

Public Service Commission

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**DATE:** November 7, 2006

**TO:** Katherine Fleming, Attorney, General Counsel

**FROM:** Division of Regulatory Compliance and Consumer Affairs (Freeman, Vandiver) <sup>f</sup>

**RE:** Docket 060004-GU, Recommendation concerning the Florida Public Utilities Company (FPUC)' request for confidential classification concerning staff's working papers prepared during the audit entitled "Florida Public Utilities Company Gas Energy Conservation Clause Audit Ended December 31, 2005", Audit Control No. 06-076-4-4, Documents Numbered 05838-06 and 06108-06

On June 21, 2006, at the audit exit conference, FPUC requested that certain portions of staff's working papers prepared during the audit entitled "Florida Public Utilities Company Gas Energy Conservation Clause Audit for the 12 Months Ended December 31, 2005", be held in a temporary confidential status in accordance with Rule 25-22.006(3)(a)2, Florida Administrative Code (FAC).

On June 29, 2006, staff filed those working papers with the Commission's Division of the Commission Clerk and Administrative Services (Document 05838-06).

On July 12, 2006, FPUC filed its request for confidential classification for certain portions of the working papers pursuant to Section 366.09(3)(a)2., Florida Statutes (F.S.), and Rule 25-22.006(3)(a)2. and (4), FAC. The FPUC's request included redacted copies of the materials for public use (Exhibit B, Document 06107-06) and copies of the materials with the sensitive portions highlighted (Document 06108-06).

Documents 05838-06 and 06108-06 are currently held by the Commission's Division of the Commission Clerk and Administrative Services as confidential pending resolution of the Florida City Gas' request for confidential classification.

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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)(e), F.S., provides the following exemption.

Subsection 366.093, F.S., provides; “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:

....

(e) Information relating to competitive business 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 25-22.006, 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**

We found two technical errors in processing FPUC’s request.

On June 29, 2006, staff filed Audit Report No. 06-076-4-4 entitled “Florida Public Utilities company Gas Energy Conservation Clause Audit for the twelve months Ended December 31, 1005 (document 05839-06).” In error, staff’s audit report indicated the audit pertained to Docket 060002. The audit report actually pertains to Docket 060004.

Filed on July 12, 2006, FPUC’s pleading in this matter concerning audit No. 06-076-4-4 refers, in part, as pertaining to purchased gas information. Audit No. 06-076-4-4 pertains entirely to Gas Energy Conservation Recovery Clause information.

These two technical errors do not ultimately affect this staff recommendation in response to the utility’s request. Reading the FPUC filing reveals the sensitive material consists of customer-specific account information pertaining to an audit of the books and records concerning FPUC’s Gas Energy Conservation Recovery Clause, Audit No. 06-076-4-4.

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FPUC pleads that release of customer-specific data such as names, addresses, account numbers, services, usage, bill amounts and similar information specific to individual customers would harm the competitive businesses of FPUC and release of private, personal information would also be detrimental to the interest of the customers. FPUC states it does not, as a matter of policy, release or reveal customer specific information unless required to do so by law or unless the release is authorized by the customer.

Customer specific data may be granted a confidential classification based upon the provisions of Section 366.093(3)(e), F.S. Recently, the following Commission decisions have granted a confidential classification to customer-specific information: Order No. PSC-00-1569-CFO-EG, issued August 31, 2000 in Docket 000002-EG, Order No. PSC-02-1210-CFO-GU, Issued September 4, 2002, in docket 020003-GU and Order No. PSC-04-1075-CFO-GU, issued November 3, 2004, in Docket No. 040003-GU.

Section 366.093(3)(e), F.S., provides that the Commission may grant a confidential classification to sensitive competitive business information if release of this information will impair the competitive business of the provider of that information. The Commission has followed a long standing policy to grant a confidential classification to customer-specific account information associated with usage. After reading the material here, staff agrees this is customer-specific account information which may be protected on the basis that release of this information may harm the competitive businesses of Florida Public Utilities Company or harm the private interests of the customers; therefore, staff recommends that this information be granted a confidential classification.

#### **Material held as Confidential**

FPUC states this information and these documents are tended to be, and are, treated as proprietary and confidential.

#### **Duration of the Confidential Classification Period**

FPUC has not specified the length of time for the confidential classification period. Absent such a request, 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 the utility's request be granted and that the identified material be granted a confidential classification for 18 months. A detailed summary recommendation, as found, follows:

**Detailed Summary Recommendation, As Found**

| Working Paper Number            | Description           | Page(s) | Line(s)                   | Recommend 18 Months Classification | Type of Information Classified Confidential |
|---------------------------------|-----------------------|---------|---------------------------|------------------------------------|---|
| Documents 05838-06 and 06108-06 |                       |         |                           |                                    |   |
| 41-3/2                          | Customer Billing Data | 1-6     | Columns A-F<br>Lines 1-35 | Grant                              | Customer-Specific Information               |
| 41-3/3                          | Customer Billing Data | 1-4     | Columns A-F<br>Lines 1-35 | Grant                              | Customer-Specific Information               |
| 41-3/4                          | Customer Billing Data | 1-2     | Columns A-F<br>Lines 1-35 | Grant                              | Customer-Specific Information               |
| 41-3/5                          | Customer Billing Data | 1       | Columns A-F<br>Lines 1-36 | Grant                              | Customer-Specific Information               |
| 41-3/5                          | Customer Billing Data | 1A      | Columns A-F<br>Lines 1-35 | Grant                              | Customer-Specific Information               |
| 41-3/5                          | Customer Billing Data | 2-4     | Columns A-F<br>Lines 1-36 | Grant                              | Customer-Specific Information               |
| 41-3/6                          | Customer Billing Data | 1       | Columns A-F<br>Lines 1-35 | Grant                              | Customer-Specific Information               |
| 41-3/6                          | Customer Billing Data | 2-5     | Columns A-F<br>Lines 1-36 | Grant                              | Customer-Specific Information               |
| 41-3/7                          | Customer Billing Data | 1       | Columns A-F<br>Lines 1-35 | Grant                              | Customer-Specific Information               |
| 41-3/7                          | Customer Billing Data | 2-4     | Columns A-F<br>Lines 1-36 | Grant                              | Customer-Specific Information               |
| 41-3/8                          | Customer Billing Data | 1       | Columns A-F<br>Lines 1-36 | Grant                              | Customer-Specific Information               |
| 41-3/8                          | Customer Billing Data | 2       | Columns A-F<br>Lines 1-28 | Grant                              | Customer-Specific Information               |
| 41-3/8                          | Customer Billing Data | 3-4     | Columns A-F<br>Lines 1-35 | Grant                              | Customer-Specific Information               |
| 41-3/9                          | Customer Billing Data | 1-5     | Columns A-F<br>Lines 1-36 | Grant                              | Customer-Specific Information               |
| 41-3/10                         | Customer Billing Data | 1-3     | Columns A-F<br>Lines 1-36 | Grant                              | Customer-Specific Information               |
| 41-3/10                         | Customer Billing Data | 4       | Columns A-F<br>Lines 1-35 | Grant                              | Customer-Specific Information               |

A temporary copy of this recommendation will be held at I:06108-06. cons fpuc raf.doc for a short period.

CC: Division of Regulatory Compliance and Consumer Affairs (Welch)  
 Division of Commission Clerk and Administrative Services (Flynn)