

State of Florida



ORIGINAL 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: November 22, 2006

TO: Richard Bellak, Attorney, Office of General Counsel

FROM: Division of Regulatory Compliance and Consumer Affairs (Freeman, Vandiver) F a

RE: Docket 060629-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 Earnings Surveillance Audit for the Twelve months Ended December 31, 2005", Audit Control No. 06-170-4-1, Documents Numbered 07922-06 and 08499-06

On August 25, 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 Earnings Surveillance 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 August 29, 2006, staff filed those working papers with the Commission's Division of the Commission Clerk and Administrative Services (Document 07922-06).

On Sept 15, 2006, FPUC filed its request for confidential classification for certain portions of the working papers pursuant to Section 366.093, 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 08498-06) and copies of the materials with the sensitive portions highlighted (Document 08499-06).

Documents 07922-06 and 08499-06 are currently held by the Commission's Division of the Commission Clerk and Administrative Services as confidential pending resolution of the FPUC' request for confidential classification.

- CMP _____
- COM _____
- CTR _____
- ECR _____
- GCL _____
- OPC _____
- RCA _____
- SCR _____
- SGA _____
- SEC 1
- OTH *Lockard*

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

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. Subsections 366.093(3)(b) and (e), F.S., provide the following exemptions.

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:

(b) Internal auditing controls and reports of internal auditors

....

(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

Reading the report reveals the sensitive information pertains to:

1.) Notes Concerning Internal Auditing Matters Reported within the Company’s Audit Committee Minutes;

Section 366.093(b), F.S., provides that the Commission may grant a confidential classification to internal auditing controls and reports of internal auditors. The material here pertains to notes concerning a discussion by the Audit Committee in which internal auditing matters were involved. The utility asserts internal audit reports and discussions directed at such reports should be granted a confidential classification. We have read this material, agree it directly pertains to internal auditing controls and reports of internal auditors, and therefore recommend a confidential classification be granted.

2.) Notes Concerning Sensitive Competitive Business Information Discussed within the Company's Board of Directors Minutes;

Section 366.093(3)(e), F.S., provides that the Commission may grant a confidential classification to sensitive competitive business information if release of that information would harm the provider of that information. Here the materials at issue "...provide insight to the possible activities of the Company and would be of value to potential competitors." We have read the auditor's notes taken from the Company's Director's minutes, agree that release of this information could harm the competitive business of FPUC, and therefore recommend a confidential classification be granted.

3.) Report of the Internal Auditor

Section 366.093(b), F.S., provides that the Commission may grant a confidential classification to reports of internal auditors. FPUC provided the PSC staff auditors with an internal audit report describing work performed under the direction of the Company management and the Auditing Committee. Reading the report reveals the document is the report of an internal auditor. We concur the internal audit report may be granted a confidential classification and recommend a confidential classification be granted.

In general support of their request, the utility points out Commission Order No. PSC-93-1631-CFO-EI, issued November 8, 1993, in Docket No. 930834-EI, and Commission Order No. PSC-04-0101-CFO-EI, issued January 28, 2004. The 1993 decision grants a confidential classification for staff's notes taken directly from a utility's internal audits, and in pertinent parts, the 2004 decision grants a confidential classification to notes taken from minutes of a Company's Board of Directors and Audit Committee. Staff's recommendation to grant the utility's request is consistent with these two prior decisions.

Material held as Confidential

FPUC states this information and these documents are intended 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, and 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 07922-06 and 08499-06					
WP 8	Audit Committee Notes	1	1-6	Grant	Internal Auditing Controls and Reports of Internal Auditors
WP 8	Board of Directors Notes	4	1-4	Grant	Sensitive Competitive Business Information
WP 9	Internal Audit	1-11	All	Grant	Internal Auditing Controls and Reports of Internal Auditors

A temporary copy of this recommendation will be held at I:08499-06. surv fpuc raf.doc for a short period.

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