

Ruth Nettles

From: Ann Bassett [abassett@lawfla.com]

Sent: Thursday, April 16, 2009 3:45 PM

To: Filings@psc.state.fl.us

Subject: Docket No. 080366-GU

Attachments: 2009-04-16, 080366, FPUC's Request for Protective Order and Temporary Protective Order.pdf

The person responsible for this electronic filing is:

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The Docket No. is 080366-GU

Petition of Florida Public Utilities Company for an Increase in Rates Charged to Natural Gas Customers

This is being filed on behalf of Florida Public Utilities Company

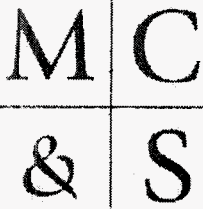
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Florida Public Utilities Company's Request for Protective Order and Temporary Protective Order

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DOCUMENT NUMBER-DATE

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April 16, 2009

VIA ELECTRONIC FILING

Ms. Ann Cole, Director
Commission Clerk and Administrative Services
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 080366-GU

Dear Ms. Cole:

Enclosed for filing on behalf of Florida Public Utilities Company in this docket is an electronic version of Florida Public Utilities Company's Request for Protective Order and Temporary Protective Order in the above referenced docket.

Thank you for your assistance.

Sincerely,

Norman H. Horton, Jr.

NHH/amb
Enclosure

cc: Ms. Cheryl Martin
Parties of Record

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by)
Florida Public Utilities Company's)
Gas Division)
_____)

Docket No. 080366-GU
Date Filed: April 16, 2009

**REQUEST FOR PROTECTIVE ORDER AND
TEMPORARY PROTECTIVE ORDER**

COMES NOW Florida Public Utilities Company ("FPUC"), pursuant to section 366.093, Florida Statutes, and Rule 25-22.006(6), Florida Administrative Code, and requests a protective order and a temporary protective order as to items requested by the Office of Public Counsel ("OPC") in their Second Set of Interrogatories and Second Request for Production of Documents and as grounds states:

1. On March 17, 2009, the OPC served their Second Set of Interrogatories and Second Request for Production of Documents on FPUC wherein the Company was requested to respond to a number of interrogatories and produce a number of documents. Several of the requested documents contain information which the Company considers to be proprietary and confidential as defined in Section 366.093, Florida Statutes, and which it treats as such. FPUC has entered an objection to these requests but has offered to make them available for review subject to confidential treatment.

2. Section 366.093(2), Florida Statutes, and Rule 25-22.006(6), Florida Administrative Code, establish procedures for the issuance of a protective order in discovery in cases before the Commission. Rule 25-22.006(6)(c), permits a utility to allow the Office of Public Counsel ("OPC") to inspect or take possession of information for the purpose of determining whether that information will be used in a proceeding subject to a temporary protective order. Since this request is from the

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FPSC-COMMISSION CLERK


OPC such procedure should suffice, however, inasmuch as the Commission Staff may also have access to the responses, FPUC would request that the Commission enter a Protective Order and/or a Temporary Protective Order exempting the identified information from public disclosure.

3. The specific documents at issue are identified on Attachment A hereto and pursuant to Rule 25-22.006(6)(c), Florida Administrative Code, the Company is making the requested documents available to the OPC subject to nondisclosure as described in that section. The Company would also make such documents available to Staff for review upon issuance of a protective order.

For the reasons given, FPUC requests the Commission to determine the identified information to be confidential information, exempt from section 119.07(1), Florida Statutes, and to issue the appropriate order(s) protecting such information.

Respectfully submitted,

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NORMAN H. HORTON, JR., ESQ.

Attorneys for Florida Public Utilities Company

ATTACHMENT "A"

INTERROGATORIES

5. Non-regulated payroll allocations. Provide a list of employees (by position title and year) that perform services for both non-regulated and regulated operations for the years 2005 to 2007,. For 2008 to 2009 to date, provide this information on a monthly basis. Also include for each employee, provide the number of hours spent on each activity (merchandising/sales, warranty, and the specific duties performed for regulated electric and/or gas services), the annual salary and benefits allocated to each activity (merchandising/sales, warranty, electric and gas).

6. Non-regulated payroll allocations. Provide the actual 2008 payroll and benefit dollars by employee with the allocation of each to merchandising/sales, warranty, electric and gas.

8. Allocation Factors. Please provide a comparison of all actual allocation factors used by the company for 2006,2007 and 2008, showing the basis and calculations for each factor and to what accounts the allocation factors are applied for each operating division, including regulatory and non-regulatory.

9. Allocation Factors. Please provide an analysis, including a description and justification, of all changes in allocation methodology to any account operating division that has occurred between 2005, 2006, 2007, 2008 and 2009.

10. Allocations. Please provide the following annual information for 2007 and 2008 by electric, gas, propane, merchandising/jobbing and value added/warranty services:

- Revenues
- Adjusted gross profit
- Number of customers, average and year-end
- Net assets before allocations
- Gross Payroll
- Direct operation and maintenance expenses

Reason: Interrogatory No. 5, 6, 8, 9 and 10. Each of these interrogatories request information relating to non-regulated operations and employee names. In responding to the interrogatories the Company has provided documents that include information on non-regulated competitive operations. The Company treats information on the non-regulated propane operations as proprietary and confidential as it relates to competitive activities. Disclosure of this information would harm and impair the competitive business of the Company. Additionally, the documents include identification of employees of both regulated and non-regulated operations. The Company does not publish employee personnel information not related to compensation, duties, qualifications or responsibilities.

40. Income Tax. Please explain the 2007, 2008 and 2009 regulatory impact of the tax liability, expense and interest issues for 2003 and 2004 that were recorded in 2007 and 2008 mentioned in the Company's September 30, 2008 10Q filing with the SEC, as well as all 2008 and 2009 regulatory impacts from the 2005 and 2006 IRS audit.

Reason: This interrogatory requests information relating to regulatory impact of certain tax activities. As part of its response the Company provided copies of recent tax returns (Exhibit 40.1) which are considered to be and treated as confidential. The Commission has treated Federal income tax returns and accompanying forms as confidential consistent with the treatment afforded these returns pursuant to 26 U.S.C. Sec. 6103(a) and similar treatment should be afforded here.

PRODUCTION OF DOCUMENTS

13. Rate Case Expense. Provide a copy of all documentation (contracts, bids, estimates, invoices, letters, emails, correspondence, and workpapers sent to, received from, or prepared by all

consultants, attorneys, or FPUC staff) regarding and supporting and justifying the requested rate case expense.

Reason: This request seeks documents regarding rate case expenses including bids and proposals. Information contained within some of the documents includes rates and arrangements which are made by competitive providers. Such information is not publicly disclosed by these providers and disclosure would harm their competitive business and impair their ability to contract on favorable terms. Such competitive interest is exempt from disclosure pursuant to Section 366.093(3)(e), Florida Statutes.

15. **Financial Income Statements.** Provide the income statements and balance sheets for all regulated and non-regulated services annually for the years 2004 to 2007 and monthly for 2008.

16. **Capital and Expense Budgets.** Provide a copy of the 2007, 2008 and 2009 capital and expense budgets for the electric, gas and non-regulated operations.

17. **Variance Analysis or Reports.** Provide a copy of all capital and expense monthly and annual variance reports or analyses for the electric, gas and non-regulated operations for the years 2007, 2008 and 2009 to date.

18. **Budget Changes.** Provide a copy of all documents that reflect and budget changes or adjustments that have been made to 2008 or 2009 capital and expense budgets for the electric, gas and non-regulated operations for the years 2007, 2008 and 2009 to date.

Reason: These requests seek production of financial and budget information regulated and non-regulated services for a period of years. The non-regulated propane operations are subject to competitive and public disclosure of this information would provide valuable information to competitors to the harm of the competitive interest of the Company. The propane operations of the

Company are not regulated but are provided on a competitive basis with others and information relating to competitive interest are exempt from disclosure pursuant to Section 366.093(3)(e), Florida Statutes.

20. Audit Fees. Please provide a copy of all engagement letters, emails or other correspondence from outside audit and accounting firms for 2006 through 2009 that address the fees or services performed.

Reason: This request seeks production of documents regarding fees and services of outside accounting and audit firms. Such services are provided in a competitive environment and public disclosure of the services and arrangements would harm the competitive interest of the providers. Such information is not publicly disclosed by the providers.

23. South Florida Operations Center. Please provide a copy of all invoices, bids, estimates, communication sent and received regarding the proposed operations center.

Reason: This request seeks production of documents pertaining to the proposed operations center. The documents provided are from competitive providers and disclosure of the proposals would harm the competitive interest of these providers.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing have been served by Hand Delivery (*) this 16th day of April, 2009 upon the following:

Ralph Jaeger, Esq.*
Office of General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Patricia Christensen*
Associate Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison St., Room 812
Tallahassee, FL 32399-1400


NORMAN H. HORTON, JR.