

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida
Public Utilities Company.

DOCKET NO. 080366-GU
ORDER NO. PSC-09-0589-CFO-GU
ISSUED: September 1, 2009

ORDER GRANTING CONFIDENTIAL CLASSIFICATION FOR CERTAIN AUDIT
WORKPAPERS (DOCUMENT NOS. 02168-09 and 02628-09)

On March 6, 2009, at the audit exit conference, staff delivered certain working papers obtained or prepared during the Florida Public Utilities Company (Company or FPUC) Gas Division Rate Case Audit conducted in this docket. The Company requested that these materials be temporarily exempted from public access in accordance with provisions of Rule 25-22.006(3)(a)2., Florida Administrative Code (F.A.C.).

On March 12, 2009, staff filed Document Number 02168-09 consisting of portions of the staff's audit working papers. On March 25, 2009, FPUC filed a request pursuant to Section 366.093, Florida Statutes (F.S.) and Rule 25-22.006(3)(a)2. and (4), F.A.C., that selected portions of the working papers prepared by the staff during the investigation receive confidential classification. The Company specifically requested that the following audit workpapers be granted confidential classification: Document 9-1, consisting of one page; Document 9-1/1, consisting of 12 pages; and Document 9-1/2, a compact disc (CD).

The Company also initially requested that Columns A and B for audit workpapers Document 59-1/1-23, consisting of five pages; Document 59-1/1-23/1, consisting of four pages; Document 59-1/3-1, consisting of one page; and Document 59-1/3-1/1, consisting of 12 pages, be granted confidential classification. However, on July 28, 2009, the Company withdrew its request for confidential classification for these latter documents. Therefore, this Order addresses only whether audit workpapers consisting of the 9-1, 9-1/1, and 9-1/2 documents should be accorded confidential classification. The information contained in these remaining documents, and for which FPUC seeks confidential classification, is not related to employee compensation, duties, qualifications, or responsibilities.

The utility's request included redacted copies for public inspection (Attachment A, Document No. 02627-09) and copies with the sensitive material highlighted (Document 02628-09). Document Numbers 02168-09 and 02628-09 are currently held by the Office of Commission Clerk as confidential pending resolution of FPUC's request for confidential classification.

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 in pertinent part as follows:

DOCUMENT NUMBER-DATE

09064 SEP-1 8

FPSC-COMMISSION CLERK

(3) 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 a 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, F.A.C., the utility has the burden of demonstrating that materials qualify for confidential classification, and 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.

Analysis of the Request

The Company alleges that the information for which it seeks confidential classification is proprietary confidential business information consisting of either:

1. Information From an Internal Audit,¹ or
2. Competitive Business Information Involving:
 - (a) Unregulated Operations of the Company;
 - (b) Customer-Specific Account Information
 - (c) Information Concerning Litigation Matters; and
 - (d) Multiple Pages of Information Taken From the Company's External Financial Officers.²

Further, as required by Section 366.093(3), F.S., the Company states that all of the above-noted information is held by it as private, proprietary, confidential, and is not released to the public.

Each category of information will be discussed below.

1. Information From an Internal Audit (Audit Workpapers 9-1 and 9-1/1)

The Company notes that the Commission has previously granted a confidential classification to internal audit information by way of Commission Order No. PSC-04-0731-CFO-

¹ Audit Workpapers 9-1 and 9-1/1

² Audit Workpaper 9-1/2 (compact disc)

GU,³ and Order No. PSC-04-0163-CFO-EI.⁴ A review of the materials reported by FPUC as part of its internal audit program shows that the materials disclose internal auditing controls and reports of internal auditors. Therefore, pursuant to Section 366.093(3)(b), F.S., those materials shall be granted a confidential classification.

2. Competitive Business Information Involving: (a) Unregulated Operations of the Company; (b) Customer-Specific Account Information; (c) Information Concerning Litigation Matters; and (d) Multiple Pages of Information Taken From the Company's External Financial Auditors (Document 9-1/2 – CD).

The Company alleges that this CD contains sensitive competitive business information and, if released, would harm the provider of the information. Specifically, the Company alleges that the CD contains information concerning unregulated operations of the Company, specific customer information, analysis of litigation by counsel, excerpts of board meetings and multiple pages of other data and workpapers of the auditors. Because this information relates to competitive business interests, the Company requests that it be granted confidential classification pursuant to Section 366.093(3)(e), F.S.

A review of the information shows that the information was taken by our audit staff from the materials provided by FPUC's external auditor. In Order No. 25297,⁵ the Commission found that portions of an external auditors working papers may qualify for a confidential classification. The Commission found that the external auditor's working papers contain two different types of information: (a) the external auditor's audit strategy and work program which is a product that has value within the marketplace and its release would impair the competitive business of the independent external auditor; and (b) material containing information about the company being audited.

A review of the CD shows that it contains the valuable audit strategy and work program of FPUC's external auditor and information concerning sensitive competitive business interests. Therefore, Document 9-1/2 (the entire CD) shall be granted a confidential classification as sensitive competitive business information.

Document Nos. 02168-09 and 02628-09					
Staff Work Paper Number	Description	Page(s)	Line(s)	Disposition	Type of Information
WP 9-1	Internal Audit Notes	1	All	Grant	Report of Internal Auditor
WP 9-1/1	Internal Audit Report	1-12	All	Grant	Report of Internal Auditor
WP 9-1/2	External Audit Work Papers	Compact Disc	All	Grant	Sensitive Competitive Business Information

³ Issued July 29, 2004, in Docket No. 030569-GU, In re: Application for a rate increase by City Gas Company of Florida.

⁴ Issued February 17, 2004, in Docket No. 030438-EI, In re: Petition for a rate increase by Florida Public Utilities Company.

⁵ Issued November 5, 1991, in Docket No. 890190-TL, In re: Petition of Citizens of State of Florida to investigate Southern Bell Telephone and Telegraph Company's cost allocation procedures.

Based on the above, Document Nos. 02168-09 and 02628-09 shall be accorded confidential classification to the extent set forth in this Order.

According to the provisions of Section 366.093(4), F.S., absent good cause shown, confidential classification is limited to 18 months. Because the Company has not shown good cause for a longer period, the period of confidential classification shall be set as 18 months from the date of this Order. As deemed necessary, the utility may request an extension of the confidential classification before the period tolls. At the conclusion of the 18-month period, the confidential information will no longer be exempt from Section 119.07(1), F.S., unless FPUC or another affected person shows, and the Commission finds, that the information continues to contain proprietary confidential business information. This Order shall be the only notification by the Commission to the parties concerning the expiration of the confidentiality time period.

Based on the foregoing, it is

ORDERED by Commissioner Nathan A. Skop, as Prehearing Officer, that Florida Public Utilities Company's request for confidential classification of Document Nos. 02168-09 and 02628-09 is granted. It is further

ORDERED that the information for which confidential classification has been requested will be granted confidential classification for a period of 18 months from the date of the issuance of this Order. It is further

ORDERED that this Order shall be the only notification by the Commission to the parties concerning the expiration of the confidentiality time period.

By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 1st day of September, 2009.



NATHAN A. SKOP
Commissioner and Prehearing Officer

(S E A L)

RRJ

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.