



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: July 30, 2009  
TO: Ralph Jaeger, Attorney, Office of General Counsel  
FROM: Division of Regulatory Compliance (Freeman, Mailhot) *F dm*  
RE: Docket 080366-GU, Recommendation concerning Florida Public Utilities Company (FPUC or Company) request for confidential classification concerning a portion of the staff working papers prepared during "Florida Public Utilities Company Gas Division Rate Case Audit -- Historical Test Year Ended December 31, 2007, Forecast Test Year Ending December 31, 2009", Audit Control No. 08-365-4-1, Documents Numbered 02168-09 and 02628-09

On March 6, 2009, when copies of certain portions of staff's working papers obtained or prepared during the "Florida Public Utilities Company Gas Division Rate Case Audit -- Historical Test Year Ended December 31, 2007, Forecast Test Year Ending December 31, 2009", were delivered to FPUC at the audit exit conference, 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 (FAC).

On March 12, 2009, staff filed document numbered 02168-09 consisting of those specified 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), FAC, that selected portions of the working papers prepared by the staff during the investigation receive confidential classification. 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).

On July 28, 2009, after discussions with the staff, FPUC reduced the size of their request.

Documents numbered 02168-09 and 02628-09 are currently held by Office of the Commission Clerk as confidential pending resolution of FPUC's request for confidential classification.

COM Pursuant to Section 119.07, F.S., documents submitted to this Commission are public records.  
ECR The only exceptions to this law are specific statutory exemptions and exemptions granted by  
GCL governmental agencies pursuant to the specific items of a statutory provision. Subsections  
GPC 366.093(3)(b), and (e), F.S., provide the following exemptions.

- RCP
- SSC
- SGA
- ADM
- CLK *Pena*

DOCUMENT NUMBER-DATE

07812 JUL 30 08

FPSC-COMMISSION CLERK

Subsection 366.093(3), 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 filing reveals the sensitive material consists of:

#### 1) Information from an Internal Audit

Section 366.093(3)(b), F.S., provides that the Commission may grant a confidential classification to internal auditing controls and reports of internal auditors. The Company reports the Commission has previously granted a confidential classification to internal audit information by way of Commission Order PSC-04-0731-CFO-GU, issued on July 29, 2004, in Docket No. 030569-GU and by way of Commission Order No. PSC-04-0163-CFO-EI issued on February 17, 2004, in Docket No. 030438. We have read the materials reported by FPUC as part of its internal audit program and agree with the utility that the materials disclose internal auditing controls and reports of internal auditors. Section 366.093(3)(b), F.S., provides that the Commission may grant a confidential classification to internal audit materials. We recommend the Commission grant such a confidential classification.

**Analysis of the FPUC Request (Continued)**

2) Competitive Business Information involving (1) Unregulated Operations of the Company, (2) Customer-Specific Account Information, (3) Information Concerning Litigation Matters, and (4) Multiple Pages of Information Taken from the Company's External Financial Auditors.

Section 366.093(3)(e), F.S., provides that the Commission may grant a confidential classification to sensitive competitive business information if its release would harm the provider of the information.

After reading the filing, we found that this category of sensitive information was taken by the PSC audit staff members from the materials provided by FPUC's external auditor.

By way of Commission Order No. 25297, issued November 5, 1991, in docket 890190-TL, 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. The Commission reasoned that release of the external auditor's valuable audit strategy and work program would harm the competitive business of the external auditor. The Commission also found company information found in the possession of the external auditor would have to separately qualify for a confidential classification on an item by item basis by meeting the terms of a specified exemption.

We have read the information identified by the Company as sensitive and agree the information reports the valuable audit strategy and work program of FPUC's external auditor. Therefore we recommend that this material be granted a confidential classification as sensitive competitive business information.

**Information Held as Confidential**

To qualify as proprietary confidential business information, the material must also be held as private and not released to the public. FPUC asserts that this sensitive information is treated as proprietary and confidential.

**Duration of the Confidential Classification Period**

FPUC has not specified a confidential classification period for this material. 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 as reduced by the Company's request, and for the reasons presented above, we recommend that FPUC's request be granted and the identified material be granted a confidential classification for 18 months.

A detailed recommendation, as amended, follows:

**Detailed Recommendation**

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information
Documents 02168-09 and 02628-09					
WP 9	External Audit Work Papers Notes	1	All	Grant	Sensitive Competitive Business 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	Computer Disc	All	Grant	Sensitive Competitive Business Information

A temporary electronic copy of this recommendation will be held at I:02628-09 fpuc forecast test year 2009 rate case raf.doc for a short period.

CC: Division of Regulatory Compliance (Welch)  
 Office of the Commission Clerk (McLean, Cole)