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-M-E-M-O-R-A-N-D-U-M-

DATE: February 20, 2009

TO: Carolne Klancke, Attorney, Office of General Counsel

FROM: Division of Regulatory Compliance (Freeman, Vandiver)

RE: Docket 080318-GU, Recommendation concerning Peoples Gas System's (Peoples') request for confidential classification and motion for a temporary protective order concerning a portion of the staff working papers prepared during the "Peoples Gas System File and Suspend Rate Case Audit Historical Year ended December 31, 2007", Audit Control No. 08-234-2-2, Documents Numbered 11078-08 and 11238-08

On November 13, 2008, when copies of certain portions of staff's working papers obtained or prepared during the "Peoples Gas System File and Suspend Rate Case Audit Historical Year ended December 31, 2007", were delivered to Peoples at the audit exit conference, the utility 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 December 2, 2008, staff filed document numbered 11078-08 consisting of those specified portions of staff's audit working papers.

On December 4, 2008, Peoples filed a request pursuant to Section 366.093, Florida Statutes (F.S) and Rule 25-22.006, FAC, that selected portions of the working papers prepared by the staff during the audit receive a confidential classification. Such a request must meet the requirements of Rule 25-22.006(4), FAC. Peoples' request included public copies of the information with the sensitive portions redacted (Document No. 11228-08, Exhibit B) and the request also included copies of the material with the sensitive information fully identified and highlighted (Document No. 11238-08).

On or about December 2, 2008, Office of Public Counsel (Merchant) requested and received a copy of the sensitive audit documents prepared for this case from the Clerk's Office. Thus, in addition to its December 4, 2008 request for a confidential classification for the sensitive audit working papers, Peoples has motioned that pursuant to Rule 25-22.006(6)(c), FAC, the information contained in staff's confidential working papers be granted a temporary protective order so the information may be protected from public disclosure while copies of the audit materials are in the custody of the Office of Public Counsel.

- COM _____
- ECR _____
- GCL _____
- OPC _____
- RCP _____
- SSC _____
- SGA _____
- ADM _____
- CLK *McLean*

February 20, 2009
Peoples Motion and Request

Documents numbered 11078-08 and 11238-08 are currently held by the Office of the Commission Clerk as confidential pending resolution of Peoples' request for confidential classification. Also, the utility's request for a protective order for this information is pending.

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

Section 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 request reveals the sensitive documents consist of staff's notes taken from Minutes of the Board of Directors and notes taken from internal audits, as well as copies of the Peoples Gas System 2007 federal income tax return.

Section 366.093(3)(e), F.S., provides that sensitive business information may be granted a confidential classification if its release would harm the competitive business of the provider of that information. This specific exemption allows the Commission to grant a confidential classification to sensitive portions of the Board of Directors Minutes and Peoples' 2007 Federal Income Tax Return because release of this sensitive information would reasonably be expected to harm the competitive business of the provider of the information. We have read the information presented here and agree that its release would cause harm to the provider of the information.

Section 366.093(3)(b), Florida Statutes, provides that information concerning internal auditing controls and reports of internal auditors is eligible for a confidential classification. We have read the information at issue here and agree it reports internal auditing controls and information from internal audits; therefore, we recommend that the internal auditing information identified by Peoples be granted a confidential classification.

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. The utility asserts: "The confidential information contained in the documents is intended to be and is treated by Peoples as private and has not been publicly disclosed."

Duration of the Confidential Classification Period

Peoples requests that this information be held in a confidential classification for at least 18 months as prescribed in Rule 25-22.006(9)(a), Florida Administrative Code.

According to the provisions set out in Section 366.093(4), F.S., absent good cause shown, confidential classification is limited to 18 months. We therefore recommend that the Commission limit the confidential classification period to 18 months. Peoples may request an extension of this classification period before it 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.

Further, we recommend that a temporary protective order be prepared to maintain confidentiality of this sensitive information during the confidential classification period while the material is in the possession of the Office of Public Counsel. As noted above this information was provided to the Office of Public Counsel on or about December 2, 2008.

A detailed recommendation follows:

Detailed Recommendation

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information
Documents Numbered 11078-08 and 11238-08					
8, page 1 of 3	Minutes Board of Directors	1	7 Areas	Grant	Sensitive Competitive Business Information
8, page 2 of 3	Minutes Board of Directors	1	5 Areas	Grant	Sensitive Competitive Business Information
8, page 3 of 3	Minutes Board of Directors	1	11 Areas	Grant	Sensitive Competitive Business Information
8-1, page 1	Minutes Board of Directors	1	18 Areas	Grant	Sensitive Competitive Business Information
8-1, page 2	Minutes Board of Directors	1	3 Areas	Grant	Sensitive Competitive Business Information
9, page 1	Summary of Internal Audits	1	12 Areas	Grant	Internal Auditing Controls and Reports of Internal audits
9, page 3	Summary of Internal Audits	1	5 Areas	Grant	Internal Auditing Controls and Reports of Internal audits
54	Peoples Gas System 2007 Federal Income Tax Return	30	All	Grant	Sensitive Competitive Business Information

A temporary copy of this recommendation will be held at I:11238-08 peoples gas rate case TYE 2007 raf.doc for a short period.

CC: Division of Regulatory Compliance (Rohrbacher)
Office of the Commission Clerk (Cole, McLean)
Office of General Counsel (Fleming)