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

DATE: January 27, 2010

TO: Katherine Fleming, Attorney, General Counsel

FROM: Division of Auditing and Performance Analysis (Freeman, Prestwood) *F CP em*

RE: Docket 100003-GU, Recommendation concerning the Florida City Gas' request for extension of confidential classification concerning staff's working papers prepared during the audit titled "Florida City Gas Purchased Gas Adjustment Supplemental Audit for the Year Ended December 31, 2006", Audit Control No. 07-067-4-1, Documents Numbered 08291-07 and 11100-07

Background

On September 7, 2007, at the audit exit conference, Florida City Gas requested that certain portions of staff's working papers prepared during the audit titled "Florida City Gas Purchased Gas Adjustment Supplemental Audit for the Year Ended December 31, 2006", be held in a temporary confidential status in accordance with Rule 25-22.006(3)(a)2., Florida Administrative Code (FAC).

On September 13, 2007, staff filed those working papers with the Office of the Commission Clerk (Document No. 08291-07).

On December 20, 2007, Florida City Gas 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, FAC. The Florida City Gas request included redacted copies of the materials for public use (Document 11101-07) and copies of the materials with the sensitive portions highlighted (Document 11100-07).

On March 12, 2008, in Docket No. 080003-GU, the Commission granted the Utility's request and issued Commission Order PSC-08-0150-CFO-GU which provided a confidential classification to sensitive information concerning the Utility's 2006 natural gas purchases for 18 months. That classification period has tolled.

COM _____

APA _____ On August 19, 2009, the utility timely requested an extension of the confidential classification

ECR _____ period.

GCL _____

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SSC _____

ADM _____

OPC _____

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Background (continued)

Documents 08291-07 and 11100-07 are currently held by the Commission Clerk as confidential pending resolution of the Florida City Gas request for an extension of 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. Subsection 366.093(3)(d), F.S., provides the following exemption.

Subsection 366.093(3), F.S., in part, 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:

....

(d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms.

....”

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 Florida City Gas filing reveals the sensitive material at issue here consists of sensitive contractual information.

Florida City Gas pleads that this specific contractual information and these prices and pricing data are not stale or dated, and release of the information would still impair the efforts of Florida City Gas to contract for goods and services on favorable terms. Subsection 366.093(3)(d), F.S. provides the Commission may grant a confidential classification to this type of sensitive material.

Staff Analysis of the Request (Continued)

The Utility points out Commission Rule 25-22.006(9)(c), FAC, provides that the Commission may extend a period of confidential classification beyond 18 months if the utility justifies that an extended period of confidential classification is needed. Florida Law, Subsection 366.093, F.S. provides the period of confidential classification is limited to only 18 months unless the utility provides cause that a longer period of classification is warranted.

Based upon reading this filing and the sensitive material at issue here, we agree with the Utility that this contractual material remains sensitive, and its release would reasonably be expected to impair the abilities of the Utility to favorably contract for goods and services in the future. Therefore, we recommend that material identified by Florida City Gas should be granted an extended confidential classification.

Staff notes the Commission has granted an extension of confidential classification to sensitive contractual information in similar cases (See Commission Order PSC-94-1224-CFO-EI, dated October 6, 1994, issued in Docket 940001-EI.)

Material held as Confidential

Florida City Gas asserts that the identified material meets the definition of “proprietary confidential business information” as described in Section 366.093(3), F.S., and states the information is held as private and has not been released to the public.

Duration of the Confidential Classification Period

Florida City Gas requests that this material be granted an extension of the confidential classification period for at least 18 months. Further, the utility requests that this material be returned as soon as the information is no longer necessary for the Commission to conduct its business.

According to the provisions of Section 366.093(4), F.S., absent good cause shown for a longer period, confidential classification is limited to 18 months. Without cause shown for a longer period, we recommend that the period of extended confidential classification be set as 18 months.

Staff Recommendation

Based upon reading the filing, and for the reasons presented above, we recommend that the Utility’s request be granted and that the identified material be granted an extension of confidential classification for 18 months. A detailed summary recommendation follows:

Detailed Summary Recommendation

Working Paper Number	Description	Page(s)	Line(s)	Recommend Extension	Type of Information Classified Confidential
Documents 08291-07 and 11100-07					
43-1	Sequent Comparison	1	Weighted Average Price: lines 1-2 Sequent Purchase Price Column; FOM Price Column; Difference Columns; Auditor Notes Column; Auditor's notes; lines 1-2	Grant	Sensitive Contractual Information
43-1	Sequent Comparison	2-3	Weighted Average Price: lines 1-4 Sequent Purchase Price Column; FOM Price Column; Difference Columns;	Grant	Sensitive Contractual Information
43-1	Sequent Comparison	4	Weighted Average Price: lines 1-7 Sequent Purchase Price Column; FOM Price Column; Difference Columns;	Grant	Sensitive Contractual Information

Working Paper Number	Description	Page(s)	Line(s)	Recommend Extension	Type of Information Classified Confidential
Documents 08291-07 and 11100-07					
43-1	Sequent Comparison	5-9	Weighted Average Price: lines 1-6 Sequent Purchase Price Column; FOM Price Column; Difference Columns;	Grant	Sensitive Contractual Information
43-1	Sequent Comparison	10	Weighted Average Price: lines 1-4 Sequent Purchase Price Column; FOM Price Column; Difference Columns;	Grant	Sensitive Contractual Information
43-1	Sequent Comparison	11	Weighted Average Price: lines 1-3 Sequent Purchase Price Column; FOM Price Column; Difference Columns;	Grant	Sensitive Contractual Information
43-1	Sequent Comparison	12	Weighted Average Price: lines 1-4 Sequent Purchase Price Column; FOM Price Column; Difference Columns;	Grant	Sensitive Contractual Information
43-1/1-1	Deal Ticket Review	2	Counterparty Column; Spread Column	Grant	Sensitive Contractual Information
43-1/2	Sequent Explanation	1	1-2	Grant	Sensitive Contractual Information

Working Paper Number	Description	Page(s)	Line(s)	Recommend Extension	Type of Information Classified Confidential
Documents 08291-07 and 11100-07					
43-1/2, page 1	Sequent Explanation	1	1	Grant	Sensitive Contractual Information
43-1/2, page 2	Sequent Explanation	1	1-5	Grant	Sensitive Contractual Information
43-1/2, page 3	Sequent Explanation	1	1-14	Grant	Sensitive Contractual Information
43-1/2-1	Spot Comparison	1	Price Columns; Amount Columns; Value Column; Line 1	Grant	Sensitive Contractual Information
43-1/3	Sequent Expenses	1	1-9	Grant	Sensitive Contractual Information
43-2	May Comparison	1	Weighted Average Price: lines 1-6 Sequent Purchase Price Column; FOM Price Column; Difference Columns;	Grant	Sensitive Contractual Information
43-4	Sequent Costs	1	Total Cost Column; Z-1 Cost Column; Z-2 Cost Column: Z-3 Cost Column; Lines 1-7	Grant	Sensitive Contractual Information

For a short period, a temporary electronic copy of this recommendation will be held at file S:\PSC\APA\WP\confidentiality matters\11100-07.city gas 1st extension pga raf.doc

CC: Division of Auditing and Performance Analysis (Welch)
Office of the Commission Clerk (McLean, Cole)