

State of Florida



Public Service Commission
-M-E-M-O-R-A-N-D-U-M-

DATE: October 3, 2002
TO: Office of General Counsel (Stern) *W*
FROM: Division of Auditing and Safety (Vandiver, Freeman) *F AM*
RE: Docket 020007-EI, Recommendation concerning Florida Power and Light Company's (FPL's) request for confidential classification for materials gathered during audit No. 02-032-4-1, entitled "FPL Environmental Clause Audit for the Year ended December 31, 2001", documents 08174-02 and 08386-02

On July 29, 2002, when copies of certain portions of staff's working papers prepared during FPL's Environmental Clause Audit for the Year Ended December 31, 2001, were delivered to FPL at the audit exit conference, the utility requested that these materials be temporarily exempted from public access in accordance with the provisions of Rule 25-22.006(3)(a)(2), Florida Administrative Code (FAC).

On August 5, 2002, staff filed document 08174-02 consisting of these materials.

On August 8, 2002, the utility filed a request pursuant to Rule 25-22.006, FAC, and Section 366.093, Florida Statutes (F.S.), that certain portions of the audit working papers prepared by the staff receive a confidential classification. The utility request includes redacted copies for public inspection (exhibit B, document 08385-02) and copies with the sensitive information highlighted (document 08386-02).

On September 25, 2002, after discussions with the staff, the utility made technical corrections to its filing. These corrections affected corrections to the utility's justification table only. No additional highlighted confidential documents or redacted documents were filed.

Documents 08174-02 and 08386-02 are currently held by the Division of Commission Clerk and Administrative Services in a temporary confidential classification pending resolution of FPL's request.

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

DOCUMENT NUMBER-DATE

10729 OCT-4 8

FPSC-COMMISSION CLERK

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, and 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 interests, the disclosure of which would impair the competitive business of the provider of the information....

According to Section 366.093 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 FPL filing reveals the sensitive materials consist of:

1. Internal audit controls or reports or information relating to internal audit controls.

FPL witness Rick Del Cueto, FPL Manager, Internal Auditing, identifies material concerning reports of internal auditors and internal auditing controls. Specifically Mr. Del Cueto identifies internal auditing materials within staff work papers entitled; "Internal Audit List" and "Internal Audit Notes".

2. Customer-specific account information.

FPL witness Rosemary Morley, FPL Manager, Rate Department, identifies customer-specific information contained in staff's audit working papers. Specifically, witness Morley reports sensitive competitive business information is contained in staff's working papers entitled; "Rate Code Information."

Ms. Morley reports FPL has a corporate policy not to disclose customer specific information without the permission of the customer unless required to do so by law. FPL's policy recognizes customer-specific information as customer names, addresses, telephone numbers, account numbers, rates, billing determinates (kW and kWh usage), conservation savings in kW, kWh and bills. According to witness Morley, "FPL's policy is premised upon the customers' right to privacy and the potential that the disclosure of customer specific information may harm some customers' competitive interests or disclose their trade secrets. FPL's customers have affirmed to FPL their interest in having this information maintained

confidential. For many of these customers, electric usage is an important part of their production or operating costs. Thus, the disclosure of rate or contract information, as well as consumption levels or patterns, could provide competitors with commercially sensitive information that would afford competitors an unfair advantage. For others, non-disclosure of the information is simply a matter of privacy. While it may be that the disclosure of such information may be more sensitive for some customers than for others, FPL has not sought to make a case-by-case determination as to the level sensitivity or potential harm with respect to disclosing a particular customer's information; rather in deference to its customers, as a matter of policy, and in the interest of customer privacy, FPL has not disclosed to third parties specific rate and contract information for customers unless required by law or unless the customer consents to such disclosure. This policy is important from both a practical and theoretical standpoint. Customers want the assurance that their information is protected to the same extent as any other customer's. Also practically speaking, it would be difficult and perhaps impossible task to make a case-by-case determination as to what level of protection each customer's data may merit."

Further, FPL offers the following decisions in support of its position that the Commission in the past has found customer-specific information to be confidential proprietary business information:

Commission order PSC-98-0421-CFO-EI, March 24, 1999, Docket 941102-EI

The decision involves confidential treatment of a quarterly report for a real time pricing program. The order held that customer specific information is regarded as confidential.

Commission order PSC-98-0620-CFO-EI, May 4, 1998, Docket 971668-EI

The decision involves confidentiality of customers who filed complaints. The identity of customers who filed a complaint was awarded a confidential classification as long as the complaint was not already a public record.

Commission order PSC-96-1478-CFO-EI, December 4, 1996, Docket 961013-EI

The decision involves the identity of customers who have requested studies regarding energy alternatives in their competitive businesses as well as the contents of these studies which identify cost saving measures. The order held that the customer's names and the contents of the studies were confidential.

FPL asserts all material marked as sensitive within this filing is private and has not been disclosed.

Length of the Classification Period

FPL requests this information be returned once it is no longer needed for Commission business.

Audit reports and related audit working papers of this nature are retained by the Commission for 25 years. Section 366.093(4), F.S., limits the length of any confidential classification to 18 months, unless cause is shown for allowing a longer period of protection. Since cause has not been shown for a longer period of protection within this filing, we recommend any confidential classification should be limited to 18 months. If the utility finds additional protection is needed, an extension may be filed before any granted protection period tolls.

STAFF RECOMMENDATION

Staff's reading of the sensitive material reveals it discloses information regarding: (1) reports of internal auditors and internal auditing controls or (2) customer-specific information release of which could cause harm to the competitive businesses of the providers of the information. We therefore recommend the utility's request for confidential classification be granted for 18 months. A detailed recommendation is provided below:

Detailed Staff Recommendation

Staff Work Paper	Page(s)	Lines(s)	Recommend	Type of Information Classified Confidential
Documents 08174-02 and 08386-02				
9	1	Col C, 1-23	Grant	Reports of Internal Auditors and Internal Auditing Controls
9-1	1-3	All	Grant	Reports of Internal Auditors and Internal Auditing Controls
41-2/1-1	1	Col C, 1-57	Grant	Sensitive Competitive Business Information
41-2/1-1	2-5	Col C, 1-56	Grant	Sensitive Competitive Business Information
41-2/1-1	6	Col C, 1-57	Grant	Sensitive Competitive Business Information
41-2/1-1	7	Col C, 1-59	Grant	Sensitive Competitive Business Information
41-2/1-1	8	Col C, 1-61	Grant	Sensitive Competitive Business Information

Staff Work Paper	Page(s)	Lines(s)	Recommend	Type of Information Classified Confidential
Documents 08174-02 and 08386-02				
41-2/1-1	9	Col C, 1-62	Grant	Sensitive Competitive Business Information
41-2/1-1	10	Col C, 1-64	Grant	Sensitive Competitive Business Information
41-2/1-1	11	Col C, 1-63	Grant	Sensitive Competitive Business Information
41-2/1-1	12	Col C, 1-57	Grant	Sensitive Competitive Business Information
41-2/1-1	13	Col C, 1-54	Grant	Sensitive Competitive Business Information
41-2/1-1	14	Col C, 1-56	Grant	Sensitive Competitive Business Information
41-2/1-1	15-16	Col C, 1-57	Grant	Sensitive Competitive Business Information
41-2/1-1	17-18	Col C, 1-58	Grant	Sensitive Competitive Business Information
41-2/1-1	19	Col C, 1-60	Grant	Sensitive Competitive Business Information
41-2/1-1	20	Col C, 1-64	Grant	Sensitive Competitive Business Information
41-2/1-2	1	Col C, 1-9	Grant	Sensitive Competitive Business Information
41-2/1-3	1-3,6-7, 9-11	2-9,12-14,27-28; Col B, 32-33,35-39; Col C, 32-33,35-39; Col D, 30,32-33,37-40	Grant	Sensitive Competitive Business Information
41-2/1-4	1	Col C, 1-64	Grant	Sensitive Competitive Business Information
41-2/1-4	2-6	Col C,1-67	Grant	Sensitive Competitive Business Information

Staff Work Paper	Page(s)	Lines(s)	Recommend	Type of Information Classified Confidential
Documents 08174-02 and 08386-02				
41-2/1-4	7	Col C, 1-53	Grant	Sensitive Competitive Business Information
41-2/1-5	1	Col C, 1-65	Grant	Sensitive Competitive Business Information
41-2/1-5	2-20	Col C, 1-67	Grant	Sensitive Competitive Business Information
41-2/1-6	1	2-4; Col B, 11-16; Col C, 9,11-23,26-29, 36-43; Col E, 11-16,24-25; Col F, 9, 11-23,26-43 Col G, 26,28	Grant	Sensitive Competitive Business Information
41-2/1-7	1	1-10,12-14,27-28; Col B, 32-33,35-39; Col C, 32-33,35-39; Col D, 30,32-33,37-40	Grant	Sensitive Competitive Business Information
41-2/1-7	2	1-10,12-14,27-28; Col B, 32-33,35-39, 41-43; Col C, 32-33,35-39, 41-43; Col D, 30,32-33, 37-39,41-44	Grant	Sensitive Competitive Business Information

Staff Work Paper	Page(s)	Lines(s)	Recommend	Type of Information Classified Confidential
Documents 08174-02 and 08386-02				
41-2/1-8	1-2	1-10,12-14,27-28; Col B, 32-33,35-39; Col C, 32-33,35-39; Col D, 30,32-33,37-40	Grant	Sensitive Competitive Business Information

A temporary copy of this recommendation will be kept at I:08386-02.raf for a short time.

CC: Bureau of Records and Hearing Services (Flynn)
 Bureau of Auditing (Welch)