



Public Service Commission

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

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COMMISSION CLERK

DATE: August 13, 2003
TO: Office of General Counsel (Holley) *F*
FROM: Division of Auditing and Safety (Freeman, Vandiver) *dw*
RE: Docket 030002-EG, Recommendation concerning Florida Power & Light Company's (FPL's) request for extension of confidential classification granted by Commission Order PSC-01-2268-PHO-EG concerning a portion of the staff working papers obtained during the preparation of audit report numbered 01-058-4-2, FPL Energy Conservation Cost Recovery Audit for the year ended December 31, 2000, Documents Numbered 08528-01 and 08099-01

On June 13, 2001, when copies of certain portions of staff's working papers obtained or prepared during the FPL conservation cost recovery audit for the year ended December 31, 2000, 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 July 12, 2001, staff filed document 08528-01 consisting of those specified portions of the staff working papers,

On June 29, 2001, the utility filed a request pursuant to Rule 25-22.006, FAC, and Section 366.093, Florida Statutes (F.S.), that selected portions of the working papers prepared by staff during the audit receive confidential classification. The utility's request included redacted copies for public inspection (Exhibit B, document 08098-01) and highlighted copies (document 08099-01).

On November 19, 2001, Commission Order PSC-01-2268-PHO-EG, Ruling XIII, granted FPL's request for a confidential classification in accordance with its June 29, 2001 request.

On May 15, 2003, FPL filed a request to extend the confidential classification granted by Commission Order PSC-01-2268-PHO-EG by an additional 18 months.

Documents 08528-01 and 08099-01 are currently held by the Commission's Division of the Commission Clerk and Administrative Services as confidential pending resolution of FPL's request for 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) provides the following exemptions:

- AUS _____
- CAF _____
- DMP _____
- SOM _____
- STR _____
- CR _____
- CL _____
- PC _____
- MS _____
- EC _____
- TH _____

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Marguerite*

DOCUMENT NUMBER-DATE
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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, 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....

(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 and services on favorable terms.

(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, 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 FPL filing reveals the sensitive material consists of:

1. Customer-specific account information;

FPL requests confidential classification for customer-specific rate and contract information. “....FPL considers such (customer-specific account) information to be confidential proprietary business information of the customer and does not disclose such information unless required by law or unless the customer consents to the disclosure. Disclosure of such information in many cases would tend to reveal certain operating characteristics, including costs, of FPL’s commercial customers. Such information would provide an unfair competitive advantage to competitors of FPL’s customers.”

Staff Analysis of the Request (Continued)

In examining FPL's unregulated natural gas enterprise, it appears that, in the past, information concerning electric customers may have been intentionally or unintentionally provided from FPL to its unregulated gas enterprise. Currently, we believe selective sharing of customer information with an unregulated gas enterprise is discouraged by Rule 25-7.072, FAC, entitled "Code of Conduct." The question in this matter is: "Has customer specific information been disclosed to the public?" In FPL's initial request for a confidential classification, Dennis Reynolds, FPL Budget and Regulatory Supervisor, testified customer-specific information was not released to the general public. In the instant request for an extension of a granted confidential classification, witness Ken Getchell, FPL Budget and Regulatory Supervisor, also testifies that this material has not been released by FPL.

Customer specific-information includes customer name, address, telephone numbers, account numbers, rates, billing determinants – kW and kWh usage, conservation savings in KW and kWh and customer bills. Release of this information to the general public could cause harm to the customer or the customer's business. FPL states it does not release the information unless the release is required by law or unless the release is authorized by the customer. Our recommendation is to grant an 18 month extension of confidential classification to this closely held, customer-specific information.

Long-standing Commission policy has allowed non governmental customer-specific information to be granted a confidential classification (See Order 22851, dated April 23, 1990, Order 96-1478, dated December 4, 1996; Order 98-0421, dated March 24, 1998, and Order 00-1569, dated August 31, 2000).

2.Contract pricing information; and

In an affidavit filed by Ken Getchell, FPL Budget and Regulatory Supervisor, in support of the request for an extension of confidential classification for both proprietary business information and customer information, Mr. Reynolds states, in part; "Disclosure of this information may impair FPL's competitive business interests and ability to contract favorably." Audit working papers identified as sensitive by Mr. Getchell are entitled: "Sample Items"; "ECCR Report for CILC Billing 1/00, 8/00 and 9/00"; "Georgia Pacific Billing Report, Calc. And CILC Agreement"; and "United Technologies Billing Report, Power Billing Calc., and Agreement".

Staff Analysis of the Request (continued)

3. Information concerning internal audit reports and internal auditing controls and notes taken by the staff auditors based upon the reading of FPL Internal audit materials.

Through written testimony filed along with the request, FPL Internal Audit Manager Rick Del Cueto identifies the internal audit material which is considered sensitive and recommends that these materials continue to be held by the Commission as confidential. Work papers identified as sensitive are entitled: "CILC Internal audit Notes" and "Internal Audit List".

FPL asserts these three types of material remain sensitive after 18 months and should be granted an additional 18 months confidential classification. The affiants, Gretchell and Del Cueto, each identify the material in their area of expertise which is sensitive, testify this information should be granted a extension of confidential classification for 18 months, and report FPL maintains the confidentiality of this information.

Duration of the Confidential Classification Period

FPL goes on to request that this material be returned to the utility once this information is no longer needed for the Commission to conduct its business. However we note the Commission staff's audit reports and the related working papers for this type of audit are retained on file by the Commission for 25 years.

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 extended classification be set as an additional 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, 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 an additional 18 months.

A detailed recommendation regarding the material follows:

Detailed Recommendation

Staff Work Paper Number	Page(s)	Line(s)	Recommend 18 mos. Extension?	Type of Information Classified Confidential
Documents 08528-01 and 08099-01				
9	1	3,5-43	Grant	Internal auditing controls and reports of internal auditors
9	2	1-42	Grant	Internal auditing controls and reports of internal auditors
9	3	1-37	Grant	Internal auditing controls and reports of internal auditors
9-1	1-2	1-51	Grant	Internal auditing controls and reports of internal auditors
9-1	3	1-22	Grant	Internal auditing controls and reports of internal auditors
43-6	1	Col G, 1-21; Col H, 1-30; Col I, 1-21	Grant	Sensitive competitive and contractual information
43-6	2	Col G, 1-27; Col H & I, 1-30	Grant	Sensitive competitive and contractual information
43-6	3	Col G, 1-29; Col H, 1-31; Col I, 1-29	Grant	Sensitive competitive and contractual information
43-6	4	Col G, 1-5; Col H, 1-10; Col I, 1-10	Grant	Sensitive competitive and contractual information
43-6/1	1-9	Col A-C,J-L,N	Grant	Sensitive competitive information

Staff Work Paper Number	Page(s)	Line(s)	Recommend 18 mos. Extension?	Type of Information Classified Confidential
Documents 08528-01 and 08099-01				
43-6/2	1-9	Col A-C,J-L,N	Grant	Sensitive competitive information
43-6/2-1	1	Col A & B, 1-3; Col C & F, 8-44; Col B, 11-16; Col E, 11-19; 36	Grant	Sensitive competitive information
43-6/2-1/1	1	Col B, 2-10	Grant	Sensitive competitive information
44-8/4	1-10	Col A-C,J-L,N	Grant	Sensitive competitive information
44-8/4-1	1	A & B, 1-3; Col C & F, 8-44; Col B, 11-16; Col E, 11-19; 36	Grant	Sensitive competitive information
44-8/4-1/1	1	Col B, 2-10	Grant	Sensitive competitive information
44-8/4-1/1-1	1	2-3,20-21	Grant	Sensitive competitive information
44-8/4-1/1-1	2	40-43	Grant	Sensitive competitive information
44-8/4-2	1	Col A & B; 1-3; Col B, 5,11-16; Col C & F, 8-44; Col E, 11-19 36	Grant	Sensitive competitive information

Page 7
 FPL
 Extension of Confidential Classification
 2000 Energy Conservation Audit
 August 13, 2003

Staff Work Paper Number	Page(s)	Line(s)	Recommend 18 mos. Extension?	Type of Information Classified Confidential
Documents 08528-01 and 08099-01				
44-8/4-2/1	1	Col B, 2-10	Grant	Sensitive competitive information
44-8/4-2/1-1	1	2-3	Grant	Sensitive competitive information
44-8/4-2/1-1	2	38-45	Grant	Sensitive competitive information

A temporary copy of this recommendation will be held at l:extend.08099-01.raf.wpd for a short period.

CC: Division of Auditing and Safety (Welch)
 Division of Commission Clerk and Administrative Services (Flynn)