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State of Florida



Public Service Commission

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COMMISSION CLERK

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RECEIVED-FPSC

DATE: August 18, 2003
TO: Office of General Counsel (Holley) *f a*
FROM: Division of Auditing and Safety (Freeman, Vandiver)
RE: Docket 030002-EG, Recommendation concerning Florida Power & Light Company's (FPL's) request for confidential classification concerning a portion of the staff working papers prepared during "FPL Energy Conservation Cost Recovery Audit for the year ended December 31, 2002", Audit Control No. 03-042-4-1, Documents Numbered 05791-03 and 05817-03

On June 12, 2003, 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, 2002, 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 June 30, 2003, staff filed document 05791-03 consisting of those specified portions of the staff working papers,

On June 30, 2003, the FPL 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 05816-03) and highlighted copies (document 05817-03).

Documents 05791-03 and 05817-03 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:

- US _____
- AF _____
- MP _____
- DM _____
- FR _____
- SR _____
- CL _____
- PC _____
- AS _____
- C _____
- H _____

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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 considers customer-specific account information to be confidential proprietary business information of the customer and does not disclose such information to third parties unless required by law or unless the customer consents to the disclosure. Customer specific-information includes customer names, addresses, 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.

Staff Analysis of the Request (Continued)

Witness Ken Gretchell, FPL Budget and Regulatory Support Supervisor, states; "FPL's policy is premised upon customer's right to privacy and the potential that disclosure of customer specific information may harm some customers' competitive interests or disclose their trade secrets. FPL's customers have affirmed to FPL their interests 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 such competitors and 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 others, FPL has not sought to make a case-by-case determination as to the level of 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 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...."

Mr. Gretchell identifies the following working papers as disclosing customer-specific account information: "Calculation of ECCR billing Factor", "Calculation of ECCR Charge", "Calculation of RTP Billing Factors", CILC Power Billing summary", "Recalculation of ECCR Credit", and "Power Billing Detail Report".

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. Contracts, Contract Prices, Invoices and other Contract Related Information.

FPL Witness Susan Gampfer, Director, Information Management Processes, reports some of the materials relate to competitive interests the disclosure of which may impair the competitive business of FPL or the provider of the information or report contract-related information which may impair the ability of FPL to contract on favorable terms. Ms. Gampfer reports this information is contained in the staff working papers entitled: "Summary of Data Warehouse Investment" and "Invoices & Purchased Order".

Staff Analysis of the Request (continued)

3. Information concerning internal audit reports and internal auditing controls.

FPL Internal Audit Manager Rick Del Cueto identifies internal audit material reported within the staff's working papers which is considered sensitive and recommends that these materials be held by the Commission as confidential. Work papers identified as sensitive are entitled: "Internal Audit List".

FPL asserts these three types of material are held as confidential and asserts this sensitive information should be granted 18 months confidential classification. FPL witnesses Gretchell, Gampfer and Del Cueto, each identify the material in their area of expertise which is sensitive, testify this information should be granted a 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 the 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 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, 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 18 months.

A detailed recommendation, as found, regarding the material follows:

Detailed Recommendation, as Found

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 05791-03 and 05817-03				
9	1	Col C, 1-51	Grant	Internal Auditing Reports and Controls
9	2	Col C, 52-81	Grant	Internal Auditing Reports and Controls
16-4/2-1/2-1	1	6,7-12,14-18,21-25	Grant	Sensitive Contractual and Competitive Information
16-4/2-1/2-1/1	1	Col A-B, 1-7, 16-21; Col C-F, 21	Grant	Sensitive Contractual and Competitive Information
16-4/2-1/2-1/1	3	3-5,13	Grant	Sensitive Contractual and Competitive Information
16-4/2-1/2-1/1	4	1,5,8-14,32,34-37	Grant	Sensitive Contractual and Competitive Information
16-4/2-1/2-1/1	5	2-5,15,17,19-22,32,36	Grant	Sensitive Contractual and Competitive Information
16-4/2-1/2-1/1	6	1-2,5,9-36	Grant	Sensitive Contractual and Competitive Information
16-4/2-1/2-1/1	7	1-3,5,7-8	Grant	Sensitive Contractual and Competitive Information
16-4/2-1/2-1/2	1	Col A, 1A,2-6,15B,15C; Col C, 6; 16-19,21-27	Grant	Sensitive Contractual and Competitive Information
16-4/2-1/2-1/2	2	Col A, 3	Grant	Sensitive Contractual and Competitive Information
16-4/2-1/2-1/2	3	7,27	Grant	Sensitive Contractual and Competitive Information

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 05791-03 and 05817-03				
16-4/2-1/2-1/2	4	1,3-6,18-30	Grant	Sensitive Contractual and Competitive Information
16-4/2-1/2-1/2	5	1,3-20	Grant	Sensitive Contractual and Competitive Information
16-4/2-1/2-1/2	6	1,6	Grant	Sensitive Contractual and Competitive Information
16-4/2-1/2-1/2	7	1,4-7,9-12,14-15	Grant	Sensitive Contractual and Competitive Information
16-4/2-1/2-1/2	8	1,4-6	Grant	Sensitive Contractual and Competitive Information
16-4/2-1/2-1/3	1	Col A, 2-5,32-34; Col B, 1,1A,13,27; Col C, 14,18,25,32-34	Grant	Sensitive Contractual and Competitive Information
16-4/2-1/2-1/3	2	1,11; Col B, 2	Grant	Sensitive Contractual and Competitive Information
16-4/2-1/2-1/3	3	3-5,19-21	Grant	Sensitive Contractual and Competitive Information
16-4/2-1/2-1/3	4	4,10-18	Grant	Sensitive Contractual and Competitive Information
✓ 41-1/1-1	1	Col A-B, 1-2,4,8-9; Col G, 1b,2b,4b,8b,9b	Grant	Sensitive Competitive Information
41-1/1-1	2	Col A-B, 11-16; Col G, 11b,12b,13b,14b,15b,16b	Grant	Sensitive Competitive Information

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Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 05791-03 and 05817-03				
41-1/2-1	1	Col A-B, 1-2,4,6; Col G, 1b,2b,4b,6b	Grant	Sensitive Competitive Information
41-1/2-1	2	Col A-B, 9-10,12-14; Col G, 9b,10b,12b, 13b,14b	Grant	Sensitive Competitive Information
41-1/2-1	3	Col A-B, 15-18; Col G, 15b,16b,17b, 18b	Grant	Sensitive Competitive Information
41-3	1	Col A-B, 1-6,8; Col F, 1b,2b,3b,4b, 5b,6b,8b	Grant	Sensitive Competitive Information
41-3	2	Col A-B, 11,12; Col F, 11b,12b	Grant	Sensitive Competitive Information
44-5/3	1	Col A-C,J-L,N, 1-2,7-8,10-14,16, 20-21,25-26,31, 34-36,41-44,46, 48-52,56-58	Grant	Sensitive Competitive Information
44-5/3	2	Col A-C,J-L,N, 1,3,6-7,11,14,16-19, 21,27-29,31,34, 36-40,42-43,45-48, 51,56,58,60-63	Grant	Sensitive Competitive Information
44-5/3	3	Col A-C,J-L,N, 2,6,9,14-15,17, 19-22,25,29,31-34, 36-37,40-44,49-54, 56,58,60,63-64	Grant	Sensitive Competitive Information

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Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 05791-03 and 05817-03				
44-5/3	4	Col A-C,J-L,N, 3-4,7-10,13-14, 16-19,21,24-26, 29-31,34-35,37, 40-41,46,48-50, 52-54,56-57,60-61, 64	Grant	Sensitive Competitive Information
✓ 44-5/3	5	Col A-C 3-5,7-8,11-12,16-17, 21-23,26-27,30, 33-34,36,39-42,44, 48,52-53,56,59, 61-63,65 J-L,N, 3-5,7-8,11-12,16-17, 21-23,26-27,30, 33-34,39-42,44, 48,52-53,56,59, 61-63,65	Grant	Sensitive Competitive Information
44-5/3	6	Col A-C,J-L,N, 1-5,7,9,13,17-18, 22-24,26,29,31-32, 36,41-44,48,50,52, 55,57,59-64	Grant	Sensitive Competitive Information
44-5/3	7	Col A-C,J-M, 7-8,10,12,14,16-22, 25-26,31,38-39,41, 43,49-51,53-54,56, 58,60-61,63-65	Grant	Sensitive Competitive Information

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 05791-03 and 05817-03				
✓ 44-5/3	8	Col A-C, 1-2,4-5,7-8,12-15, 22-23,29,31-32,35, 38-39 J-L,N, 1-2,4-5,7-8,12-15, 22-23,29,31-32,35, 38	Grant	Sensitive Competitive Information
44-5/3-1	1	Col D-F, 1a,1b,1c, 2-11	Grant	Sensitive Competitive Information
44-5/3-1/1	2	Col A, 1-2; Col B, 1-3,11-13, 15-16: Col C, 8-9,11-13, 15-16,21-44; Col E, 11-13,15-36; Col F, 8-9,11-13, 15-44	Grant	Sensitive Competitive Information
44-5/3-1/1	3	Col A, 1-2; Col B, 1-3,10-13, 15-16; Col C, 8-13,15-16, 21-44; Col E, 10-13,15-36; Col F, 8-13,15-44	Grant	Sensitive Competitive Information

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 05791-03 and 05817-03				
44-5/3-1/1	4	Col A, 1-2; Col B, 1-3,11-13, 15-16; Col C, 8-9,11-13, 15-16,21-44; Col E, 11-13,15-36; Col F, 8-9,11-13, 15-44	Grant	Sensitive Competitive Information

A temporary copy of this recommendation will be held at I:05817-03.raf.wpd for a short period.

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