



Public Service Commission

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

DATE: September 17, 2003
TO: Office of General Counsel (Stern)
FROM: Division of Auditing and Safety (Freeman, Vandiver)
RE: Docket 030007-EI, Recommendation concerning Florida Power & Light Company's (FPL's) request for confidential classification concerning a portion of the staff working papers prepared during "FPL Environmental Cost Recovery Clause Supplement Audit for the 12 Months Ended December 31, 2002", Audit Control No. 03-030-4-1, Documents Numbered 06114-03 and 06789-03

On July 7, 2003, when copies of certain portions of staff's working papers obtained or prepared during the "FPL Environmental Cost Recovery Clause Supplement Audit for the Twelve Months 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 July 10, 2003, staff filed document 06114-03 consisting of those specified portions of the staff working papers,

On July 28, 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 06788-03) and highlighted copies (document 06789-03).

Documents 06114-03 and 06789-03 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. Subsections 366.093(3)(d) and (e) provide the following exemptions:

DOCUMENT NUMBER-DATE

U9004 SEP 19 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, 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 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 contractual data such as pricing and other terms.

FPL witness Roger F. Messer, FPL Manager, Environmental Support, asserts the sensitive material consists of proprietary business information which contains or constitutes contractual data such as pricing and other terms, the disclosure of which would impair the efforts of FPL to contract for goods and services on favorable terms. Mr. Messer also points out release of this information could impair the competitive businesses of the contractual counter party or service provider. Witness Messer indicates this information is contained within the staff working papers entitled; “Test of Cash Vouchers”, “Invoice”, “Purchase Order”, and “Test of Journal Entries”.

Subsection 366.093(3)(d), F.S., provides an exemption from public disclosure for information concerning bids and contractual data if release of the information would impair the ability of the public utility or its affiliates to contract on favorable terms. Subsection 366.093(3)(e), F.S., provides an exemption from public disclosure for sensitive competitive business information if release of the information would harm the competitive business of the provider of the information.

Lastly, FPL asserts this information meets the definition of “Proprietary Confidential Business Information” set out in Section 366.093, F.S.

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 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

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
45-1/1	1-2,4	1	Grant	Sensitive contractual and competitive information
45-1/1	5	1-2,4	Grant	Sensitive contractual and competitive information
45-1/1	6-7	1	Grant	Sensitive contractual and competitive information
45-1/1	10	1,10,14.20-22,27,29,31	Grant	Sensitive contractual and competitive information
45-1/1	11	1,8,15-16	Grant	Sensitive contractual and competitive information
45-1/1	13	1	Grant	Sensitive contractual and competitive information

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Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 06114-03 and 06789-03				
45-1/1	17	1-6,11-12	Grant	Sensitive contractual and competitive information
45-1/1	18	1,3-5	Grant	Sensitive contractual and competitive information
45-1/1	19	27	Grant	Sensitive contractual and competitive information
45-1/1	20	1,18	Grant	Sensitive contractual and competitive information
45-1/1	21	1	Grant	Sensitive contractual and competitive information
45-1/1	22	1,4	Grant	Sensitive contractual and competitive information
45-1/1-1	2	Col C-E, 2-3; Col D-E, 4,12; Col E, 14	Grant	Sensitive contractual and competitive information
45-1/1-1	3	Col C-E, 2-3; Col D-E, 4; Col E,12	Grant	Sensitive contractual and competitive information
45-1/1-2	2	Col A-B, 1; Col B, 7	Grant	Sensitive contractual and competitive information
45-2/1	1	Col A, 3,13;	Grant	Sensitive contractual and competitive information
45-2/1	2	Col A-C, 3-10	Grant	Sensitive contractual and competitive information
45-2/1	3	Col A, 1,8	Grant	Sensitive contractual and competitive information

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Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 06114-03 and 06789-03				
45-2/1	4	11,22,25,29	Grant	Sensitive contractual and competitive information

A temporary copy of this recommendation will be held at I:06789-03.raf.wpd for a short period.

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