

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

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**DATE:** December 6, 2004  
**TO:** Marlene Stern, Attorney, General Counsel  
**FROM:** Division of Regulatory Compliance and Consumer Assistance (Freeman, Vandiver) <sup>F</sup> <sup>W</sup> *AM*  
**RE:** Docket 041142-EI, Recommendation concerning Florida Power & Light Company's (FPL) request for confidential classification concerning a portion of the staff working papers prepared during "Florida Power & Light Revenue Refund Audit for the Year Ended December 31, 2003", Audit Control No. 04-105-4-1, Documents Numbered 09867-04 and 10377-04

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On August 26, 2004, when copies of certain portions of staff's working papers obtained or prepared during the "Florida Power & Light Revenue Refund Audit for the Year Ended December 31, 2003", 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 September 9, 2004, staff filed document 09867-04 consisting of those specified portions of the staff working papers.

On September 24, 2004, FPL filed a request pursuant to Section 366.093, Florida Statutes (F.S), and Rule 25-22.006, FAC, that selected portions of the working papers prepared by the staff during the audit receive confidential classification. The utility's request included redacted copies for public inspection (document 10378-04) and highlighted copies (document 10377-04).

Documents 09867-04 and 10377-04 are currently held by the Commission's Division of the Commission Clerk and Administrative Services as confidential pending resolution of FPL's request for 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), F.S., provide the following exemptions.

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Subsection 366.093, F.S., 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.

(e) Information relating to competitive business 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**

#### **Late Filing**

FPL’s filing provides cause as to why the request for confidential classification was filed more than 21 days after the audit exit conference. FPL explains hurricanes Charley and Francis struck areas in FPL’s service area – Charley resulting in loss of power to 874,000 homes and Francis resulting in loss of power to 2.8 million of FPL’s 4.2 million customers. FPL employees associated with this filing were serving storm duty during the pendency of the request and were not able to complete the steps necessary to make this request by September 16, 2004. The request was filed on Friday, September 24. FPL asserts no party or interested person has been or will be prejudiced by this filing lapse. FPL asserts FPL’s customers will be served by granting a confidential classification to these materials. FPL cites a prior Commission decision supporting such a showing, see Commission Order No. PSC-01-2251-CFO-EI, Docket 000061-EI, Issued November 16, 2001.

Commission Order No. PSC-01-2251-CFO-EI, in part, provides: “Neither...(party) objected to the lack of timeliness of...(the) Request (for confidential classification). I find that, despite its lateness,...(the) request must be substantively reviewed because all parties could be harmed if the Request were denied on procedural grounds.”

**Staff Analysis**

The Office of General Counsel has the responsibility of determining if a request is timely filed. Technical staff has no objection to allowing this request to proceed and recommends the utility's explanation be considered to meet the requirements for demonstrating cause described by Rule 25-22.006(3)(a)2., F.A.C.

**The Request**

Reading the FPL filing reveals the sensitive material consists of:

1. Customer-specific account information

FPL asserts that customer-specific information should be granted a confidential classification on the basis that customer-specific information would harm competitive business interests. Subsection 366.093(e), F. S., provides that the Commission may grant a confidential classification to sensitive information concerning competitive business interests if release of that information will harm the provider of that information.

FPL witnesses Ken G. Getchell, FPL Manager, Budget and Regulatory Support, and David T. Bromley, FPL Manager, Power Systems Regulatory, identify materials associated with customer-specific account information as reported within staff working papers entitled: "Lighting Revenue", "Cable Billing", and "Pole Attachment Billing."

FPL witness Lourdes F. Sori, FPL Manager, Technical systems A, identifies sensitive contractual and competitive business information to include customer-specific information within working papers entitled: "Wireless Billing."

FPL and FPL witnesses Getchell, Bromley and Sori state FPL treats customer-specific information as confidential to include: customer names, addresses, telephone numbers, account numbers, rates, billing determinants (kW and kWh usage), conservation savings in kW, kWh and bills. FPL does not disclose this type of information, except as required by law, to entities or persons other than the customer without the customers consent.

**Staff Analysis**

After reading the information identified by witnesses Getchell, Bromley and Sori we recommend that this information be held as confidential because the information is sensitive competitive business information release of which would harm the competitive business of the provider of that information.

2. Contractual amounts paid by wireless providers to rent space on cellular towers owned by FPL

Subsection 366.093(d), F. S., provides that the Commission may grant a confidential classification to sensitive contractual information to include bidding information if release of that information will impair the ability of the utility or its affiliates to contract on favorable terms.

Subsection 366.093(e), F. S., provides that the Commission may grant a confidential classification to sensitive competitive business information if release of that information will harm the provider of that information.

FPL witness Lourdes F. Sori identifies sensitive contractual and competitive business information associated with rental to wireless providers found within staff working papers entitled: "Wireless Billing." FPL and FPL witness Sori assert this information if released would impair the ability of FPL and its affiliates to favorably contract for goods and services and impair the competitive businesses of the providers of this information. FPL also asserts these contracts prohibit the disclosure of this information.

### **Staff Analysis**

While FPL reports there are contractual provisions prohibiting disclosure of this information, these restrictions do not govern whether the affected information will be granted a confidential classification. Such provisions do identify that the information is sensitive, but a confidential classification will only be granted if release of the information will impair the contractual ability of the utility and its affiliates or if release of the information will harm the competitive business of the provider of that information.

Reading the information reveals this information is sensitive contractual and competitive information release of which would cause the type of harm described in sections 366.093 (d) and (e), F.S. We therefore recommend that this information be granted a confidential classification.

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3. Contractual data such as pricing and other terms and sensitive internal company procedures.

Subsection 366.093(d), F. S., provides that the Commission may grant a confidential classification to sensitive contractual information to include bidding information if release of that information will impair the ability of the utility or its affiliates to contract on favorable terms.

Subsection 366.093(e), F. S., provides that the Commission may grant a confidential classification to sensitive competitive business information if release of that information will harm the provider of that information.

Subsection 366.093(3), F.S. defines “proprietary confidential business information” as information such that disclosure of the information will harm ratepayers or the person’s or company’s business operations.

Witness Jeff A. Harbert, FPL Director of Financial Planning and Accounting, identifies the information associated with contractual information including pricing and other terms as reported within staff working papers entitled: “Swap Explanations.”

FPL and Mr. Harbert plead that release of this contractual data would impair the ability of FPL to contract with vendors for goods and services on favorable terms as well as harm the competitive business of the providers of this information. FPL asserts release of this competitive information would harm the contractors and vendors by providing competitors an unfair advantage in future competitions for both FPL and non-FPL contracts.

FPL also asserts that internal company procedures associated with this information is also “proprietary confidential business information” and therefore qualifies for a confidential classification on that basis.

### **Staff Analysis**

After reading the material identified by witnesses Harbert, we agree that release of this material would reasonably be expected to impair the ability of FPL or its affiliates to contract favorably for goods and services and release of this material could impair competitive business of FPL and the involved vendors and contractors. We also agree that the identified internal company procedures if released could cause harm to FPL and ultimately to the ratepayer. We therefore recommend that the material be granted a confidential classification on the basis that the material meets the exemptions provided by Subsections 366.093(3)(d) and (e), Florida Statutes.

### **Information Held as Confidential**

To qualify as proprietary confidential business information the material must also be held as private and not be released to the public. FPL asserts that this sensitive information has not been released to the public. FPL witnesses also assert FPL has maintained the confidentiality of those materials they have identified as sensitive.

**Duration of the Confidential Classification Period**

FPL requests 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 18 months.

A detailed recommendation follows:

**Detailed Recommendation**

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information Classified
Documents 09867-04 and 10377-04					
41-1/3	Lightning Revenue	1	9,12-13,15,18-19, 21	Grant	Sensitive competitive business information
41-1/3	Lightning Revenue	2	8	Grant	Sensitive competitive business information
41-4/1-1/1	Cable Billing	1	1,6-9,13a-16,20	Grant	Sensitive competitive business information
41-4/1-1/2	Cable Billing	1	1,6-9,13-17,21	Grant	Sensitive competitive business information
41-4/1-1/3	Cable Billing	1	1,6-9,13-17,21	Grant	Sensitive competitive business information
41-4/1-1/3	Cable Billing	2	1	Grant	Sensitive competitive business information
41-4/1-1/4	Cable Billing	1	1,6-10,14-19,23	Grant	Sensitive competitive business information
41-4/1-1/4	Cable Billing	2-5	1	Grant	Sensitive competitive business information
41-4/2-1	Wireless Billing	1	1,6-9,13-17,20, 22-25	Grant	Sensitive contractual and competitive business information
41-4/2-2	Wireless Billing	1	1,6-9,13-17,20, 22-27	Grant	Sensitive contractual and competitive business information
41-4/2-2	Wireless Billing	2	1,6-10,13-18,20,22-30	Grant	Sensitive contractual and competitive business information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 09867-04 and 10377-04					
41-4/2-2	Wireless Billing	3	1,3	Grant	Sensitive contractual and competitive business information
41-4/3-1	Pole Attachment Billing	1	1,14-18,22	Grant	Sensitive competitive business information
41-4/3-1	Pole Attachment Billing	2	1,6-9,13-18,21	Grant	Sensitive competitive business information
41-4/3-1	Pole Attachment Billing	3	1,6-10,13a-17,21	Grant	Sensitive competitive business information
41-7/1-1/1	Swap Explanations	1	Cols B-D, 1-5;	Grant	Sensitive contractual information
41-7/1-1/1	Swap Explanations	2	Cols B-G,I,K,M, 1	Grant	Sensitive contractual information
41-7/1-2/1	Swap Explanations	1	Cols B-E, 3-40	Grant	Sensitive contractual and competitive business information
41-7/1-2/1	Swap Explanations	2	Col B, 3-42; Col C, 3-44; Col D, 3-39; Col E, 3-43	Grant	Sensitive contractual and competitive business information
41-7/1-2/1	Swap Explanations	4	Cols E-F, 1-22; Cols G, 1-26; Col H, 1-22; Col I, 1-26 Col J, 1-24	Grant	Sensitive contractual and competitive business information
41-7/1-3	Swap Explanations	1-5	All	Grant	Sensitive competitive business information

A temporary copy of this recommendation will be held at I:10377-04.fplraf.doc for a short period.

CC: Division of Regulatory Compliance and Consumer Assistance (Welch)  
Division of Commission Clerk and Administrative Services (Flynn)