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# Public Service Commission

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

**DATE:** February 14, 2008

**TO:** Katherine Fleming, Attorney, Office of General Counsel

**FROM:** Division of Regulatory Compliance and Consumer Assistance (Freeman, Vandiver) f a

**RE:** Docket 070304-EI, Recommendation concerning Florida Public Utilities Company -- Electric Division (FPUC) request for confidential classification concerning a portion of the staff working papers prepared during "FPUC -- Electric Division File and Suspend Rate Case Investigation As of December 2006, Forecast December 31, 2008", Audit Control No. 07-262-4-1, Documents Numbered 10920-07, and 00148-08

On December 13, 2007, when copies of certain portions of staff's working papers obtained or prepared during the "FPUC -- Electric File and Suspend Rate Case Investigation As of December 2006, Forecast December 31, 2008", were delivered to FPUC at the audit exit conference, the utility requested that these materials be temporarily exempted from public access in accordance with provisions of Rule 25-22.006(3)(a)2., Florida Administrative Code (FAC).

On December 14, 2007, staff filed document numbered 10920-07 consisting of those specified portions of the staff's audit report and working papers.

On January 7, 2008, FPUC filed a request pursuant to Section 366.093, Florida Statutes (F.S) and Rule 25-22.006(3)(a)2. and (4), FAC, that selected portions of the working papers prepared by the staff during the investigation receive confidential classification. The utility's request included redacted copies for public inspection (Document No. 00147-08) and copies with the sensitive material highlighted (Document 00148-08).

Documents numbered 10920-07 and 00148-08 are currently held by Office of the Commission Clerk as confidential pending resolution of FPUC's request for confidential classification.

- CMP \_\_\_\_\_
- COM \_\_\_\_\_
- CTR \_\_\_\_\_
- ECR \_\_\_\_\_
- GCL \_\_\_\_\_
- OPC \_\_\_\_\_
- RCA \_\_\_\_\_
- SCR \_\_\_\_\_
- SGA \_\_\_\_\_
- SEC \_\_\_\_\_
- OTH M-L

DOCUMENT NUMBER-DATE

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:*

....

*(b) Internal auditing controls and reports of internal auditors*

....

*(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**

Reading the filing reveals the sensitive material consists of:

#### 1) Board of Directors Minutes

Section 366.093(3)(e), F.S. provides that the Commission may grant a confidential classification to sensitive competitive business information release of which would harm the provider of that information.

FPUC asserts release of the material presented would impair the operations of the company. After reading the information, Staff agrees with the utility that this information is sensitive competitive business information release of which would harm the competitive business of the provider of that information.

#### 2) Review of Internal Audits

Section 366.093(3)(b), F.S., provides that the Commission may grant a confidential classification to internal auditing controls and reports of internal auditors.

Staff agrees with the utility that information from internal audits is presented, and therefore, the information qualifies for a confidential classification

**Information Held as Confidential**

To qualify as proprietary confidential business information, the material must also be held as private and not released to the public. FPUC asserts that this sensitive information is treated as proprietary and confidential.

**Duration of the Confidential Classification Period**

FPUC has not specified a confidential classification period for this material. 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
Documents 10920-07 and 00148-08					
WP 8, page 2	Board of Director's Minutes	2	1-2	Grant	Sensitive Competitive Business Information
WP 8, Page 3	Board of Director's Minutes	3	1-16	Grant	Sensitive Competitive Business Information
WP 9-2	Internal Audit Review	1-3	All	Grant	Internal Auditing Controls and Report of Internal Auditor

A temporary copy of this recommendation will be held at I:00148-08 FPUC ratecase raf.doc for a short period.

CC: Division of Regulatory Compliance and Consumer Assistance (Welch)  
 Office of the Commission Clerk (Lockard, Cole)