

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Environmental Cost
Recovery Clause

DOCKET NO. 980007-EI
ORDER NO. PSC-98-0555-CFO-EI
ISSUED: April 20, 1998

ORDER GRANTING CONFIDENTIAL TREATMENT AND DENYING EXTENSION OF
CONFIDENTIAL CLASSIFICATION TIME FOR CERTAIN FORMS
OBTAINED DURING FLORIDA POWER AND LIGHT COMPANY'S ENVIRONMENTAL
COST RECOVERY CLAUSE AUDIT (DOCUMENT NOS. 06066-97 AND 06620-97)

On July 1, 1997, Florida Power & Light Company (FPL) requested confidential classification pursuant to Rule 25-22.006 and Section 366.093, Florida Statutes, of certain material obtained during the Environmental Cost Recovery Clause Audit (Audit). The information for which confidential classification is sought is contained in Document Nos. 06620-97 and 06066-97.

FPL requests that certain portions of the staff working papers obtained during the audit receive confidential classification. The utility's filing included edited documents for public inspection (Document No. 06621-97) and highlighted documents specifying confidential material (Document No. 06620-97). On June 17, 1997, staff filed Document No. 06066-97 consisting of staff working papers prepared during the staff's audit of FPL's Environmental Cost Recovery Clause Audit for the twelve month period ended September 30, 1996. When the audit exit conference was held on June 10, 1997, the utility requested that these documents be temporarily excepted from public access in accordance with the provisions of Rule 25-22.006 (3)(a)(2), Florida Administrative Code.

FPL's request for confidential classification falls into the exception to Section 119.07, Florida Statutes, which allows for the confidential treatment of "internal auditing controls and reports of internal auditors." Section 366.093 (3)(b), Florida Statutes. FPL argues that the information for which confidential treatment is sought is proprietary confidential business information, the disclosure of which would cause the utility or its ratepayers harm.

The information FPL seeks to protect is contained in workpaper 1-9, pages 1 and 2, at all lines. These pages contain reports, bids or other contractual data which is protected from public disclosure under Section 366.093(3)(d), Florida Statutes. FPL also

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seeks to protect information contained in workpaper 9-2, page 1 at all lines. This page contains reports of internal auditors and should be granted confidential treatment under Section 366.093(3)(b), Florida Statutes. FPL maintains that the information contained in workpaper 9-3, page 1 at all lines is entitled to confidential classification. This information should be granted confidential classification because it pertains to reports of internal auditors. As such, it is entitled to confidential classification under Section 366.093(3)(b), Florida Statutes. FPL requests that the information contained in workpaper 9-4, page 1 at all lines be granted confidential classification because it pertains to reports of internal auditors. As such, it is entitled to confidential classification under Section 366.093(3)(b), Florida Statutes. FPL requests that the information contained in workpaper 9-5, page 1 at all lines be granted confidential classification because it pertains to reports of internal auditors. As such, it is entitled to confidential classification under Section 366.093(3)(b), Florida Statutes. Lastly, FPL requests confidential classification for the information contained in workpaper 9-6, pages 1 and 2 at all lines because this information pertains to reports of internal auditors. As such, it is entitled to confidential classification under Section 366.093(3)(d), Florida Statutes.

From the foregoing, it appears that the information for which FPL seeks confidential classification meets the requirements of Section 366.093(3)(d) for confidential classification.

DECLASSIFICATION

The utility requests confidential protection for at least 18 months and requests that the information be held as confidential until the material is returned to FPL in accordance with section 366.093(4), Florida Statutes. The Commission dealt with a similar request in Order No. PSC-96-0198-CFO-EI in Docket No. 960001-EI issued February 13, 1996. In that Order, the Commission found that:

Regarding return of confidential materials . . . copies of staff audit work papers filed by the utility in explanation of its filing . . . shall be returned to FPL after the assigned confidential period has expired. [T]he original staff audit work papers . . . shall be retained in accordance with the regular retention of staff audit work papers.

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In the present docket, Document No. 06620-97 represents copies of documents prepared or obtained by the staff which are filed by the utility in explanation of its filing. These documents which are obtained from the utility should be returned to FPL after the assigned confidential period has expired.

Document No. 06066-97, however, contains the original Commission staff audit work papers. These documents should be retained in accordance with the regular retention of staff documents. These papers record work performed, record staff observations during fieldwork, and form the basis for subsequent staff audits. If the utility believes that continued confidential treatment beyond the 18 months provided by section 366.093(4), Florida Statutes is appropriate, the utility must request an extension of the period before the protection tolls.

The utility's request for a confidential classification period to last "until the Commission no longer needs the material to conduct its business" shall be denied. The request for an unspecified classification period exceeding 18 months without demonstration of good cause shown exceeds the provisions of the applicable statute. The utility's request for confidential classification should, therefore, only be granted for an 18 month period.

In consideration of the foregoing, it is

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that FPL's request for confidential classification of certain portions of its Environmental Cost Recovery Audit Workpapers contained in Document Nos. 06620-97 and 06066-97 is granted confidential classification for the reasons discussed within the body of this Order. It is further

ORDERED that the information contained in Document Nos. 06620-97 and 06066-97 be granted confidential classification for a period of 18 months from the date of this Order. It is further

ORDERED that Document No. 06620-97 be returned to FPL 18 months after the date of this Order. It is further

ORDERED that this Order will be the only notification by the Commission to the parties concerning the expiration of the confidentiality time period.

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By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 20th Day of April, 1998.



SUSAN F. CLARK, Commissioner and
Prehearing Officer

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in

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the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.