

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Environmental cost
recovery clause.

DOCKET NO. 020007-EI
ORDER NO. PSC-02-1450-CFO-EI
ISSUED: October 21, 2002

ORDER GRANTING CONFIDENTIAL CLASSIFICATION TO DOCUMENT NO. 08386-02 (X-REF DOCUMENT NO. 08174-02; AUDIT CONTROL NO 02-032-4-1)

On July 29, 2002, copies of certain portions of the Commission staff's working papers prepared during Florida Power and Light Company's (FPL's) Environmental Clause Audit for the Year Ended December 31, 2001, were delivered to FPL at the audit exit conference. On August 5, 2002, Commission staff filed these papers with the Division of the Commission Clerk and Administrative Services. The papers were assigned Document No. 08174-02.

On August 8, 2002, the utility filed a Request for Confidential Classification asking that certain portions of the audit working papers prepared by the staff receive a confidential classification. The utility request includes redacted copies for public inspection (Exhibit B of Document No. 08385-02) and copies with the sensitive information highlighted (Document No. 08386-02).

On September 25, 2002, after discussions with the Commission staff, the utility filed technical corrections to the justification table presented within the request. The justification table identifies which material is to be considered for confidential classification and why that material should be protected. No additional highlighted or redacted documents were filed. The justification table is provided below.

Staff Work Paper	Page(s)	Lines(s)	Type of Information Classified
Documents 08174-02 and 08386-02			
9	1	Col C, 1-23	Reports of Internal Auditors and Internal Auditing Controls

DOCUMENT NUMBER-DATE

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Staff Work Paper	Page(s)	Lines(s)	Type of Information Classified Confidential
9-1	1-3	All	Reports of Internal Auditors and Internal Auditing Controls
41-2/1-1	1	Col C, 1-57	Sensitive Competitive Business Information
41-2/1-1	2-5	Col C, 1-56	Sensitive Competitive Business Information
41-2/1-1	6	Col C, 1-57	Sensitive Competitive Business Information
41-2/1-1	7	Col C, 1-59	Sensitive Competitive Business Information
41-2/1-1	8	Col C, 1-61	Sensitive Competitive Business Information
Documents 08174-02 and 08386-02			
41-2/1-1	9	Col C, 1-62	Sensitive Competitive Business Information
41-2/1-1	10	Col C, 1-64	Sensitive Competitive Business Information
41-2/1-1	11	Col C, 1-63	Sensitive Competitive Business Information
41-2/1-1	12	Col C, 1-57	Sensitive Competitive Business Information
41-2/1-1	13	Col C, 1-54	Sensitive Competitive Business Information
41-2/1-1	14	Col C, 1-56	Sensitive Competitive Business Information
41-2/1-1	15-16	Col C, 1-57	Sensitive Competitive Business Information

Staff Work Paper	Page(s)	Lines(s)	Type of Information Classified Confidential
41-2/1-1	17-18	Col C, 1-58	Sensitive Competitive Business Information
41-2/1-1	19	Col C, 1-60	Sensitive Competitive Business Information
41-2/1-1	20	Col C, 1-64	Sensitive Competitive Business Information
41-2/1-2	1	Col C, 1-9	Sensitive Competitive Business Information
41-2/1-3	1-3, 6-7, 9-11	2-9, 12-14, 27-28; Col B, 32-33, 35-39; Col C, 32-33, 35-39; Col D, 30, 32-33, 37-40	Sensitive Competitive Business Information
41-2/1-4	1	Col C, 1-64	Sensitive Competitive Business Information
41-2/1-4	2-6	Col C, 1-67	Sensitive Competitive Business Information
Documents 08174-02 and 08386-02			
41-2/1-4	7	Col C, 1-53	Sensitive Competitive Business Information
41-2/1-5	1	Col C, 1-65	Sensitive Competitive Business Information
41-2/1-5	2-20	Col C, 1-67	Sensitive Competitive Business Information

Staff Work Paper	Page(s)	Lines(s)	Type of Information Classified Confidential
41-2/1-6	1	2-4; Col B, 11-16; Col C, 9, 11-23, 26-29, 36-43; Col E, 11-16, 24-25; Col F, 9, 11-23, 26-43 Col G, 26, 28	Sensitive Competitive Business Information
41-2/1-7	1	1-10, 12-14, 27-28; Col B, 32-33, 35-39; Col C, 32-33, 35-39; Col D, 30, 32-33, 37-40	Sensitive Competitive Business Information

Staff Work Paper	Page(s)	Lines(s)	Type of Information Classified Confidential
41-2/1-7	2	1-10,12-14,27-28; Col B, 32-33,35-39,41-43; Col C, 32-33,35-39,41-43; Col D, 30,32-33,37-39,41-44	Sensitive Competitive Business Information
Documents 08174-02 and 08386-02			
41-2/1-8	1-2	1-10,12-14,27-28; Col B, 32-33,35-39; Col C, 32-33,35-39; Col D, 30,32-33,37-40	Sensitive Competitive Business Information

In accordance with Section 119.07, Florida Statutes, documents submitted to this Commission are public records. The only exceptions to this law are specific statutory exceptions and exemptions granted by governmental agencies pursuant to the specific items of a statutory provision. Section 366.093(3), Florida Statutes, provides the following exemptions:

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 interests, the disclosure of which would impair the competitive business of the provider of the information[.]

According to Section 366.093 and Rule 25-22.006, Florida Administrative Code, the utility has the burden of demonstrating that materials qualify for confidential classification. According to Rule 25-22.006, 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.

The FPL filing reveals the sensitive materials consist of:

1. Internal audit controls or reports or information relating to internal audit controls.

FPL witness Rick Del Cueto, FPL Manager of Internal Auditing, identifies material concerning reports of internal auditors and internal auditing controls. Specifically Mr. Del Cueto identifies internal auditing materials within staff work papers entitled: "Internal Audit List" and "Internal Audit Notes."

2. Customer-specific account information.

FPL witness Rosemary Morley, FPL Manager of the Rate Department, identifies customer-specific information contained in staff's audit working papers. Specifically, witness Morley reports sensitive competitive business information is contained in staff's working papers entitled: "Rate Code Information."

Ms. Morley reports FPL has a corporate policy not to disclose customer specific information without the permission of the customer unless required to do so by law. FPL's policy recognizes customer-specific information as customer names, addresses, telephone numbers, account numbers, rates, billing determinants (kW and kWh usage), conservation savings in kW, kWh and bills. According to witness Morley, "FPL's policy is premised upon the customers' right to privacy and the potential that the disclosure of customer specific information may harm some customers' competitive interests or disclose their trade secrets. FPL's customers have affirmed to FPL their interest 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 competitors an 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 for 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 customer 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. This policy is important from both a practical and theoretical standpoint. Customers want the assurance that their information is protected to the same extent as any other customer's. Also practically speaking, it would be a

difficult and perhaps impossible task to make a case-by-case determination as to what level of protection each customer's data may merit."

Further, FPL claims that our Orders support its position. See Order PSC-98-0421-CFO-EI, issued March 24, 1999, in Docket 941102-EI; Order PSC-98-0620-CFO-EI, issued May 4, 1998, in Docket 971668-EI; Order PSC-96-1478-CFO-EI, issued December 4, 1996, in Docket 961013-EI.

Lastly, FPL asserts all material marked as sensitive within this filing is private and has not been disclosed.

Review of the sensitive material shows that it discloses information regarding: (1) reports of internal auditors and internal auditing controls; or, (2) customer-specific information, release of which could cause harm to the competitive businesses of the providers of the information. Therefore the utility's request for confidential classification is granted.

FPL requests this information be returned once it is no longer needed for Commission business. However, audit reports and related audit working papers of this nature are retained for 25 years. Section 366.093(4), Florida Statutes, limits the length of any confidential classification to 18 months, unless good cause is shown for allowing a longer period of protection. Since good cause has not been shown for a longer period of protection, I find that any confidential classification should be limited to 18 months. If the utility finds additional protection is needed, an extension may be filed before any granted protection period tolls.

Based on the foregoing, it is

ORDERED by Commissioner Michael A. Palecki, as Prehearing Officer, that the Request for Confidential Classification filed by Florida Power and Light on August 8, 2002, is granted. It is further

ORDERED that pursuant to Section 366.093(4), Florida Statutes, and Rule 25-22.006, Florida Administrative Code, any confidentiality granted to the material specified herein shall expire eighteen (18) months from the date of the issuance of this

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Order in the absence of a renewed request for confidentiality. 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.

By ORDER of Commissioner Michael A. Palecki, as Prehearing Officer, this 21st Day of October, 2002.



MICHAEL A. PALECKI
Commissioner and Prehearing Officer

(S E A L)

MKS

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)

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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 the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, 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.