

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Environmental cost
recovery clause.

DOCKET NO. 030007-EI
ORDER NO. PSC-03-1142-CFO-EI
ISSUED: October 13, 2003

ORDER GRANTING CONFIDENTIAL CLASSIFICATION TO DOCUMENT NO. 06789-03 (X-REF DOCUMENT NO. 06114-03; AUDIT CONTROL NO. 03-030-4-1)

On July 7, 2003, when copies of certain portions of the Commission Staff's working papers prepared during Florida Power & Light Company's (FPL) Environmental Cost Recovery Clause Audit for the Year 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. On July 10, 2003, Commission Staff filed these papers with the Division of the Commission Clerk and Administrative Services. The papers were assigned Document No. 06114-03.

On July 28, 2003, FPL filed a Request for Confidential Classification asking that certain portions of the Staff's audit working papers receive confidential classification. The utility's request included highlighted copies of the information, which was assigned Document No. 06789-03. In addition, FPL's filing included a justification table identifying which materials should be considered for confidential classification and why that material should be protected. The justification table is provided below.

Staff Work Paper Number	Page(s)	Line(s)	Type of Information Classified Confidential
Documents 06114-03 and 06789-03			
45-1/1	1-2,4	1	Sensitive contractual and competitive information
45-1/1	5	1-2,4	Sensitive contractual and competitive information
45-1/1	6-7	1	Sensitive contractual and competitive information

DOCUMENT NUMBER-DATE

09973 OCT 13 8

FPSC-COMMISSION CLERK

Staff Work Paper Number	Page(s)	Line(s)	Type of Information Classified Confidential
45-1/1	10	1,10,14.20- 22,27,29,31	Sensitive contractual and competitive information
45-1/1	11	1,8,15-16	Sensitive contractual and competitive information
45-1/1	13	1	Sensitive contractual and competitive information
Documents 06114-03 and 06789-03			
45-1/1	17	1-6,11-12	Sensitive contractual and competitive information
45-1/1	18	1,3-5	Sensitive contractual and competitive information
45-1/1	19	27	Sensitive contractual and competitive information
45-1/1	20	1,18	Sensitive contractual and competitive information
45-1/1	21	1	Sensitive contractual and competitive information
45-1/1	22	1,4	Sensitive contractual and competitive information
45-1/1- 1	2	Col C-E, 2-3; Col D-E, 4,12; Col E, 14	Sensitive contractual and competitive information
45-1/1- 1	3	Col C-E, 2-3; Col D-E, 4; Col E,12	Sensitive contractual and competitive information

Staff Work Paper Number	Page(s)	Line(s)	Type of Information Classified Confidential
45-1/1-2	2	Col A-B, 1; Col B, 7	Sensitive contractual and competitive information
45-2/1	1	Col A, 3,13;	Sensitive contractual and competitive information
45-2/1	2	Col A-C, 3-10	Sensitive contractual and competitive information
45-2/1	3	Col A, 1,8	Sensitive contractual and competitive information
Documents 06114-03 and 06789-03			
45-2/1	4	11,22,25,29	Sensitive contractual and competitive information

In accordance with Section 119.07, Florida Statutes, documents submitted to the Commission are public records, unless granted a specific exemption, pursuant to the terms of Chapter 366, Florida Statutes. 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:

* * *

(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, Florida Statute, and Rule 25-22.006, Florida Administrative Code, the utility has the burden of demonstrating that materials qualify for confidential classification. FPL must demonstrate 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.

FPL asserts that the sensitive material consists of proprietary business information which contains contractual data such as pricing and other terms, the disclosure of which would impair the efforts of the utility to contract for goods and services on favorable terms. FPL also points out that release of this information could impair the competitive businesses of the contractual counter party or service provider.

Section 366.093(3)(d), Florida Statutes, 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. In addition, Section 366.093(3)(e), Florida Statutes, 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. The information that FPL is requesting be exempt from public disclosure concerns contractual data, which is sensitive competitive business information, the release of which could harm the competitive business of the contractual counter party or service provider. Therefore, it appears that the information is proprietary confidential business information that should be exempt from public disclosure, pursuant to Section 366.093(3)(d) and (e), Florida Statutes. Accordingly, FPL's request for confidential classification is granted.

ORDER NO. PSC-03-1142-CFO-EI
DOCKET NO. 030007-EI
PAGE 5

Section 366.093(4), Florida Statutes, limits the period of confidential classification to 18 months, absent good cause. FPL has not requested a longer period. Therefore, the information shall be exempt from disclosure for a period of 18 months.

Based on the foregoing, it is

ORDERED by Commissioner Braulio L. Baez, as Prehearing Officer, that the request by Florida Power & Light for confidential classification of portions of Document Nos. 06114-03 and 06789-03 is hereby granted. It is further

ORDERED that the information described within the body of this Order and contained in Document Nos. 06114-03 and 06789-03 shall be granted confidential classification for a period of 18 months from the date of the issuance 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.

By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 13th day of October, 2003.



BRAULIO L. BAEZ
Commissioner and Prehearing Officer

(S E A L)

AEV

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; or (2) 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.