

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Environmental cost recovery clause.

DOCKET NO. 050007-EI
 ORDER NO. PSC-05-0917-CFO-EI
 ISSUED: September 16, 2005

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
 J. TERRY DEASON
 RUDOLPH "RUDY" BRADLEY
 LISA POLAK EDGAR

ORDER GRANTING CONFIDENTIALITY TO DOCUMENT NOS. 07166-5 AND 07567-05

BY THE COMMISSION:

Florida Power and Light (FPL) seeks confidential classification of documents from its environmental cost recovery clause audit for the year ended December 31, 2004 (Audit Control No. 05-033-4-1). On July 14, 2005, when copies of certain portions of staff's working papers obtained or prepared during the audit 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 27, 2005, staff filed document no. 07166-05 consisting of those specified portions of the staff working papers.

On August 4, 2005, FPL filed a request pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006 seeking confidential classification for selected portions of the working papers prepared by the staff during the audit. The utility's request included redacted copies for public inspection (document no. 07568-05) and a copy in which the sensitive material is highlighted (document no. 07567-05). Document nos. 07166-05 and 07567-05 are currently held by the Division of the Commission Clerk and Administrative Services as confidential pending resolution of FPL's request for confidential classification.

FPL's request is summarized in the table below.

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information Classified
Document Nos. 07166-05 and 07567-05					
9	List of Internal Audits	1	Col C	Grant	Internal auditing controls and reports of internal auditors

DOCUMENT NUMBER-DATE

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Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
9-1	Internal Audit	1-2	All	Grant	Internal auditing controls and reports of internal auditors
41-1/1-1	Revenue	1-2	Col A, 1-51	Grant	Sensitive competitive business information
41-1/1-2	Revenue	1	Col A, 1-51	Grant	Sensitive competitive business information
41-1/1-2	Revenue	2	Col A, 1-9	Grant	Sensitive competitive business information

Pursuant to Section 119.07, F.S., documents submitted to the Commission are public records. An exemption to the public records requirement is provided for proprietary confidential business information in Section 366.093(3), which states:

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 the 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.

Witness Robert Onsgard, FPL Manager, Internal Auditing, identified as confidential material in the staff working papers entitled "List of Internal Audits" and "Internal Audit." Mr. Onsgard explains that FPL treats the material as confidential. After reading the material identified by Mr. Onsgard, we agree that release of this material would reveal internal auditing controls and the reports of internal auditors, and it is therefore confidential under Section 366.093(3)(b).

FPL also seeks confidential classification for certain customer-specific information because the information would harm its customers' competitive business interests. Subsection 366.093(3)(e) provides that the Commission may grant confidential classification to sensitive competitive business information if public release will harm the provider of that information. FPL witness Korel M. Dubin, FPL Manager, Regulatory Issues, identified as confidential certain

customer-specific account information in staff working papers entitled "Revenue." Ms. Dubin states that FPL treats this information as confidential.

FPL explains that it treats as confidential customer-specific information such as customer names, addresses, telephone numbers, account numbers, rates, billing determinants (kW and kW usage), and conservation savings. This is the type of information for which it seeks confidential classification. FPL claims its policy is based on the customers' right to privacy and the potential that the disclosure of customer-specific information may harm some customers' competitive interests. For many of its customers, electric usage is an important part of their production or operating costs. Thus, the disclosure of such information could provide competitors with an unfair advantage. FPL goes on to state:

For others, non-disclosure of the information is simply a matter of privacy. While it may be that 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.

After reviewing the information identified by Ms. Dubin, I find that it shall be held as confidential because the information meets the definition of "proprietary confidential business information" set out in Section 366.093, Florida Statutes, in that release of this privately-held sensitive business information would cause the provider of the information harm. Accordingly, FPL's request for confidential classification is granted.

Pursuant to Section 366.093(4), confidential protection may only be granted for 18 months unless the entity requesting confidential classification shows good cause why the period should be extended. FPL did not request confidential status for more than 18 months, so the document will be granted confidential status for 18 months from the issuance date of this Order.

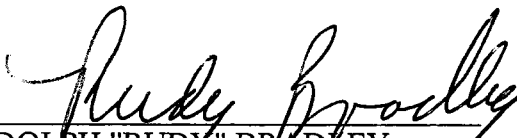
Based on the foregoing, it is

ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that the request of Florida Power & Light to extend confidentiality is granted. It is further

ORDERED that pursuant to Section 366.093(4), Florida Statutes, and Rule 25-22.006, Florida Administrative Code, confidentiality granted to the material specified herein shall expire 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 Rudolph "Rudy" Bradley, as Prehearing Officer, this
16th day of September, 2005.



RUDOLPH "RUDY" BRADLEY
Commissioner and Prehearing Officer

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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; 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.