



ORIGINAL
Public Service Commission
-M-E-M-O-R-A-N-D-U-M-

DATE January 30, 2003
TO: Office of General Counsel (Moore) *W*
FROM: Division of Auditing and Safety (Vandiver, Freeman) *F*
RE: Docket 021111-EI, Recommendation concerning Florida Power and Light Company's (FPL's) request for confidential classification for materials gathered during audit No. 02-174-4-1, entitled "FPL Revenue Refund Audit for the Year ended April 14, 2002", Documents 11267-02 and 11872-02 *Just*

On October 9, 2002, when copies of certain portions of staff's audit report and working papers prepared during "FPL Revenue Refund Audit for the Year ended April 14, 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 (FAC).

On October 16, 2002, staff filed document 11267-02 consisting of these materials.

On October 29, 2002, the utility filed a request pursuant to Rule 25-22.006, FAC, and Section 366.093, Florida Statutes (F.S.), that certain portions of the audit report and working papers prepared by the staff receive a confidential classification. The utility request includes copies of staff's audit report and working papers with sensitive information highlighted (document 11872-02).

On January 23, 2003, after discussions with the staff, the utility reduced its request and provided a final public copy of the staff's audit report and working papers with sensitive information redacted (document 00741-03) as well as a final listing by page and line of the information requested to be granted a confidential classification.

Documents 11267-02 and 11872-02 are currently held by the Division of Commission Clerk and Administrative Services in a temporary confidential classification pending resolution of FPL's request.

In accordance with Section 119.07, F.S., 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. Subsections 366.093 (c), (d) and (e), F.S. provide the following exemptions:

- AUS _____
- CAF _____
- CMP _____
- COM _____
- CTR _____
- ECR _____
- GCL _____
- OPC _____
- MMS _____
- SEC 1
- OTH *Marguerite*

DOCUMENT NUMBER-DATE

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“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:....

(c) Security measures, systems or procedures.

(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 or 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 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 FPL filing reveals the sensitive materials consist of:

1. Non governmental, customer-specific account information.

FPL witnesses Dennis Reynolds, Budget and Regulatory Support Supervisor, David Bromley, Manager, Regulatory Strategy, and Martha Gonzalez, Customer Billing Projects and Support Supervisor, identify certain sensitive non governmental, customer-specific information contained in staff’s audit working papers. FPL claims release of this identified material would harm the ability of FPL to contract on favorable terms. In addition, FPL claims release of this same information could harm the competitive business of FPL or its customers.

Witness Reynolds identifies sensitive competitive business and contractual information contained in working papers entitled; “Payment coupon”, “Sample of transactions account 451”, and “Sample testing of transactions account 456.”

Witness Bromley identifies sensitive competitive and contractual information within the staff working paper entitled “Response to audit document request No. 10.”

Witness Gonzalez identifies sensitive competitive and contractual information within the staff working paper entitled “Answer to audit document request No. 41.”

Staff Analysis of the Request

1. Non governmental, customer-specific account information (continued)

FPL witnesses Reynolds, Bromley, Gonzalez and Donald L. Babka, Director of Regulatory and Tax Accounting, report 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 determinates (kW and kWh usage), conservation savings in kW, kWh and bills.

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

Staff Analysis of the Request

1. Non governmental, customer-specific account information (continued)

Further, FPL offers the following decisions in support of its position that the Commission in the past has found customer-specific information to be confidential proprietary business information:

Commission order PSC-98-0421-CFO-EI, March 24, 1999, Docket 941102-EI

The decision involves confidential treatment of a quarterly report for a real time pricing program. The order held that customer specific information is regarded as confidential.

Commission order PSC-98-0620-CFO-EI, May 4, 1998, Docket 971668-EI

The decision involves confidentiality of customers who filed complaints. The identity of customers who filed a complaint was awarded a confidential classification as long as the complaint was not already a public record.

Commission order PSC-96-1478-CFO-EI, December 4, 1996, Docket 961013-EI

The decision involves the identity of customers who have requested studies regarding energy alternatives in their competitive businesses as well as the contents of these studies which identify cost saving measures. The order held that the customer's names and the contents of the studies were confidential.

Staff Analysis of the Request (continued)

2. Security Measures, Systems or Procedures which contain or constitute non governmental customer-specific account information.

3. FPL Business Plans and Strategies

FPL witness Babka identifies information concerning security measures, systems or procedures which contain or constitute customer-specific information concerning non governmental customers. Specifically, Mr. Babka identifies security measures within staff's working paper entitled "Physical Distribution Center".

Witness Babka also identifies material within staff's audit working papers reporting sensitive business plans and strategies release of which would harm FPL. Mr. Babka identifies material within working paper 1, the audit report, as being competitively sensitive. Lastly, Mr Babka identifies contractually and competitively sensitive staff working papers entitled; "Sample testing of transaction account 454 and account 450".

4. FPL FiberNet's customer and pricing information, financial projections, operating results and cost data.

FPL witness Sol Stamm, FPL FiberNet, LLC, (FiberNet) Controller, identifies sensitive competitive information concerning FiberNet's customer and pricing information, financial projections, operating results and cost data. Specifically Mr. Stamm reports this information is contained staff audit working papers entitled; "Refund calculation", "FiberNet revenues", and "FiberNet income statement". Controller Stamm asserts, if made public, release of this information would provide competitors with an unfair advantage and harm FiberNet's efforts to contract on favorable terms.

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

Length of the Classification Period

FPL requests this information be returned once it is no longer needed for Commission business.

Audit reports and related audit working papers of this nature are retained by the Commission for 25 years. Section 366.093(4), F.S., limits the length of any confidential classification to 18 months, unless cause is shown for allowing a longer period of protection. Since cause has not been shown for a longer period of protection within this filing, we recommend 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.

CLOSING THE DOCKET

Once any order resolving FPL's request becomes final, this docket should be closed.

STAFF RECOMMENDATION

Staff's reading of the sensitive material reveals it discloses information regarding either: (1) non governmental customer-specific account information, (2) security measures, (3) sensitive FPL business strategies and plans or (4) sensitive business information concerning FPL affiliate FiberNet. We therefore recommend the utility's request for confidential classification be granted for 18 months. A detailed recommendation is provided below:

DETAILED STAFF RECOMMENDATION

Staff Work Paper	Page(s)	Lines(s)	Recommend	Type of Information Classified Confidential
Documents 11267-02 and 11872-02				
1	8	5	Grant	Sensitive Competitive Business Information
1	9	Col A, 6,11,16,21, 26,31; Col B-D, 4-7,9-12, 14-17,19-22,24-27, 29-33	Grant	Sensitive Competitive Business Information
41-3/1-1/7	1	2,4; Col A,B, 6; 10-13,17-22,24	Grant	Sensitive Contractual and Competitive Information
41-3/1-1/8	1	2,4; Col A,B, 6; 10-14,18-24,26	Grant	Sensitive Contractual and Competitive Information
41-3/1-1/9	1	2,4; Col A,B, 6; 10-12,16-21,23	Grant	Sensitive Contractual and Competitive Information

Staff Work Paper	Page(s)	Lines(s)	Recommend	Type of Information Classified Confidential
Documents 11267-02 and 11872-02				
41-3/1-1/10	1	2,4; Col A,B, 6; 10-13,17-22,24	Grant	Sensitive Contractual and Competitive Information
41-3/1-1/11	1	2,4; Col A,B, 6; 10-12,16-21,23	Grant	Sensitive Contractual and Competitive Information
41-8/3-1	5	3-6	Grant	Sensitive Contractual and Competitive Information
41-8/3-1	6	3-6	Grant	Sensitive Contractual and Competitive Information
41-8/3-1	7	3-6	Grant	Sensitive Contractual and Competitive Information
41-8/3-1	10	3-6	Grant	Sensitive Contractual and Competitive Information
41-8/3-1	11	3-6	Grant	Sensitive Contractual and Competitive Information
41-8/3-1	12	3-6	Grant	Sensitive Contractual and Competitive Information
41-9/5-1	1	16-17,26-27	Grant	Sensitive Contractual and Competitive Information
41-9/5-1	2	2-3,12-13,15-16,18-19	Grant	Sensitive Contractual and Competitive Information
41-10/1	1	Col E, 14,27,38-39	Grant	Sensitive Contractual and Competitive Information
41-10/1	16	Col E, 21-22,35-36	Grant	Sensitive Contractual and Competitive Information
41-10/1	18	Col E, 9,31,32	Grant	Sensitive Contractual and Competitive Information

Staff Work Paper	Page(s)	Lines(s)	Recommend	Type of Information Classified Confidential
Documents 11267-02 and 11872-02				
41-10/1	19	Col E, 40	Grant	Sensitive Contractual and Competitive Information
41-10/1	27	Col E, 27	Grant	Sensitive Contractual and Competitive Information
41-10/1	29	Col E, 6,8,12	Grant	Sensitive Contractual and Competitive Information
41-10/1	42	Col E, 32	Grant	Sensitive Contractual and Competitive Information
41-10/1-1	1	Col C, 2,5,8,11, 14-16,19,22,25,29	Grant	Sensitive Contractual and Competitive Information
41-10/1-1/1	1	1,6,10,14,18,22,26,30, 34,38	Grant	Sensitive Contractual and Competitive Information
41-10/1-1/1-1	1	2,4; Col A,B, 6; 10-13,17-22, 24	Grant	Sensitive Contractual and Competitive Information
41-10/1-1/1-1	2	2,4; Col A,B, 6; 10-13,17-22,24	Grant	Sensitive Contractual and Competitive Information
41-10/1-1/1-1	3	2,4; Col A,B, 6; 10-13,17-22,24	Grant	Sensitive Contractual and Competitive Information
41-11	1-4	All	Grant	Security Measures
41-11/5	2	Col E, 11-15	Grant	Sensitive Contractual and Competitive Information
41-11/5	21	Col E, 21-22	Grant	Sensitive Contractual and Competitive Information

Staff Work Paper	Page(s)	Lines(s)	Recommend	Type of Information Classified Confidential
Documents 11267-02 and 11872-02				
41-11/9-1	1	Col B, 7-10,16-19	Grant	Sensitive Contractual and Competitive Information
43-2, page 2	1	Col D-E, 7-20	Grant	Sensitive Competitive Business Information
44	1	8,11	Grant	Sensitive Competitive Business Information
44	2	Col D-E, 8-20	Grant	Sensitive Competitive Business Information
44-1	1-16	All	Grant	Sensitive Competitive Business Information
44-1/1	1-13	All	Grant	Sensitive Competitive Business Information
44-1/2	1-3	All	Grant	Sensitive Competitive Business Information
44-2	1	Col A, 9, 14,19,24,29, 34; Col B, 7-10;12-15, 17-20;22-25,27-30, 32-36,39-43; Col C-D, 7-10;12-15, 17-20;22-25,27-30, 32-36	Grant	Sensitive Competitive Business Information

A temporary copy of this recommendation will be kept at I:11872-02.raf for a short time.

CC: Bureau of Records and Hearing Services (Flynn)
 Division of Economic Regulation (Mailhot, Slemkewicz)
 Bureau of Auditing (Welch)