

State of Florida



ORIGINAL

Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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-M-E-M-O-R-A-N-D-U-M- COMMISSION CLERK

**DATE:** July 13, 2004

**TO:** Richard Bellak, Attorney, General Counsel

**FROM:** Division of Auditing & Safety (Freeman, Vandiver) *F* *Just*

**RE:** Docket 040494-GU, Recommendation concerning Florida Public Utilities Company' (FPUC) request for confidential classification concerning a portion of the staff working papers prepared during "Florida Public Utilities Company, Non-Monitored Transportation Administration Charge Cost Recovery Factors Audit for the Historical Year Ended December 31, 2003", Audit Control No. 04-015-4-1, Documents Numbered 05350-04 and 05922-04

On May 3, 2004, when copies of certain portions of staff's working papers obtained or prepared during the "Florida Public Utilities Company, Non-Monitored Transportation Administration Cost Recovery Factors Audit for the Historical Year Ended December 31, 2003", were delivered to FPUC 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 May 7, 2004, staff filed document 05350-04 consisting of those specified portions of the staff audit working papers.

On May 24, 2004, FPUC filed a request pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006(3)(a)2. and (4), FAC, that selected portions of the working papers prepared by the staff during the audit receive confidential classification. The utility's request included redacted copies for public inspection (document 05921-04) and highlighted copies (document 05922-04).

- CWP \_\_\_\_\_
- COM \_\_\_\_\_
- CTR \_\_\_\_\_ Documents 05350-04 and 05922-04 are currently held by the Commission's Division of the Commission Clerk and Administrative Services as confidential pending resolution of FPL's request for confidential classification.
- ECR \_\_\_\_\_
- GCL \_\_\_\_\_
- OPC \_\_\_\_\_ Pursuant to Section 119.07, F.S., documents submitted to this Commission are public records. The only exceptions to this law are specific statutory exemptions and exemptions granted by governmental agencies pursuant to the specific items of a statutory provision. Subsection 366.093(3)(e), F.S., provides the following exemption:
- MMS \_\_\_\_\_
- RCA \_\_\_\_\_

SCR \_\_\_\_\_

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Subsection 366.093, F.S., provides; “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:

....

(e) Information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider of the information....”

According to Section 366.093, F.S., 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 FPUC filing reveals the sensitive material consists of:

1. Recalculation of revenues disclosing specific-customer account information, customer usage and billing information.

FPUC asserts disclosure of customer lists would provide information useful to competitors that would impair the competitive business of FPUC and provide customer information which would harm the utility’s customers and may harm the competitive businesses of those customers.

The utility also asserts this information is a trade secret and should be protected on that basis.

Staff notes that the Commission does not grant a confidential classification on the basis that information is a trade secret unless the utility demonstrates why the information should be recognized as a trade secret or unless the utility demonstrates the information has been recognized as a trade secret by another administrative body. To date, the utility has not demonstrated that the material reported here qualifies as a trade secret.

2. Transportation service customer list.

FPUC asserts information on this list consists of names, account numbers, locations, and usage data. FPUC asserts this type of information would be useful to competitors, harmful to the ratepayer, harmful to the competitive business of the utility, and harmful to the providers of the transportation service.

3. Copies of individual customer invoices.

FPUC argues this information reports customer locations, account numbers, usage, billed amounts, pool manager and charges. FPUC asserts disclosure of this information would provide useful and valuable information to other competitive interests and would impair the competitive business of FPUC and would cause harm to the ratepayer and to the business interests of the utility. <sup>5</sup>

Lastly, The utility asserts the information described above meets the definition of “proprietary confidential business information” pertaining to competitive business information as set out by Section 366.093(3)(e), F.S. FPUC also reports it holds this type of information as proprietary and confidential and does not disclose it to the public.

**Duration of the Confidential Classification Period**

While FPUC has requested a confidential classification for the specified material, FPUC has not specified the requested time period for this classification. We note the Commission staff’s working papers for this type of audit are retained on file by the Commission for 25 years.

According to the provisions of Section 366.093(4), F.S., absent good cause shown, confidential classification is limited to 18 months. Without cause shown for a longer period, we recommend that the period of confidential classification be set as 18 months. As deemed necessary, the utility may request an extension of the confidential classification before the period tolls.

**Staff Recommendation**

Section 366.093, F.S. provides that the Commission may grant a confidential classification to material the release of which may harm the provider of that information or the ratepayer. Sections 366.093(3)(e), F.S. provides that the Commission may grant a confidential classification if release of the sensitive material would harm the utility’s competitive business. Based upon reading the filing, FPUC has demonstrated release of the specified material gathered during this audit would either harm the utility’s competitive business or ultimately harm the ratepayer. Based upon reading the filing, and for the reasons presented above, we recommend the utility’s request be granted and that the identified material be granted a confidential classification for 18 months.

A detailed recommendation, as found, follows:

**Detailed Recommendation, as found**

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
41-2				business information
41-2/1	1 to 12	1-293	Grant	Sensitive competitive business information
41-2/1	13	1-23	Grant	Sensitive competitive business information
41-2/1	14	1-20	Grant	Sensitive competitive business information
41-2/1	15	1-22	Grant	Sensitive competitive business information
41-2/1	16	1-22	Grant	Sensitive competitive business information
41-2/1	17	1-22	Grant	Sensitive competitive business information
41-2/1	18	1-25	Grant	Sensitive competitive business information
41-2/1	19	1-24	Grant	Sensitive competitive business information
41-2/1	20	1-24	Grant	Sensitive competitive business information
41-2/1	21	1-23	Grant	Sensitive competitive business information
41-2/1	22	1-23	Grant	Sensitive competitive business information
41-2/1	23	1-23	Grant	Sensitive competitive business information
41-2/1	24	1-22	Grant	Sensitive competitive business information
41-2/1				business information

A temporary copy of this recommendation will be held at I:05922-04.FPUCraf.doc for a short period.

CC: Division of Auditing and Safety (Welch)  
Division of Commission Clerk and Administrative Services (Flynn)