

State of Florida



ORIGINAL

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: July 20, 2004

TO: Martha Brown, Attorney, General Counsel

FROM: Division of Regulatory Compliance and Consumer Assistance (Freeman, Vandiver)

RE: Docket 040002-EG, Recommendation concerning Florida Power & Light Company's (FPL) request for extension of confidential classification concerning a portion of the staff working papers prepared during "FPL Energy Conservation Cost Recovery Clause Audit for the Year Ended December 31, 2001", Audit Control No. 02-064-4-1, Documents Numbered 07733-02, 7953-02 and 11029-02

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COMMISSION CLERK

On July 16, 2002, when copies of certain portions of staff's working papers obtained or prepared during the "FPL Energy Conservation Cost Recovery Clause Audit for the Year Ended December 31, 2001", 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 July 24, 2002, staff filed document 07733-02 consisting of those specified portions of the staff working papers.

On July 30, 2002, FPL filed a request pursuant to Section 366.093, Florida Statutes (F.S), and Rule 25-22.006, 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 07954-02) and highlighted copies (document 07953-02).

On October 10, 2002, after discussions with the staff, FPL reduced the amount of material for which confidential protection was requested. In support of this change, FPL filed revised, redacted copies of this material for public inspection (Exhibit B, Document 11028-02) and filed revised copies with the sensitive information highlighted (document 11029-02).

- CMP _____
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- On October 31, 2002, Commission Order No. PSC-02-1493-CFO-EG was issued in docket 020002-EG granting the utility's request, as modified, and providing 18 months confidential classification for the specified material. That 18 month period has now tolled.
- On April 16, 2004, FPL filed a first request for extension of the confidential classification for material granted by Commission Order PSC-02-1493-CFO-EG.
- Documents 07733-02, 07953-02, and 11029-02 are currently held by the Commission's Division of the Commission Clerk and Administrative Services as confidential pending resolution of FPL's request for extension of confidential classification.

DOCUMENT NUMBER-DATE
08199 JUL 28 3
FPSC-COMMISSION CLERK

July 20, 2004
Florida Power & Light Request for Extension

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. Subsections 399.093(3)(b) and (e), F.S., provide the following exemptions.

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:

(b) Internal auditing controls and 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....”

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 FPL filing reveals the sensitive material consists of:

1). Internal auditing controls and reports of internal auditors.

Witness Robert Onsgard, FPL Manager, Internal Auditing, identifies material concerning reports of internal auditors and internal auditing controls within FPL’s request. Specifically Mr. Onsgard identifies internal auditing materials within staff working papers entitled: “ Internal Audits” and “Notes from Internal Audits.”

Mr. Onsgard represents these documents continue to be proprietary confidential business information and should be accorded a confidential classification for an additional 18 months.

Staff notes Section 366.093(b), F.S., provides that internal auditing controls and reports of internal auditors may be granted a confidential classification.

- 2). Business plans and strategies of FPL
- 3). Customer-specific account information.

Witness Ken Getchell, FPL Budget and Regulatory Support Supervisor, identifies material concerning customer-specific account information within FPL's request. Specifically, Mr. Getchell identifies customer-specific account information within staff working papers entitled: "RTP Factors for July 2001", "Billing Invoices for July and September 2001", "Sample tests of Transactions", "Incentives", "CILC(Commercial/Industrial Load Control) Incentives", and "Invoices."

Mr. Getchell represents these documents continue to be proprietary confidential business information and should be accorded a confidential classification for an additional 18 months. Ms. Getchell further reports; "...FPL has a corporate policy not to disclose customer-specific information. This policy includes, but is not limited to; customer names, addresses, telephone numbers, account numbers, rates, billing determinates (kW and kWh usage), conservation savings in kW, kWh and bills. FPL treats such information as confidential and does not disclose it, except as required by law, to entities or persons other than the customer without the permission of that customer. Additionally, some of the documents and information...contain FPL business plans and strategies which FPL considers to be confidential proprietary business information, the disclosure of which would impair the competitive business of FPL.

FPL's policy is premised upon the customer's right to privacy and the potential that the disclosure of customer-specific information may harm some customer's 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 such 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 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 the 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...."

Furthermore, FPL offers the following three prior decisions in support of its request that customer-specific information be granted a confidential classification:

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 those studies which identify cost saving measures. The order held that the customer's names and the contents of the studies were confidential.

Staff notes Section 366.093(3)(e), F.S., provides that sensitive competitive business information the release of which would harm the provider of the information may be granted a confidential classification.

Staff also notes FPL witness Getchell referred to the potential that a customer's trade secrets may be revealed if customer-specific electric account information is disclosed. In order for this information to qualify for a confidential status on the basis that the information reports a trade secret, the utility or the provider of the information is required to identify and demonstrate why the specific information was considered a trade secret or demonstrate where another administrative body has held that this information is a trade secret. To date, neither FPL nor any specific customer has demonstrated that trade secrets are reported within the sensitive information identified in this filing.

Information Held as Confidential

Both utility witnesses indicate that the information identified by them is held as confidential by FPL and this information is not released to the public.

Duration of the Confidential Classification Period

FPL requests that this material be returned to the utility once the information is no longer needed for the Commission to conduct its business. However, 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

Based upon reading the filing, and for the reasons presented above, we recommend the utility's request for extension of classification period be granted and that the identified material be granted a confidential classification for an additional 18 months.

A detailed recommendation follows:

Detailed Recommendation

Staff Work Paper Number	Page(s)	Line(s)	Recommend Granting an 18 Month Extension	Type of Information Classified Confidential
Documents 07733-02, 07953-02 and 11029-02				
9	1	Col C, 1-51	Grant	Reports and information concerning internal audits
9	2	Col C, 52-99	Grant	Reports and information concerning internal audits
9	3	Col C, 1-5	Grant	Reports and information concerning internal audits
9	4	Col C, 1-23	Grant	Reports and information concerning internal audits
9-1	1-7	All	Grant	Reports and information concerning internal audits
41-1/1-1	1-2,4-6, 9-10,12-16	Col A, 1-28; Col B, 2-10,12-14, 27-28; Col C, 1,3-10, 12-13,28; Col D, 17-18, 20-24,28; Col E, 17-18,20-24; Col F. 16-18.22-25:	Grant	Sensitive competitive business information
41-1/1-2	2-3,6-10	Col A-B, 1-3; Col B-C,E-G, 8-45	Grant	Sensitive competitive business information
41-1/1-3	2-3,5-7,9	Col A-B, 1-3; Col B-C,E-G, 8-45	Grant	information

Staff Work Paper Number	Page(s)	Line(s)	Recommend Granting an 18 Month Extension	Type of Information Classified Confidential
43-3	1	Col I-K, 1-44	Grant	Sensitive competitive business information
43-4/1	1-2	Col A-B, 1-3; Col B-C,E-G, 8-43	Grant	Sensitive competitive business information
43-6	1	Col I,K, 49-55, 59-62,64-91	Grant	Sensitive competitive business information
43-6/10	1	1	Grant	Sensitive competitive business information
43-6/10	2	2,4,15,19-23,25-30	Grant	Sensitive competitive business information
43-6/10	3	6,7,25	Grant	Sensitive competitive business information
43-6/10	4	11	Grant	Sensitive competitive business information
43-6/10	5	1	Grant	Sensitive competitive business information
43-6/10	7	11-15	Grant	Sensitive competitive business information
43-6/10	10	Col A, 3,5,7	Grant	Sensitive competitive business information
43-6/11	1	1-4,6,11-12	Grant	Sensitive competitive business information
43-6/11	2	Col A, 2-33	Grant	Sensitive competitive business information
43-6/11	3-5	All	Grant	Sensitive competitive business information
43-6/12	1	1-4; Col A, 5-6,8-38; Col B, 5-6,13-38; Col C, 5-6,13-38	Grant	Sensitive competitive business information
43-6/12	2	1-19	Grant	Sensitive competitive business information
43-6/12	3-4	All	Grant	Sensitive competitive business information
43-7	1	Col J-K, 1	Grant	Sensitive competitive business information

Staff Work Paper Number	Page(s)	Line(s)	Recommend Granting an 18 Month Extension	Type of Information Classified Confidential
Document: 07733-02, 07953-02 and 11029-02				
43-7	2	Col G, 22; Col J, 9; Col N, 18-19	Grant	Sensitive competitive business information
43-7	3	Col G,K,N, 23	Grant	Sensitive competitive business information
43-7	4	Col G, 25-27; Col K, 25-27; Col J, 15-17,32-36; Col N, 13-15, 23A-25.27	Grant	Sensitive competitive business information
43-7/3	1	1-2; Col A, 3-11; Cols B-C, 3-4, 10-11; 13-36	Grant	Sensitive competitive business information
43-7/3	2	1-7,15-23	Grant	Sensitive competitive business information
43-7/3	3-4	All	Grant	Sensitive competitive business information
44-7/1-1/1	1	Cols A-C,J-L,N, 1,4,11,13,15,17, 19-20,23,25-26, 28-32,34,36,41-44, 49-51,53,56-61, 66-67,69-72	Grant	Sensitive competitive business information
44-7/1-1/1	2	Cols A-C,J-L,N, 1,5-6,9-11,14,17, 19-20,22,30,32-33, 35,41-43,46,48-51, 56-59,61,63,65,68, 70,72-73	Grant	Sensitive competitive business information

Staff Work Paper Number	Page(s)	Line(s)	Recommend Granting an 18 Month Extension	Type of Information Classified Confidential
44-7/1-1/1	3	Cols A-C,J-L,N, 2,9,11,13,15-16, 18-20,24,27,29,31, 37-41,45-46,48,50, 52-53,57,59,61-64, 66,68-70,72-74	Grant	Sensitive competitive business information
44-7/1-1/1	4	Cols A-C,J-L,N, 2,4,9,11,20-22,24, 26,28,30-34,36,38, 41-43,45,53,55-56, 59,63,65,68,71	Grant	Sensitive competitive business information
44-7/1-1/1	5	Cols A-C,J-L,N, 3-4,8-11,13,15, 17-18,20-22,26, 30-32,34-35,38, 41-43,49-50,52,54, 58,60-63,66-67, 71-72,74	Grant	Sensitive competitive business information
44-7/1-1/1	6	Cols A-C,J-L,N, 1-3,8,10,13,15-16, 21,24-25,28-29,31, 36,39,41,44-45,47, 49-51,55-57,61-63, 65-66,70-71	Grant	Sensitive competitive business information
44-7/1-1/1	7	Cols A-C,J-L,N, 2,4-8,10,12-20,23, 28,32,37-40,45-46, 48-51,53,55,57,60, 62	Grant	Sensitive competitive business information
44-9/1-1/1	1	Cols A-C,J-L,N, 1,5,9,11-12,14, 17-19,21-24,27,29, 37-40,42-43,47-51, 54-55,58-59,61-62, 64,67,69,71,74	Grant	Sensitive competitive business information
44-9/1-1/1	2	Cols A-C,J-L,N, 6,10-11,20,22, 24-26,28-29,33-34, 39,42-44,46,49-50, 54-55,59-60,65-66, 68,72	Grant	Sensitive competitive business information

Staff Work Paper Number	Page(s)	Line(s)	Recommend Granting an 18 Month Extension	Type of Information Classified Confidential
Documents 07733-02, 07953-02 and 11029-02				
44-9/1-1/1	3	Cols A-C,J-L,N, 2-4,14-16,19-21, 24-27,33-34,36-37, 40-43,45,49,53-54, 57-58,60,62-63, 70-72,74	Grant	Sensitive competitive business information
44-9/1-1/1	4	Cols A-C,J-L,N, 1-2,4,6-8,10,14, 20,22,25,30-31,33, 37-38,41,45-47, 52-54,56,58,61-65, 67-69,74	Grant	Sensitive competitive business information
44-9/1-1/1	5	Cols A-C,J-L,N, 2-4,8-9,13,17-22, 24,27-28,31-32,34, 36-38,42-44,46-47, 49-50,55-56,58-59, 62-64,67-70,72-74	Grant	Sensitive competitive business information
44-9/1-1/1	6	Cols A-C,J-L,N, 4-7,9-10,12,17-19, 21-23,25-26,31,39, 41,46,49-51,54-57, 61-65,70-73	Grant	Sensitive competitive business information
44-9/1-1/1	7	Cols A-C,J-L,N, 1,3-4,6,10-11, 15-20,27,32-37, 39-42,54,56,58	Grant	Sensitive competitive business information

A temporary copy of this recommendation will be held at I:11029-02ext1raf.doc for a short period.

CC: Division of Regulatory Compliance and Consumer Assistance (Welch)
Division of Commission Clerk and Administrative Services (Flynn)