

State of Florida



Public Service Commission

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COMMISSION CLERK

DATE: August 16, 2004

TO: Jennifer Rodan, Attorney, General Counsel

FROM: Division of Regulatory Compliance and Consumer Affairs (Freeman, Vandiver) ^{F a}

RE: Docket 040001-EI, Recommendation concerning Florida Power & Light Company's (FPL) request for confidential classification concerning response to staff audit report entitled "FPL Fuel Cost Recovery Clause Audit for the Year Ended December 31, 2003, Audit Control No. 04-023-4-1, Documents Numbered 04848-04 and 05637-04"

On April 5, 2004, Bureau of Auditing Chief Denise Vandiver sent a staff audit report entitled "Florida Power and Light Fuel Cost Recovery Clause Year Ended December 31, 2003, Docket No. 040001-EI, audit control No. 04-023-4-1" to Florida Power and Light Company.

On April 26, 2004, FPL filed a response to this audit (Document 04848-04) along with a Notice of Intent to Seek Confidential Classification to its Audit response.

On May 17, 2004, FPL filed its request for confidential classification of its audit response. FPL's request included redacted copies of the response for public use (Document 05636-04, Exhibit B) and copies of its response with the sensitive portions highlighted (Document 05637-04)

Documents 04848-04 and 05637-04 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.

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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 366.093(3)(d) and (e), F.S., provide the following exemptions.

DOCUMENT NUMBER-DATE
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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:

....

(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 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. Material related to FPL’s overall procurement practices and strategies including vendor-specific and detailed procurement information; and
2. Material concerning hedging-related expenditures

Subsection 366.093(d), F.S., provides that sensitive contractual or bid information, release of which would harm the ability of a utility or its affiliates to contract for goods and services, may be granted a confidential classification.

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

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According to FPL witness Gerald J. Yupp, Manager of Regulated Wholesale Power Trading in the Energy Marketing and Trading Division, release of this sensitive vendor pricing information and materials concerning certain hedging-related expenses would impair FPL's competitive business interests and impair the competitive interests of the provider of these goods and services. Mr. Yupp also states release of the information would impair the ability of FPL to contract on favorable terms in the future.

Specifically, Mr. Yupp indicates this material is contained within the response to staff auditing disclosures concerning "GenTrader License Fees in Incremental Hedging."

After reading this material, we agree it is reasonable to expect that release of this information could impair the competitive business of FPL, its vendors, or otherwise impair the ability of FPL or its affiliates to contract favorably for goods and services in the future. Therefore, we recommend the material identified by Mr. Yupp be granted a confidential classification on the basis that this information meets the exemption requirements set out by Subsections 366.093(d) and (e), Florida Statutes.

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 materials related to audits of this type 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 be granted and that the identified material be granted a confidential classification for 18 months.

A detailed recommendation follows:

Detailed Recommendation

FPL Response to the Audit Page Number	Line(s)	Recommend	Type of Information Classified Confidential
4	25,28-29	Grant	Sensitive contractual information
5	3	Grant	Sensitive contractual information
6	3,5-6,12	Grant	Sensitive contractual information

A temporary copy of this recommendation will be held at I:05637-04.fplraf.doc for a short period.

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