

State of Florida



ORIGINAL

Public Service Commission

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COMMISSION
CLERK

DATE: April 15, 2005

TO: Marlene Stern, Attorney, General Counsel's Office

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

RE: Docket 050007-EI, 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 Environmental Cost Recovery Clause Supplemental Audit for the Year Ended December 31, 2002", Audit Control No. 03-030-4-1, Documents Numbered 06114-03 and 06789-03

On July 7, 2003, when copies of certain portions of staff's working papers obtained or prepared during the "FPL Environmental Cost Recovery Clause Supplemental Audit for the Year Ended December 31, 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 July 10, 2003, staff filed document 06114-03 consisting of those specified portions of the staff working papers.

On July 28, 2003, 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 (Exhibit B, document 06788-02) and highlighted copies (document 06789-03).

MP _____ On October 13, 2003, Commission Order No. PSC-03-1142-CFO-EI was issued in docket 030007-EI granting the utility's request and providing 18 months confidential classification for the specified material. That 18 month period has now tolled.

OM _____

TR _____

CR _____ On April 12, 2005, FPL filed a first request for extension of the confidential classification for material granted by Commission Order PSC-03-1142-CFO-EI.

SCL _____

IPC _____ Documents 06114-03 and 06789-03 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.

IMS _____

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FPSC-COMMISSION CLERK

April 15, 2005
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 366.093(3)(d) 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:

....

(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

The utility’s request for extension asserts its justification table filed on July 28, 2003, in docket 030007 (Exhibit C, document 06788-03) remains valid because the reported information remains sensitive.

Reading the FPL filing reveals the sensitive material consists of: Contracts and contractual data such as pricing and other terms.

FPL asserts disclosure of this information would impair the efforts of FPL to contract for services on favorable terms and would impair the competitive interests of the providers of the information. FPL reports this information remains sensitive and should be held as confidential for an additional 18 months.

Witness Roger F. Messer, FPL Manager Environmental Support, identifies this sensitive contractual and sensitive business information as contained within the PSC staff audit working papers entitled: “Test of Cash Vouchers”, “Invoice”, “Purchase Order”, and “Test of Journal Entries.”

April 15, 2005
Florida Power & Light Request for Extension

Information Held as Confidential

Witness Messer represents all the identified information continues to be held as confidential by FPL, and should be accorded a confidential classification by the Commission for an additional 18 months.

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.

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

Staff notes Section 366.093, F. S., provides that the Commission may grant a confidential classification to information the release of which may harm the ratepayers or the person's or company's business operations. In part, the statute identifies certain types of information release of which will cause harm to include, but not be limited to:

Section 366.093(3)(d), F.S., which provides that the Commission may grant a confidential classification to sensitive contractual or bid information release of which may harm the public utility or its affiliates ability to contract; and

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

The detailed information from the utility which was gathered by the staff auditors pertains to contractual payments and FPL claims that release of this information would impair FPL's ability to contract for goods and services in the future and FPL asserts disclosing this contractual information would also harm the competitive businesses of the participating vendors. We agree with FPL and their witnesses that even after 18 months of confidential classification, this information remains sensitive and release of this information at this time could cause harm.

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	Description	Page(s)	Line(s)	Recommend Granting an 18 Month Extension	Type of Information Classified Confidential
Documents 06114-03 and 06789-03					
5-1/1	Test of Cash Vouchers	1-2,4	1	Grant	Sensitive contractual and competitive information
5-1/1	Test of Cash Vouchers	5	1-2,4	Grant	Sensitive contractual and competitive information
5-1/1	Test of Cash Vouchers	6-7	1	Grant	Sensitive contractual and competitive information
5-1/1	Test of Cash Vouchers	10	1,10,14,20-22, 27,29,31	Grant	Sensitive contractual and competitive information
					competitive information
5-1/1	Test of Cash Vouchers	13	1	Grant	Sensitive contractual and competitive information
5-1/1	Test of Cash Vouchers	17	1-6,11-12	Grant	Sensitive contractual and competitive information
5-1/1	Test of Cash Vouchers	18	1,3-5	Grant	Sensitive contractual and competitive information
5-1/1	Test of Cash Vouchers	19	27	Grant	Sensitive contractual and competitive information
5-1/1	Test of Cash Vouchers	20	1,18	Grant	Sensitive contractual and competitive information
5-1/1	Test of Cash Vouchers	21	1	Grant	Sensitive contractual and competitive information
5-1/1	Test of Cash Vouchers	22	1,4	Grant	Sensitive contractual and competitive information
45-1/1-1	Invoice	2	Col C-E, 2-3; Col D-E, 4,12; Col E, 14	Grant	Sensitive contractual and competitive information
45-1/1-1	Invoice	3	Col C-E, 2-3; Col D-E, 4; Col E, 12	Grant	Sensitive contractual and competitive information
45-1/1-2	Purchase Order	2	Col A-B,1; Col B, 7	Grant	Sensitive contractual and competitive information
45-2/1	Test of Journal Entries	1	Col A, 3,13	Grant	Sensitive contractual and competitive information
45-2/1	Test of Journal Entries	2	Col A-C, 3-10	Grant	Sensitive contractual and competitive information
45-2/1	Test of Journal Entries	3	Col A, 1-8	Grant	Sensitive contractual and competitive information
45-2/1	Test of Journal Entries	4	11,22,25,29	Grant	Sensitive contractual and competitive information

April 15, 2005
Florida Power & Light Request for Extension

A temporary copy of this recommendation will be held at I:06789-03ext1raf.doc for a short period.

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

