



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: August 30, 2005
TO: Martha Brown, Attorney, General Counsel
FROM: Division of Regulatory Compliance and Consumer Assistance (Freeman, Vandiver) *F* *on* *Aug*
RE: Docket 050002-EG, Recommendation concerning Florida Power & Light Company's (FPL) request for 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, 2004", Audit Control No. 05-042-4-1, Documents Numbered 06625-05 and 06604-05

On June 22, 2005, when copies of certain portions of staff's audit working papers obtained or prepared during the "FPL Energy Conservation Cost Recovery Clause Audit for the Year Ended December 31, 2004", 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 13, 2005, staff filed document 06625-05 consisting of those specified portions of the staff working papers.

On July 13, 2005, FPL filed a request pursuant to Rule 25-22.006, FAC, and Section 366.093, Florida Statutes (F.S), that selected portions of the working papers prepared by the staff during the audit receive confidential classification. The utility's request included a redacted copy for public inspection (Exhibit B, document 06603-05) and a highlighted copy (document 06604-05).

Documents 06625-05 and 06604-05 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.

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.

DOCUMENT NUMBER-DATE

08350 AUG 31 05

FPSC-COMMISSION CLERK

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 FPL filing reveals the sensitive material consists of customer-specific account information.

FPL asserts that customer-specific information should be granted a confidential classification on the basis that release of this customer-specific information would harm competitive business interests. Subsection 366.093(3)(e), F. S., provides that the Commission may grant a confidential classification to sensitive information concerning competitive business interests if release of that information will harm the provider of that information.

FPL witness Ken Ketchell, FPL Budget and Regulatory Support Supervisor, identifies materials associated with sensitive customer-specific account information within staff working papers entitled: “Bill Test”, “Proposal”, “Cell Phone Bill”, “Case Studies”, “CILC (Commercial/Industrial Load Control) Incentives”, “Sample Bill”, and “CDR (Commercial/Industrial Demand Reduction) Incentives.”

FPL and FPL witness Ketchell report that FPL treats customer-specific information as confidential to include: “customer names, addresses, telephone numbers, account numbers, rates, billing determinants (kW and kWh usage), conservation savings in kW, kWh and bills.” FPL states its policy “is premised upon 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 reports their customers “have affirmed their interest in having this information maintained confidential. For many of those 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.” FPL goes on to state: “For others, non-disclosure of the information is simply a matter of privacy. While it may be that 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 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 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.”

After reading the information identified by witness Ketchell, we recommend that this customer-specific account information be held as confidential because the information meets the definition of “proprietary confidential business information” set out in Section 366.093, Florida Statutes, in that release of this privately-held information pertaining to competitive interests would cause the provider of that information harm. We further note the Commission has held in many prior decisions that customer-specific rate information be granted a confidential classification.

We note FPL has referred to the term trade secrets in its request. FPL has not requested that a confidential classification be granted on the basis that trade secrets are revealed. We recommend a confidential classification be approved on the basis that the materials report sensitive competitive business information. The utility has not met the burden of proof that this information rises to the level of a trade secret nor has the utility provided an administrative precedent where such information was held to be a trade secret.

Information Held as Confidential

To qualify as proprietary confidential business information the material must also be held as private and not be released to the public. FPL asserts that this information has not been released to the public. FPL witness Ketchell also asserts FPL has maintained the confidentiality of those materials they have identified as sensitive.

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

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	Description	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 06625-05 and 06604-05					
41-1/1-1	Bill Test	1	1	Grant	Sensitive Competitive Business Information
43-5/1	Proposal	1	17	Grant	Sensitive Competitive Business Information
43-5/1	Proposal	2	9	Grant	Sensitive Competitive Business Information
43-5/2	Cell Phone Bill	5	1,12,31	Grant	Sensitive Competitive Business Information
43-5/2	Cell Phone Bill	7	3,6,34,36,42	Grant	Sensitive Competitive Business Information
43-5/2	Cell Phone Bill	8	2,5	Grant	Sensitive Competitive Business Information
43-5/2	Cell Phone Bill	9	Cols A-B, 2,5	Grant	Sensitive Competitive Business Information
43-5/2	Cell Phone Bill	10	Col A, 2,5; Col B, 3,5	Grant	Sensitive Competitive Business Information
43-5/2	Cell Phone Bill	11-23	Cols A-B, 2,5	Grant	Sensitive Competitive Business Information
43-5/2	Cell Phone Bill	24	2-5	Grant	Sensitive Competitive Business Information
43-5/3	Case Studies	2	8,14,18,20,22, 28-31	Grant	Sensitive Competitive Business Information
43-5/3	Case Studies	3	1-5,9-10,12-15	Grant	Sensitive Competitive Business Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 06625-05 and 06604-05					
43-5/3	Case Studies	4	1-2,6,13-14,21-22, 28-29	Grant	Sensitive Competitive Business Information
43-5/3	Case Studies	5	1,9-11	Grant	Sensitive Competitive Business Information
44-1/1	CILC Incentives	1	Cols A-C,J-N, 4,6-10,12-13, 16-19,24-27,29, 32,35,37-38,44, 48-52,57,61,63	Grant	Sensitive Competitive Business Information
44-1/1	CILC Incentives	2	Cols A-C,J-N, 64-69,73-78,80-81, 83-86,88,90-91, 93-94,98-100, 103-104,106-108, 114-115,118,121, 123,127-128, 130-131	Grant	Sensitive Competitive Business Information
44-1/1	CILC Incentives	3	Cols A-C,J-N, 132-133,136-138, 140,142,145,147, 150,153-154, 157,161-162, 164-165,167-168, 171,173,175, 177,179-181,188, 190-191,194,196	Grant	Sensitive Competitive Business Information
44-1/1	CILC Incentives	4	Cols A-C,J-N, 198-200,203-205, 207,209,211-214, 217-218,220-221, 225,228,232-234, 240-245,253-254, 257	Grant	Sensitive Competitive Business Information
44-1/1	CILC Incentives	5	Cols A-C,J-N, 259,261-265,269, 278,282,285-287, 289,291-292,296, 298, 300,302, 305-307,310-312, 314-317,319-322, 324	Grant	Sensitive Competitive Business Information
44-1/1	CILC Incentives	6	Cols A-C,J-N, 325,329-332,334, 338-339,341,343, 346,349-350,352, 362,369,372, 374-375,378, 381-382,385,389, 391	Grant	Sensitive Competitive Business Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 06625-05 and 06604-05					
44-1/1	CILC Incentives	7	Cols A-C,J-N, 395-404,408-409, 412,414,416,423, 426,429-430,435, 438,440,442-443, 445,449-451	Grant	Sensitive Competitive Business Information
44-1/1	CILC Incentives	8	Cols A-C,J-N, 452,454,461, 465-466,470,472, 475,477-478, 481-483,491	Grant	Sensitive Competitive Business Information
44-1/1-1	Sample Bill	1	Col A, 1-2; Col B, 1-2,2a, 10-12,14-15; Col C, 7-8,10-12, 14-15,21-28,32-44; Col E, 10-12, 14-18,30-31; Col F, 7-8,10-12, 12a, ,14-29,32-44	Grant	Sensitive Competitive Business Information
44-1/2	CDR Incentives	1	Cols A-C, J-M, 1-3,6-8,10,14-16, 18,20	Grant	Sensitive Competitive Business Information

A temporary copy of this recommendation will be held at I:06604-05.fplraf.doc for a short period.

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