



Public Service Commission

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

DATE: August 31, 2005

TO: Marlene Stern, Attorney, General Counsel

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

RE: Docket 050007-EI, Recommendation concerning Florida Power & Light Company's (FPL) request for confidential classification concerning a portion of the staff working papers prepared during "FPL Environmental Cost Recovery Clause Audit for the Year Ended December 31, 2004", Audit Control No. 05-033-4-1, Documents Numbered 07166-05 and 07567-05

On July 14, 2005, when copies of certain portions of staff's working papers obtained or prepared during the "FPL Environmental 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 27, 2005, staff filed documents 07166-05 consisting of those specified portions of the staff working papers.

On August 4, 2005, 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 07568-05) and highlighted copies (document 07567-05).

Documents 07166-05 and 07567-05 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. Subsections 366.093(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 the 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. Information related to internal auditing reports and associated documents.

Subsection 366.093(b), F.S., provides that the Commission may grant a confidential classification to internal auditing controls and to the reports of internal auditors.

Witness Robert Onsgard, FPL Manager, internal auditing, identifies materials associated with FPL’s internal audits as reported within staff working papers entitled: “List of Internal Audits” and “Internal audit.”

After reading the material identified by witness Onsgard, we agree that release of this material would reveal internal auditing controls and the reports of internal auditors.

2. Customer-specific account information

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

FPL witness Korel M. Dubin, FPL Manager, Regulatory Issues, identifies materials associated with customer-specific account information as reported within staff working papers entitled: "Revenue."

FPL and FPL witness Dubin state 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 claims its policy "is premised upon the 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." Further, 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 Dubin we recommend that this 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 sensitive business information would cause the provider of that information harm.

We note FPL has referred to the term "trade secrets" in its request. FPL has not requested that 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 this type of information was held to be a trade secret.

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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 witnesses Onsgard and Dubin assert 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 follows:

Detailed Recommendation

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 07166-05 and 07567-05					
9	List of Internal Audits	1	Col C	Grant	Internal auditing controls and reports of internal auditors
9-1	Internal Audit	1-2	All	Grant	Internal auditing controls and reports of internal auditors
41-1/1-1	Revenue	1-2	Col A, 1-51	Grant	Sensitive competitive business information
41-1/1-2	Revenue	1	Col A, 1-51	Grant	Sensitive competitive business information
41-1/1-2	Revenue	2	Col A, 1-9	Grant	Sensitive competitive business information

A temporary copy of this recommendation will be held at I:07567-05.fplraf.doc for a short period.

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