



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: May 12, 2009

TO: Martha Brown, Attorney, Office of General Counsel

FROM: Division of Regulatory Compliance (Freeman, Mailhot) ^F *DM*

RE: Docket 090007-EI, Recommendation concerning Florida Power & Light Company's (FPL) request for extension of confidential classification concerning a portion of the staff audit working papers prepared during "Florida Power & Light Environmental Cost Recovery Clause Audit for the Historical Year Ended December 31, 2006", Audit Control No. 07-071-4-1, Documents Numbered 06311-07 and 06642-07

On July 12, 2007, when copies of certain portions of staff's audit working papers obtained or prepared during the "Florida Power & Light Environmental Cost Recovery Clause Audit for the Historical Year Ended December 31, 2006", were delivered to FPL at the audit exit conference, the utility requested that these materials be temporarily exempted from public access in accordance with provisions of Rule 25-22.006(3)(a)2., Florida Administrative Code (FAC).

On July 24, 2007, staff filed document numbered 06311-07 consisting of those specified portions of the staff's audit report and working papers.

On August 2, 2007, 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 a confidential classification. The utility's request included redacted copies for public inspection (Document No. 06643-07) and copies with the sensitive material highlighted (Document 06642-07).

On September 20, 2007, by way of Order No. PSC-07-0770-CFO-EI, the Commission granted FPL's request and provided a confidential classification to identified portions of the staff's 2006 Environmental Recovery clause audit working papers. That classification period has now tolled.

On March 20, 2009, FPL requested that the classification period granted to the 2006 environmental audit working papers be extended for an additional 18 months for some of the materials. The utility's request for an extended classification period also contained revised public copies of the sensitive information with the confidential portions redacted (Document No. 02452-09).

- COM
- ECR
- CCL
- OPC
- ROP
- SSC
- SGA
- ADM
- CLK *McLean*

Documents numbered 06311-07 and 06642-07 are currently held by the Office of the Commission Clerk as confidential pending resolution of FPL's request to extend the classification period.

DOCUMENT NUMBER-DATE

04649 MAY 14 08

FPSC-COMMISSION CLERK

May 12, 2009
Florida Power and Light Request

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(3), 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 filing reveals the sensitive material consists of:

1. Contractual Data such as Pricing and Other Terms.

By way of an affidavit, Roger F. Messer, FPL Director, Environmental Support, identifies sensitive contractual information found within staff working papers titled: "Plant Sample", "Sample of Expenses", and "Sample of Journal Entries." Mr. Messer asserts release of this contractual information would impair the efforts of FPL to contract for goods and services on favorable terms and could also impair the competitive business of FPL and its vendors.

Pursuant to the provisions of Section 366.093(3)(d), F.S., the Commission may grant a confidential classification to sensitive contractual information if release would impair the ability of the utility or its affiliates to contract favorably for goods and services. Pursuant to the provisions of Section 366.093(3)(e), F.S., the Commission may grant a confidential classification to sensitive competitive business information if release would harm the provider of the information.

We have read the information identified by witness Messer and agree it is sensitive contractual and competitive business information. Furthermore, staff agrees with the assertion that the materials are not stale and that their release would cause the harm that FPL and Mr. Messer describe.

2. Customer-Specific Account Information.

By way of an affidavit, Mr. Terry J. Keith, FPL Director of Cost Recovery Clauses, identifies customer-specific account information within staff working paper titled: "Billing Information."

Mr. Keith reports: "...It is FPL's 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 absent the customer's consent."

The Commission policy concerning customer-specific account information has been to grant confidentiality pursuant to the exemption described within Section 366.093(3)(e), F.S., on the basis that release of this information would harm the competitive business of the provider of the information. Reading the material identified by Mr. Keith, we agree that the material is not stale and its release would cause harm to the provider of the information.

Information Held as Confidential

To qualify as proprietary confidential business information, the material must also be held as private and not released to the public. FPL asserts that this sensitive information meets the statutory restrictions necessary for the material to be provided a extension of confidential classification. Also, FPL asserts that the information has not been disclosed to the Public. Further, FPL employees Messer and Keith report FPL has maintained the confidentiality of these materials.

Duration of the Confidential Classification Period

FPL requests that this material be held as confidential for at least 18 months and that this material should be returned to FPL 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 extension of confidential classification be set as 18 months. As deemed necessary, the utility may request another 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 an extension of confidential classification for 18 months.

A detailed recommendation follows:

Detailed Recommendation

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend an 18 Month Extension of Classification	Type of Information
Documents 06311-07 and 06642-07					
16-1/14-3, page 2	Plant Sample	1	Col. F	Grant	Sensitive Contractual and Competitive Business Information
41-2/3-1	Billing Information	1-3	Col. 1	Grant	Customer-Specific Account Information
41-2/3-2	Billing Information	1-3	Col. 1	Grant	Customer-Specific Account Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend an 18 Month Extension of Classification	Type of Information
Documents 06311-07 and 06642-07					
43-3	Sample of Expenses	1	Col. C, 2-5	Grant	Sensitive Contractual and Competitive Business Information
43-3	Sample of Expenses	2	Col. C, 6,8,10-12; Cols. C-D, 7	Grant	Sensitive Contractual and Competitive Business Information
43-3	Sample of Expenses	3-5	Col. C		
43-3	Sample of Expenses	6	Col. C, 32-34	Grant	Sensitive Contractual and Competitive Business Information
43-3	Sample of Expenses	7	Col. C	Grant	Sensitive Contractual and Competitive Business Information
43-3	Sample of Expenses	8	Col. C, 39-41	Grant	Sensitive Contractual and Competitive Business Information
43-3	Sample of Expenses	9	Col. C, 43-44,46-47	Grant	Sensitive Contractual and Competitive Business Information
43-3	Sample of Expenses	10	Col. C, 49-50	Grant	Sensitive Contractual and Competitive Business Information
43-3	Sample of Expenses	11-15	Col. C	Grant	Sensitive Contractual and Competitive Business Information
43-3	Sample of Expenses	16	Col. C, 73-75	Grant	Sensitive Contractual and Competitive Business Information
43-3	Sample of Expenses	17	Col. C, 76-77	Grant	Sensitive Contractual and Competitive Business Information
43-3	Sample of Expenses	18	Col. C, 81	Grant	Sensitive Contractual and Competitive Business Information
43-4	Sample of Journal Entries	14	Col. G, 4,7-8,11	Grant	Sensitive Contractual and Competitive Business Information
43-4	Sample of Journal Entries	17	Col. G, 23-24,27,30	Grant	Sensitive Contractual and Competitive Business Information
43-4/1	Sample of Journal Entries	2	Col. C, 48-49	Grant	Sensitive Contractual and Competitive Business Information
43-4/1	Sample of Journal Entries	3	Col. C, 94,96,99-100, 102,104-105	Grant	Sensitive Contractual and Competitive Business Information
43-4/1	Sample of Journal Entries	4	Col. C, 119-120,133-135,148	Grant	Sensitive Contractual and Competitive Business Information

May 12, 2009
Florida Power and Light Request

A temporary copy of this recommendation will be held at I:06642-07 ext fpl 2006
environmental raf.doc for a short period.

CC: Division of Regulatory Compliance (Welch)
Office of the Commission Clerk (McLean, Cole)