



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

DATE: February 7, 2011
TO: Office of the Commission Clerk (McLean, Nettles)
FROM: Office of Auditing and Performance Analysis (Prestwood, Deamer)
RE: Docket 110000, Undocketed filings for 2011, Recommendation to Grant a Claim of Confidentiality to Materials Pertaining to the "Review of the 2009 Regulatory Assessment Fee for FPL Fibernet, LLC, Company Code TX603", Audit Control Number 10-179-4-1, Documents 08826-10 and 09277-10

On October 19, 2010, at the audit exit conference held for the "Review of the 2009 Regulatory Assessment Fee for FPL Fibernet, LLC TX603," FPL Fibernet requested that certain information obtained by staff auditors from company records be granted a temporary confidential classification.

On October 20, 2010, staff filed that material in a temporary confidential status with the Office of the Commission Clerk (Document No. 08826-10).

On November 9, 2010, pursuant to Section 366.093, Florida Statutes (F.S.) and Rule 25-22.006, Florida Administrative Code (FAC), FPL requested that certain material pertaining to this review be granted a confidential classification. FPL Fibernet has filed a public copy of the information with the sensitive information redacted (Document No. 09278-10) and filed a confidential copy of the information with the sensitive information highlighted (Document No. 09277-10).

While this material qualifies for a confidential classification pursuant to the provisions governing the electric utility industry (Section 366.093, F.S.), this information reports the competitive telecommunications operations of FPL Fibernet, LLC, and FPL affiliate which provides competitive local exchange line services (CLEC) in the open market; therefore, these materials are eligible for a Claim of Confidentiality which is applied to telecommunications information as provided by Section 364-183(1), F.S., and Rule 25-22.006(5), FAC.

Telecommunications companies may claim that sensitive information should be held as confidential by the Commission. "Claimed" confidential information may be held by the Commission as confidential for an unlimited time period without an initial formal evaluation, and it is not necessary for the Commission to issue an Order to effect the claim.

It is a great advantage to a telecommunications utility to be able to claim confidentiality for an unlimited time rather than face the costly task of proving the material should be held as confidential for a short time period. However, if the "claimed" information were to be placed before the Commission in an evidentiary proceeding such as a hearing, or if a public records

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request was made, then at that time, the telecommunications company would have to make a formal request for a confidential classification for the sensitive information as set out by Rule 25-22.006(4), FAC.

It is the staff's opinion that granting a claim of confidentiality to documents 08826-10 and 09277-10 best responds to FPL Fibernet's request; thus these documents should be held as claimed confidential.

Records retention requirements are expected to toll for these materials on June 30, 2016. At that time, Document No. 08826-10 may be destroyed and Document 09277-10 may be returned to the source.

Further, we are sending a copy of this recommendation to FPL Fibernet, LLC, to explain that pursuant to the provisions set out in Section 364.183(1), F.S., and Rule 25-22.006(5), FAC, a claim of confidentiality has been granted to these materials.

Cc: Office of General Counsel (Brown)
FPL Fibernet, LLC, (Mr. Ilan Kaufer, 9250 West Flagler St., Miami, Florida 33714)