

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for confidential classification of certain material provided in connection with Grey Tax Audit (Audit Control No. 98-190-4-1) by Florida Power & Light Company

DOCKET NO. 981743-EI  
ORDER NO. PSC-99-0462-CFO-EI  
ISSUED: March 5, 1999

ORDER GRANTING REQUEST FOR CONFIDENTIAL CLASSIFICATION

Commission staff (staff) performed an audit of Florida Power & Light Company (FPL or the utility) during which the staff requested and obtained information concerning "grey" tax matters. FPL now seeks confidential classification for some of the information retained by staff during the course of this audit.

Pursuant to Section 119.01, Florida Statutes, 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 terms of a statutory provision.

Pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, the utility has the burden of demonstrating that the materials qualify for confidential classification. According to Rule 25-22.006, the utility must meet this burden by demonstrating that the materials fall into one of the statutory examples set forth in Section 366.093, or by demonstrating that the information is proprietary confidential business information, the disclosure of which will cause the utility or its ratepayers harm.

FPL seeks confidential treatment for two types of information. The first is information contained in internal audits. The other is information that pertains to adjustments or issues on FPL's income tax returns. According to FPL some of this information is either the subject of agreements or settlements with the Internal Revenue Service (IRS), or is the subject of ongoing discussions, litigation, or potential litigation. FPL argues that disclosure of this information would enable FPL's competitors to obtain, at no cost to the competitors, the benefits of the utility's efforts concerning certain tax initiatives. This circumstance would give FPL's competitors a competitive edge. Furthermore, the utility

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argues that disclosure of certain information, such as the specific items underlying the booking of taxes, could undermine FPL's litigation position.

FPL asserts that the information for which confidential treatment has been requested is intended to be and is treated as confidential by FPL and has not been disclosed to the public.

Upon review, the information described in the table below is hereby found to be proprietary confidential business information pursuant to Section 366.093, Florida Statutes. The information related to FPL internal audits is exempt pursuant to Section 366.093(b), Florida Statutes. The information related to FPL's income tax returns is exempt because it is the Commission's policy to afford confidential treatment to Federal income tax returns and related correspondence. In re: Application for rate increase by Southern States Utilities, Order No. PSC-92-1073-CFO-WS, 92 F.P.S.C. 9:687, 692 (1992). Moreover, since this information relates to the utility's competitive interest, and disclosure would impair FPL's competitive business, this information is exempt pursuant to Section 366.093(3)(e), Florida Statutes. The proprietary confidential business information described below shall be kept confidential and shall be exempt from Section 119.07(1), Florida Statutes, for a period of 18 months.

Staff Work Paper Number	Page Number	Lines	Disposition	Reason
Documents 12833-98 and 13327-98				
1	2	Marked A  Marked B	Grant	Discloses sensitive competitive information.  Discloses information regarding internal auditing reports or controls.

Staff Work Paper Number	Page Number	Lines	Disposition	Reason
Documents 12833-98 and 13327-98				
1	3	Marked A, B, C	Grant	Discloses sensitive competitive information.
1	4	Marked A, B	Grant	Discloses sensitive competitive information.
1	5	Marked A	Grant	Discloses sensitive competitive information.
1	6	Marked A, B	Grant	Discloses sensitive competitive information.
1	7	Marked A	Grant	Discloses sensitive competitive information.
1	9	Marked A	Grant	Discloses sensitive competitive information.
9	1	All	Grant	Discloses information regarding internal auditing reports or controls.

Staff Work Paper Number	Page Number	Lines	Disposition	Reason
Documents 12833-98 and 13327-98				
9-1	1-4	All	Grant	Discloses information regarding internal auditing reports or controls.
54	1	Marked A,B	Grant	Discloses sensitive competitive information.
54	2	Marked A	Grant	Discloses sensitive competitive information.
54	3	Marked A,B	Grant	Discloses sensitive competitive information.
54	4	Marked A	Grant	Discloses sensitive competitive information.
54	5	Marked A Marked B	Grant	Discloses sensitive competitive information.  Discloses information regarding internal auditing reports or controls.

Staff Work Paper Number	Page Number	Lines	Disposition	Reason
Documents 12833-98 and 13327-98				
54	6	Marked A	Grant	Discloses sensitive competitive information.
54-3	1	Marked A	Grant	Discloses sensitive competitive information.
54-3/3	1	Marked A, B, C	Grant	Discloses sensitive competitive information.
54-3/3	2	Marked A	Grant	Discloses sensitive competitive information.
54-3/3	4	Marked A, B, C, D, E	Grant	Discloses sensitive competitive information.
54-4	1	All	Grant	Discloses sensitive competitive information.
54-4	2	All	Grant	Discloses sensitive competitive information.
54-4/1	1-40	All	Grant	Discloses sensitive competitive information.

Staff Work Paper Number	Page Number	Lines	Disposition	Reason
Documents 12833-98 and 13327-98				
54-4/2	1-6	All	Grant	Discloses sensitive competitive information.
54-4/3	1-9	All	Grant	Discloses sensitive competitive information.
54-4/4	1-3	All	Grant	Discloses sensitive competitive information.

FPL requested that the proprietary confidential business information listed above be returned at the expiration of the 18-month confidential period. This request is denied since this information is part of staff's work papers made during the course of staff's audit of FPL. These work papers record work performed, record staff observations during field audits, and form the basis of subsequent staff audits. As such, the work papers must be retained in accordance with the regular retention of staff audit work papers. Should FPL desire continued confidential treatment of the work papers, it must request an extension before the expiration of the 18 month period granted herein.

It is therefore

ORDERED by Chairman Joe Garcia, as Prehearing Officer, that the Request for Confidential Classification of Certain Material Provided in Connection with the Grey Tax Audit identified in Document No. 13327-98 (x-ref Document No. 12833-98), filed by Florida Power and Light Company is hereby granted pursuant to Rule 25-22.006, Florida Administrative Code, and Section 366.093, Florida Statutes, for the reasons set forth in the body of this order. It is further

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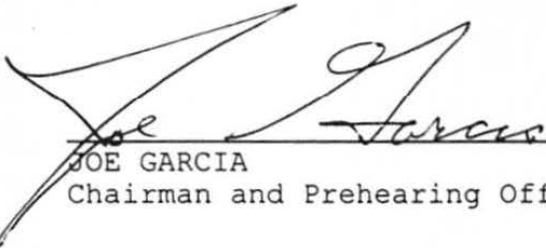
ORDERED that pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, any confidential classification granted to the documents specified herein shall expire 18 months from the date of issuance of this order in the absence of a renewed request for confidentiality pursuant to Section 366.093. It is further

ORDERED that this order shall be the only notification by the Commission to Florida Power and Light Company concerning the expiration of the confidentiality time period. It is further

ORDERED that Florida Power and Light Company's request for the documents to be returned is denied. It is further

ORDERED that this docket shall be closed upon issuance of this order.

By ORDER of Chairman Joe Garcia, as Prehearing Officer, this 5th day of March, 1999.

  
JOE GARCIA  
Chairman and Prehearing Officer

( S E A L )

MAH

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

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Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.