



Public Service Commission

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

DATE: June 12, 2002
TO: Office of General Counsel (Dodson)
FROM: Division of Auditing and Safety (Freeman, Vandiver) *aj*
RE: Docket 001148-EI, Review of the retail rates of Florida Power & Light Company *Am*

Recommendation concerning Florida Power & Light Company's (FPL's) request for confidential classification for a portion of the supplemental staff audit report and working papers obtained during the audit numbered 01-249-4-1, entitled "Florida Power and Light Company Supplemental Audit of Minimum Filing Requirements Forecast Year Ended December 2002", Documents Numbered 03089-02, 03090-02, 03091-02 and 03490-02

On March 6, 2002, when certain pages of staff's supplemental audit report and working papers prepared during the audit entitled "Florida Power and Light Company Supplemental Audit of Minimum Filing Requirements Forecast Year Ended December 2002" were delivered to FPL at the audit exit conference, the utility requested that these materials be temporary excepted from public access in accordance with the provisions of Rule 25-22.006(3)(a)(2), Florida Administrative Code (FAC).

On March 18, 2002, staff filed documents 03089-02, 03090-02 and 03091-02, consisting of those pages of the staff audit report and working papers identified as sensitive at the audit exit conference.

On March 27, 2002, the utility filed a request pursuant to Rule 25-22.006, FAC, and Section 366.093, Florida Statutes (F.S.), that selected pages of the supplemental staff audit report and working papers prepared by staff during the audit receive confidential classification. The utility's request includes redacted copies for public inspection (Exhibit B, document 03489-02) and full and complete copies of this material with the sensitive information highlighted (document 03490-02).

On April 24, 2002, after discussions with the staff, the utility filed additional information and the deposition of Richard Welty concerning its request for a confidential classification concerning terms contained in its contract with NPS Energy Services Inc. (Document 03490-02, working papers 50-1/5, 50-1/5-1 [2pages], 50-1/5-2 [2 Pages], and 50-1/5-4).

Pursuant to Section 119.07, F.S., documents submitted to this Commission are public records. The only exceptions to this rule are specific statutory exemptions and exemptions granted by governmental agencies to the specific items of a statutory provision. Sections 366.093(c)(d) and (e), F.S., provide the following exemptions:

JS _____
 AF _____
 VP _____
 DM _____
 TR _____
 CR _____
 CL _____
 PC _____
 MS _____
 EC _____
 FH _____
signature

DOCUMENT NUMBER 03490-02

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FPSC-COMMUNICATIONS CLERK

"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:....

(c) Security measures, systems, or procedures.

(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 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, FPL has the burden of demonstrating that information and materials provided to the staff during the supplemental audit 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.

While this matter is pending, the information identified as sensitive is held as confidential by the Division of Commission Clerk and Administrative Services.

Staff Analysis of the Request

Reading the filing reveals the sensitive audit information consists of:

1. Contractual data describing bids, pricing and other contractual terms;

FPL asserts that sensitive information is present which describes bids, pricing or other contractual data the release of which would harm the ability of FPL to contract on favorable terms.

John Hartzog, Manager, FPL Nuclear Financial and Information Services, identifies sensitive contractual data concerning motor overhauls, certain purchase orders, and disposal rate schedules.

Rene Silva, Manager, FPL Business Services Power Generation Division, identifies contractually sensitive information concerning certain warranty information.

Section 366.093(d), F.S., provides that information concerning bids or contracts release of which would impair the ability of a utility to contract qualifies for confidential protection.

2. Sensitive security measures, systems or procedures.

Within staff's working papers, Mr. Hartzog, identifies sensitive information concerning a detailed transactions report disclosing security costs.

Section 366.093(c), F.S., lists security measures, systems, or procedures as qualifying for confidential protection.

3. Sensitive contractual information which also reveals information about the competitive business of the provider of that information.

Richard Welty, Manager, FPL Nuclear Information Services, identifies information which is both contractually sensitive and sensitive to the competitive business supplying the information.

Section 366.093 (d), F.S., provides that sensitive contractual information may qualify for confidential protection if release of the information impairs the utility's ability to contract. Section 366.093 (e), F.S., provides that sensitive competitive business information may also qualify for protection if release of the information would harm the business of the provider of that information.

Staff Analysis of the Request – Listing of sensitive information (continued)

4. Sensitive information about the competitive businesses of FPL, its customers or vendors such that release of this information would harm the competitive business of those who provided the information.

John Hartzog reports staff's supplemental audit report contains sensitive information concerning increases in the FPL Nuclear Division Budget.

Mr. Hartzog also identifies sensitive competitive information with staff's working papers concerning increases in the nuclear budget, breaker maintenance at Turkey Point, the 10 year breaker overhaul matrix, the 2002 Rad Waste Budget Request, and certain other projects and notes.

Rene Silva identifies sensitive competitive business concerning Plant Scherer and structural maintenance.

Peter R. Kiernan, FPL Director Major Maintenance Power Generation Division, identifies sensitive business information concerning Project Plans and Operations and Maintenance expenses at Turkey Point, Project Plans and Operations and Maintenance expenses at Plant Martin Units 1 & 2, and at the Putnam project.

Keith S. Kennedy, Director, FPL Risk Management, identifies sensitive business information concerning a risk management summary and information contained in Account 924, "Property Insurance".

Staff Analysis of the Request – Listing of sensitive information (continued)

5. Financial projections beyond the test year.

Donald L. Babka, Director, FPL Regulatory and Tax Accounting, identifies information subject to SEC "fair disclosure requirements" concerning: Plant Scherer Outage Costs; projected workforce; information concerning fossil system efficiency; and projected budget and expenses concerning the "Power Generation Division".

FPL prepares financial projections and other forward looking documents under the strict guidelines of the Securities and Exchange Commission (SEC). Release of financial projections is subject to the Fair Disclosure Rules (Regulation FD) of the SEC. These rules provide that when sensitive information is disclosed it would have to be disclosed widely and equally to all parties because of the likelihood that a shareholder would consider it important in making an investment decision. Long range internal financial projections are typically held as confidential by public companies and are not disclosed unless disclosed in a regular quarterly or annual financial report required by the SEC. The fact that release of this information triggers the disclosure requirements of Regulation FD indicates that this information is proprietary confidential business information the release of which would cause harm.

6. FPL and all FPL witnesses assert FPL has maintained the confidentiality of these materials.

Staff Analysis of the Request (continued)

Duration of the Confidential Classification Period

FPL requests the material be granted confidential classification for at least 18 months. FPL goes on to request that this material be returned to the utility once this information is no longer needed for the Commission to conduct its business. However we note audit reports and the related working papers for this type of audit are retained on file by the Commission for 25 years.

According to the provisions of Section 366.093(4), F.S., absent good cause shown, confidential classification is limited to 18 months. Without good cause shown for a longer period, we recommend that the period of classification be set as 18 months. The utility may request and extension of this period before it tolls.

Staff Recommendation

For the reasons presented above, and based upon reading the filing, we recommend the utility's requests be granted and the identified material be granted a confidential classification for 18 months.

A detailed recommendation regarding the material follows:

Detailed Recommendation, As Found

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 03089-02 and 03490-02				
WP 1 Report	1	38	Grant	Sensitive Competitive Business Information
WP 1 Report	2	1-5	Grant	Sensitive Competitive Business Information
WP 1 Report (Annotated)	1	38	Grant	Sensitive Competitive Business Information
WP 1 Report (Annotated)	2	1-5	Grant	Sensitive Competitive Business Information
43-1/2-1/1	1-10	All	Grant	Sensitive Information concerning Security Measures, Systems or Procedures
47-7/1-4	1	Line 9, Cols A,F	Grant	Sensitive Competitive Business Information
47-7/1-4/1	1	18	Grant	Sensitive Competitive Business Information
		Cols. C-F	Grant	Sensitive Proprietary Confidential Business Information
47-7/1-4/2	1-3	Cols. F-G	Grant	Sensitive Proprietary Confidential Business Information

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 03089-02 and 03490-02				
47-7/1-4/2	4	Cols. E-G	Grant	Sensitive Proprietary Confidential Business Information
47-7/1-4/4	3	47-51	Grant	Sensitive Competitive Business Information
47-7/1-4/4	4	1-15	Grant	Sensitive Competitive Business Information
47-7/1-5	1	9-20, Cols. H-L	Grant	Sensitive Competitive Business Information
47-7/1-5	2-3	9-10, Cols. H-L	Grant	Sensitive Competitive Business Information
47-7/1-5	4	10-30, Cols H-L	Grant	Sensitive Competitive Business Information
47-7/1-5	5	9-31, Cols H-L	Grant	Sensitive Competitive Business Information
47-7/1-5	6	9-29, Cols H-L	Grant	Sensitive Competitive Business Information
47-7/1-5	7	10-40, Cols H-L	Grant	Sensitive Competitive Business Information
47-7/1-5	8	10-26, Cols H-L	Grant	Sensitive Competitive Business Information
47-7/1-5	9	11-31, cols H-L	Grant	Sensitive Competitive Business Information
47-7/1-5	10	10-30, Cols H-L	Grant	Sensitive Competitive Business Information
47-7/1-5	11	10-29, Cols H-L	Grant	Sensitive Competitive Business Information
47-7/1-5	12	11-31, Cols H-L	Grant	Sensitive Competitive Business Information

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 03089-02 and 03490-02				
47-7/1-5	13	10, Cols H-L	Grant	Sensitive Competitive Business Information
Documents 03090-02 and 03490-02				
47-7/1-6	1	9-10, Cols H-L	Grant	Sensitive Competitive Business Information
47-7/1-6	2	11-13, Cols H-L	Grant	Sensitive Competitive Business Information
47-7/1-6	3	11, Cols H-L	Grant	Sensitive Competitive Business Information
47-7/1-6	4	11,13, Cols H-L	Grant	Sensitive Competitive Business Information
47-7/1-6	5	10-11, Cols. H-L	Grant	Sensitive Competitive Business Information
47-7/1-6	6	10-13, Cols H-L	Grant	Sensitive Competitive Business Information
47-7/1-6	7	9-29, Cols H-L	Grant	Sensitive Competitive Business Information
47-7/1-6	8	9-35, Cols H-L	Grant	Sensitive Competitive Business Information
47-7/1-6	9	9-31, Cols H-L	Grant	Sensitive Competitive Business Information

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Document 03090-02 and 03490-02				
47-7/1-6	10	9-28, Cols H-L	Grant	Sensitive Competitive Business Information
47-7/1-6	11	9-21, Cols H-L	Grant	Sensitive Competitive Business Information
47-7/1-6	12	9, Cols H-L	Grant	Sensitive Competitive Business Information
47-7/1-7	1	9-22, Cols H-L	Grant	Sensitive Competitive Business Information
47-7/1-7	2	9, Cols H-L	Grant	Sensitive Competitive Business Information
47-7/1-7	3	9-30, Cols H-L	Grant	Sensitive Competitive Business Information
47-7/1-7	4	9-29, Cols H-L	Grant	Sensitive Competitive Business Information
47-7/1-7	5	9-31, Cols H-L	Grant	Sensitive Competitive Business Information
47-7/1-7	6-7	9-29, Cols H-L	Grant	Sensitive Competitive Business Information
47-7/1-7	8	9-21, Cols H-L	Grant	Sensitive Competitive Business Information
47-7/1-7	9	9-30, Cols H-L	Grant	Sensitive Competitive Business Information
47-7/1-7	10	9-26, Cols H-L	Grant	Sensitive Competitive Business Information
47-7/1-7	11	9, Cols H-L	Grant	Sensitive Competitive Business Information
47-7/2-1	1	43-50	Grant	Sensitive Competitive Business Information
47-7/2-1	2	8-43	Grant	Sensitive Competitive Business Information

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Document 03090-02 and 03490-02				
47-7/2-1	3	8-9	Grant	Sensitive Competitive Business Information
47-7/2-2	1	40-46	Grant	Sensitive Competitive Business Information
47-7/2-2	2	7-19	Grant	Sensitive Competitive Business Information
47-7/2-5	1	39-48	Grant	Sensitive Competitive Business Information
47-7/2-5	2	8-46	Grant	Sensitive Competitive Business Information
47-7/2-5	3	8-17	Grant	Sensitive Competitive Business Information
47-7/2-6	1	39-40	Grant	Sensitive Competitive Business Information
47-7/2-6	2	Cols B-D	Grant	Sensitive Competitive Business Information
47-7/2-6	3	Cols B-D	Grant	Sensitive Competitive Business Information
47-7/2-12	2	16-17, Col B; 21-26, Col F	Grant	Sensitive Competitive Business Information
47-7/2-12	3	15, Col A	Grant	Sensitive Competitive Business Information
47-7/2-13	1	32-35	Grant	Sensitive Competitive Business Information
47-7/2-13	2	6-9; Col B	Grant	Sensitive Competitive Business Information
47-7/2-13	3	Col B	Grant	Sensitive Competitive Business Information

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Document 03090-02 and 03490-02				
47-7/3-1/3	1	Col I,H	Grant	Sensitive Proprietary Confidential Business Information
47-7/5-1	1	Col G-H	Grant	Sensitive Proprietary Confidential Business Information
47-7/5-2	1	Col G-H	Grant	Sensitive Proprietary Confidential Business Information
47-7/5-3	1	Col C-D	Grant	Sensitive Proprietary Confidential Business Information
47-8/1-8	1	Cols N-O	Grant	Sensitive Proprietary Confidential Business Information
47-8/2-1	1-2	1-24, Col B	Grant	Sensitive Contractual Business Information
47-8/2-1	3	1-12, Col B	Grant	Sensitive Contractual Business Information
47-9/3	1	5-8; Cols E-J	Grant	Sensitive Proprietary Confidential Business Information
47-9/4	1	Cols N-O	Grant	Sensitive Proprietary Confidential Business Information

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Document 03091-02 and 03490-02				
49-1/1-1/1-1	1	7-9,13-14	Grant	Sensitive Competitive Business Information
49-1/1-1/1-2	1	7-9,13-14	Grant	Sensitive Competitive Business Information
49-1/1-1/1-3	1	7-9,13-14	Grant	Sensitive Competitive Business Information
49-7	6	17,19,21-23, Cols E,H	Grant	Sensitive Competitive Business Information
49-7	7	6,8,10-11,21-22,24-25, 27-29, Cols E,H	Grant	Sensitive Competitive Business Information
49-7	8	16-17,19-20,22-24,34, Cols E,H	Grant	Sensitive Competitive Business Information
49-7	9	5,7-8,10-12,22,24, 26-28, Cols E,H	Grant	Sensitive Competitive Business Information
49-7	10	16,18,20-22,32, Cols E,H	Grant	Sensitive Competitive Business Information
49-7	11	5,6-8,21,23,25-27, Cols E,H	Grant	Sensitive Competitive Business Information
49-7	12	16,18,20-22,32, Cols E,H	Grant	Sensitive Competitive Business Information
49-7	13	5,7-9,19,21,23-25, Cols E,H	Grant	Sensitive Competitive Business Information
50	1	33-37	Grant	Sensitive Competitive Business Information
50-1/1	1	14	Grant	Sensitive Competitive Business Information
50-1/1-1	1	11-27; Col A	Grant	Sensitive Competitive Business Information

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Document 03090-02 and 03490-02				
50-1/2	1	3-4,7-9	Grant	Sensitive Competitive Business Information
50-1/2-1	1	3	Grant	Sensitive Competitive Business Information
		6-18	Grant	Sensitive Proprietary Confidential Business Information
		21	Grant	Sensitive Competitive Business Information
		24-36	Grant	Sensitive Proprietary Confidential Business Information
50-1/4	1	Cols B-C	Grant	Sensitive Contractual and Competitive Business Information
50-1/4-3	1-26	All	Grant	Sensitive Contractual Information
50-1/5	1	Cols C-D	Grant	Sensitive Contractual and Competitive Business Information
50-1/5-1	1-2	All	Grant	Sensitive Contractual and Competitive Business Information
50-1/5-2	1-2	All	Grant	Sensitive Contractual and Competitive Business Information
50-1/5-3	7	Col B	Grant	Sensitive Competitive Business Information
50-1/5-4	1	Cols C-D	Grant	Sensitive Contractual and Competitive Business Information

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Document 03090-02 and 03490-02				
50-1/6	1	5-12, Cols B-C; 14-18, Cols B-C; 20-23, Col B; 25, Col B; 26, Col B-C; 30-31, Col B-C	Grant	Sensitive Competitive Business Information
50-1/6-1	1	Cols B-C	Grant	Sensitive Competitive Business Information
50-1/6-2	1-3	All	Grant	Sensitive Contractual Information
50-1/7	1-10	All	Grant	Sensitive Contractual Information
50-4	2	14	Grant	Sensitive Competitive Business Information

A temporary copy of this recommendation will be held at I:03490-02.RAF for a short period.

CC: Division of Auditing and Safety (Welch)
 Division of Commission Clerk and Administrative Services (Flynn)