

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Environmental cost recovery clause.

DOCKET NO. 040007-EI
ORDER NO. PSC-04-1074-CFO-EI
ISSUED: November 3, 2004

ORDER GRANTING CONFIDENTIAL CLASSIFICATION TO DOCUMENT NOS. 08243-04
AND 08288-04

BY THE COMMISSION:

On July 11, 2004, 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, 2003," 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. On July 29, 2004, staff filed Document No. 08243-04 consisting of those specified portions of the staff working papers.

On July 30, 2004, FPL filed a request for confidential classification of Document No. 08243-04, pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. The utility's request included a redacted copy for public inspection (Document No. 08287-04) and a copy with the confidential material highlighted (Document No. 08288-04). Documents 08243-04 and 08288-04 are currently held by the Commission's Division of the Commission Clerk and Administrative Services as confidential pending resolution of this request for confidential classification.

FPL explains that the confidential material falls into three categories: contractual information; customer-specific account information; and, internal auditing controls and reports of internal auditors. FPL further explains that the contractual data includes pricing and other terms the disclosure of which would impair FPL's ability to contract for goods and services on favorable terms, and is confidential pursuant to Section 366.093(3)(d). With respect to the customer-specific account information, FPL explains that its corporate policy is not to disclose such information, and it is confidential pursuant to Section 366.093(3)(e). The auditing materials are confidential pursuant to Section 366.093(3)(b). FPL filed affidavits with the Commission that attest to the nature of this information, and that FPL has not disclosed it.

Florida law presumes that documents submitted to governmental agencies are public records. The only exceptions to this presumption are the specific statutory exemptions and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. This presumption is based on the concept that government should operate in the "sunshine." Rule 25-22.006(4)(c), Florida Administrative Code, provides that it is the Company's burden to demonstrate that the documents fall into a statutory exemption or that the

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information is proprietary confidential business information, the disclosure of which will cause the Company or its ratepayers harm.

Section 366.093(3), Florida Statutes, defines “proprietary confidential business information” as:

[I]nformation, 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.

....

(b) Internal auditing controls and reports of internal auditors

....

(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.

After reviewing the material identified by FPL, I find that the materials satisfy the requirements for confidential classification for the reasons provided by FPL. With respect to customer-specific information, it is routinely deemed confidential because it may harm the business interests of some customers. For such customers, the cost of electricity is an important component of their production costs, and information on electricity usage could provide competitors of such customers with an unfair advantage. See e.g. Order No. PSC-02-1450-CFO-EI, issued in *In re: Environmental cost recovery clause*, on October 21, 2002; Order No. PSC-03-0511-CFO-EI, issued in *In re: Request for confidential classification of material provided pursuant to Audit Control No. 02-174-4-1 by Florida Power & Light*, on April 17, 2003; Order No. PSC-03-1198-CFO-EG, issued in *In re: Energy conservation cost recovery clause*, on October 22, 2003.

The following table identifies the specific parts of the document for which confidentiality was requested, and the justification for the request. The table shows that confidentiality is granted for each specific request.

Staff Work Paper Number	Description	Page(s)	Line(s)	Disposition	Type of Information Classified Confidential
Documents 0824	04 and 08288-04				
9	List of internal audits	1	Col C, 1-51	Grant	Internal auditing controls and reports of internal auditors
9	List of internal audits	2	Col C, 1-12	Grant	Internal auditing controls and reports of internal auditors
41-2/1-2	Customer billing	1	Col B, 1-36	Grant	Customer-specific account information
41-2/1-2	Customer billing	2	Col B, 1-33	Grant	Customer-specific account information
41-2/1-3	Customer billing	1	Col B, 1-36	Grant	Customer-specific account information
41-2/1-3	Customer billing	2	Col B, 1-28	Grant	Customer-specific account information
41-2/1-4	Customer billing	5	Col A, 1	Grant	Customer-specific account information
43-3/2	Statistical sample	6	Col E, 1,4,7,10; 13-15	Grant	Sensitive contractual and competitive business information
43-3/2-1A	Sample testing	1	Col B, 17	Grant	Sensitive contractual and competitive business information
43-3/2-1A	Sample testing	3	Col B, 12,14,16-17	Grant	Sensitive contractual and competitive business information
43-3/2-1A	Sample testing	4	Cols, B,E, 17; Col F, 17-29; Col H, 20-21	Grant	Sensitive contractual and competitive business information
43-3/2-1/1	Sample testing	1-4	All	Grant	Sensitive contractual and competitive business information
43-3/3-1	Sample testing	2	Col B, 2; Col F, 3-4	Grant	Sensitive contractual and competitive business information

Staff Work Paper Number	Description	Page(s)	Line(s)	Disposition	Type of Information Classified Confidential
43-3/4	Statistical sample	1	Col M, 17	Grant	Sensitive contractual and competitive business information
43-3/4	Statistical sample	2	Col M, 21-22, 28-35	Grant	Sensitive contractual and competitive business information
43-3/4	Statistical sample	3	Col M, 22,35	Grant	Sensitive contractual and competitive business information
43-3/4	Statistical sample	4	Col M, 1-6,36	Grant	Sensitive contractual and competitive business information
43-3/4	Statistical sample	5	Col M, 1-2,8-9	Grant	Sensitive contractual and competitive business information
43-3/4	Statistical sample	6	Col M, 22	Grant	Sensitive contractual and competitive business information
43-3/4	Statistical sample	7	Col M, 1,7-10, 13,24	Grant	Sensitive contractual and competitive business information
43-3/4	Statistical sample	8	Col M, 7-9,11-15, 27-28,35-37,39	Grant	Sensitive contractual and competitive business information
43-3/4	Statistical sample	9	Col M, 14-17,37	Grant	Sensitive contractual and competitive business information
43-3/4	Statistical sample	10	Col M, 2-4,28, 31,35	Grant	Sensitive contractual and competitive business information
43-3/4	Statistical sample	11	Col M, 6,14-15	Grant	Sensitive contractual and competitive business information
43-3/4	Statistical sample	12	Col M, 8-9,11-12, 18,23	Grant	Sensitive contractual and competitive business information
43-3/4	Statistical sample	13	Col M, 22,24,26,36	Grant	Sensitive contractual and competitive business information
43-3/4-1	Sample testing	1	Col B, 1,13,17	Grant	Sensitive contractual and competitive business information
43-3/4-1	Sample testing	2	Col B, 1,7,14,19	Grant	Sensitive contractual and competitive business information

Staff Work Paper Number	Description	Page(s)	Line(s)	Disposition	Type of Information Classified Confidential
43-3/4-1	Sample testing	3	Col B, 1,3	Grant	Sensitive contractual and competitive business information
43-3/5-1	Sample testing	1	Col F, 19-21	Grant	Sensitive contractual and competitive business information

The material shall retain confidential status for 18 months after the issuance of this order, in accordance with Section 366.093(4), Florida Statutes, unless a request to extend the duration of confidential treatment is filed before the 18 month period expires.

Based on the foregoing, it is

ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that Florida Power & Light's Request for Confidential Classification is granted. It is further

ORDERED that pursuant to Section 366.093(4), Florida Statutes, confidentiality shall expire 18 months from the date of issuance of this order, in the absence of a renewed request for confidentiality. It is further

ORDERED that this Order will be the only notification by the Commission to the parties concerning the expiration of the confidentiality time period.

By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this 3rd day of November, 2004.



RUDOLPH "RUDY" BRADLEY
Commissioner and Prehearing Officer

(SEAL)
MKS

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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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 25-22.0376, 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 the Commission Clerk and Administrative Services, 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.