



Public Service Commission

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

DATE: February 5, 1999

TO: Division of Appeals (Helton)

FROM: Division of Auditing and Financial Analysis (Freeman, Vandiver)

RE: Recommendation concerning Florida Power & Light Company's (FPL's) request for confidential classification for portions of the staff audit report and portions of the staff audit working papers obtained during the preparation of audit report numbered 98-190-4-1, FPL's Grey Tax Areas for the 12 months period ended December 31, 1997, Docket No. 981743-EI, Document Nos. 12833-98 and 13327-98

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RECORDS AND REPORTING

On November 4, 1998, when copies of certain portions of staff's audit report and working papers regarding FPL's "Grey Tax Areas" audit for the calendar year 1997 were delivered to the utility at the audit exit conference, the utility requested that these documents be temporarily excepted from public access in accordance with the provisions of Rule 25-22.006(3)(a)(2), Florida Administrative Code (FAC). On November 16, 1998, staff filed document 12833-98 consisting of those portions of the staff audit report and working papers. These documents are currently held by the Division of Records and Reporting and designated as temporarily exempt from public access. On November 25, 1998, the utility filed a request pursuant to Rule 25-22.006, FAC, and Section 366.093, Florida Statutes (F.S.), that selected portions of the staff audit report and working papers prepared by staff during the tax audit receive confidential classification. The utility's request included highlighted copies (Document 13327-98) and redacted copies (Document 13326-98) for public use.

Pursuant to Section 119.07, F. S., documents submitted to this Commission are public records. The only exemptions to this law are specific statutory exemptions and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. Subsections 366.093(3)(b) and (e), F.S., provide the following exceptions:

"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:....

- (b) Internal auditing controls and reports of internal auditors....
- (e) Information related to competitive interests, the disclosure of which would impair the competitive business of the provider of the information...."

DOCUMENT NO
16918-99

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 FPL's Request

Analysis of the utility's listing of confidential materials filed with the request reveals the sensitive information presented in the filing consists of:

- 1) Internal auditing controls and reports of internal auditors or information describing the results of these reports or controls.

FPL witness Del Cueto, FPL Manager, Internal Auditing, attests that the identified information either reports or describes internal auditing controls or the reports of internal auditors and confirms that FPL has maintained the confidentiality of these documents and materials.

- 2) Information pertaining to adjustments or issues on FPL's tax returns.

FPL describes these issues and adjustments as "...some of which are the subject of agreements or settlements with the Internal Revenue Service and some of which are the subject of ongoing discussions or litigation or potential litigation. The disclosure of such information would afford competitors and potential competitors of FPL the benefits of FPL's efforts in certain tax initiatives, at no cost to such competitors, thus conferring a competitive benefit on such entities. Further, certain information such as the specific items underlying the booking of deferred taxes, if disclosed, could undermine FPL's position in the context of such discussions and/or litigation...."

FPL has filed affidavits of Donald Chasmar, FPL Manager, Tax Compliance & Audits, and David Huss, FPL Supervisor, Tax & Depreciation, who affirm the confidential nature of the material relating to how FPL accounts for certain taxes and assert FPL has maintained the confidentiality of the material.

Staff Recommendation

We recommend the utility's request be granted, as found.

To qualify for confidential protection, the material must be recognized as confidential under at least one of the specific exemptions of the public records law. Information concerning internal auditing controls and internal auditing reports is listed as qualifying for confidential classification. As for the material regarding taxation matters, the Commission has previously and consistently granted a confidential classification for this type of material. This policy is set out clearly in Commission Order 92-1073, dated September 28, 1992:

“...Federal income tax returns are generally kept confidential by the Internal Revenue Service, 26 U.S.C. Section 6103(a), and the same is true with state income tax returns and the Florida Department of Revenue, Section 213.053(2), Florida Statutes. This Commission has traditionally afforded a utility's income tax returns the same confidential treatment. I also agree that related correspondence should also be kept confidential.”

Lastly to qualify for confidential classification, the information must be held as confidential and not publicly disclosed. FPL witnesses report the material has been held as confidential by FPL.

A listing of the documents and information recommended for confidential classification, as found, is presented beginning on the next page of this memorandum. All other documents and information associated with this docket have been accounted for and become public record by default pursuant to the provisions of Rule 22.006(3)(a)(1), FAC:

“....Absent good cause shown, failure to file such a request [for confidential protection] within 21 days constitutes a waiver of confidentiality.

Requested Confidential Period

FPL requests that the confidential information in this identified in this docket not be declassified for a period of at least 18 months and requests that the material be returned to FPL in accordance with Section 366.093(4), F.S., as soon as the information is no longer necessary for the Commission to conduct its business.

The Commission has addressed a similar request in Commission Order 96-0198, dated February 13, 1996. This procedure applied in the instant case would provide: Document 13327-98, presents copies of documents prepared or obtained by staff which are filed by the utility in explanation of its filing. These documents should be returned to FPL after the assigned confidential period has expired. The related document numbered 12833-98, however, presents the original Commission staff audit work papers or audit report. These documents should be retained in accordance with the regular retention of staff documents. These papers record work performed, record staff observations during fieldwork, and form the basis for subsequent staff audits. If the utility wants continued confidential treatment beyond the period assigned by this order, the utility must request an extension of the period before the protection tolls. In accordance with prior practice, we recommend that at the end of the confidential classification period, in accordance with the utility's wishes, that document 13327-98 be returned to the utility.

Close the Docket

In closing, we recommend that any order which resolves the confidentiality of these items should contain language to close the docket once the order becomes final.

Specific Page and Line Recommendations

Staff Work Paper Number	Page Number(s)	Lines	Recommend	Reason
Documents 12833-98 and 13327-98				
1	2	Marked A Marked B		Discloses sensitive competitive information. Discloses information regarding internal auditing reports or controls.
1	3	Marked A,B,C		Discloses sensitive competitive information.
1	4	Marked A,B		Discloses sensitive competitive information.

Staff Work Paper Number	Page Number(s)	Lines	Recommend	Reason
Documents 12833-98 and 13327-98				
1	5	Marked A		Discloses sensitive competitive information.
1	6	Marked A,B		Discloses sensitive competitive information.
1	7	Marked A		Discloses sensitive competitive information.
1	9	Marked A		Discloses sensitive competitive information.
9	1	All		Discloses information regarding internal auditing reports or controls.
✓ 9-1	1-4	All		Discloses information regarding internal auditing reports or controls.
54	1	Marked A,B		Discloses sensitive competitive information.
54	2	Marked A		Discloses sensitive competitive information.
54	3	Marked A,B		Discloses sensitive competitive information.
54	4	Marked A		Discloses sensitive competitive information.
54	5	Marked A Marked B		Discloses sensitive competitive information. Discloses information regarding internal auditing reports or controls.
54	6	Marked A		Discloses sensitive competitive information.
54-3	1	Marked A		Discloses sensitive competitive information.

Staff Work Paper Number	Page Number(s)	Lines	Recommend	Reason
Documents 12833-98 and 13327-98				
54-3/3	1	Marked A,B,C		Discloses sensitive competitive information.
54-3/3	2	Marked A		Discloses sensitive competitive information.
54-3/3	4	Marked A,B,C, D,E		Discloses sensitive competitive information.
54-4	1	All		Discloses sensitive competitive information.
54-4	2	All		Discloses sensitive competitive information.
54-4/1	1-40	All		Discloses sensitive competitive information.
54-4/2	1-6	All		Discloses sensitive competitive information.
54-4/3	1-9	All		Discloses sensitive competitive information.
54-4/4	1-3	All		Discloses sensitive competitive information.

For a limited time, a copy of this recommendation will be retained at I:13327-98.RAF.

CC: Division of Financial Analysis (Slemkewicz, Welch, Wilson, Pelt)
 Division of Records and Reporting (M. Sanders)

MEMORANDUM

June 4, 1999

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RECORDS AND
REPORTING

TO: MARY ANDREWS BANE,
DEPUTY EXECUTIVE DIRECTOR/TECHNICAL

FROM: TIM DEVLIN,
DIRECTOR, DIVISION OF AUDITING AND FINANCIAL ANALYSIS

SUBJECT: FLORIDA POWER & LIGHT COMPANY
GREY TAX AUDIT
CONTROL NO. 98-190-4-1

TPJ

981743-EI

Pursuant to APM 11.04(C)(4)(b), I request that Christine Romig and Ann Causseaux be granted access to the confidential part of the audit report and workpapers prepared pursuant to the above-described undocketed audit. This audit was initiated by Christine Romig. Ann Causseaux is Christine's supervisor.

Any confidential information reviewed will be treated in accordance with the procedures in the Administrative Procedures Manual.

/cgr

OK
MAB
6/4/99