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Public Service Commission

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**DATE:** May 18, 2007

**TO:** Lisa Bennet, General Counsel's Office

**FROM:** Division of Regulatory Compliance and Consumer Assistance (Freeman, Vandiver) *F CW*

**RE:** Docket 070001-EI, Recommendation concerning Florida Power & Light Company's (FPL) request for 2<sup>nd</sup> extension of confidential classification concerning a portion of the staff working papers prepared during "FPL Capacity Cost Recovery Clause Audit for the Year Ended December 31, 2001", Audit Control No. 02-044-4-1, Documents Numbered 06362-02 and 06955-02

On June 18, 2002, when copies of certain portions of staff's working papers obtained or prepared during the "FPL Capacity Cost Recovery Clause Audit for the Year Ended December 31, 2001", 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 (FAC).

On June 20, 2002, staff filed document 06362-02 consisting of those specified portions of the staff working papers.

On July 8, 2002, FPL filed a request pursuant to Section 366.093, Florida Statutes (F.S), and Rule 25-22.006, FAC, that selected portions of the working papers prepared by the staff during the audit receive confidential classification. The utility's request included redacted copies for public inspection (Exhibit B, document 06954-02) and highlighted copies (document 06955-02).

- CMP \_\_\_\_\_
- COM \_\_\_\_\_
- CTR \_\_\_\_\_
- ECR \_\_\_\_\_
- GCL \_\_\_\_\_
- OFC \_\_\_\_\_
- PCA \_\_\_\_\_
- SCR \_\_\_\_\_
- SGA \_\_\_\_\_
- SEC \_\_\_\_\_
- OTH \_\_\_\_\_

On August 29, 2002, after discussions with the staff, FPL filed a revision to its request reducing the amount of material requested as confidential.

On October 21, 2002, Commission Order No. PSC-02-1437-CFO-EI was issued in docket 020001-EI granting the utility's request and providing 18 months confidential classification for the specified material. That 18 month period has now tolled.

On April 19, 2004, FPL filed a first request for extension of the confidential classification for material granted by Commission Order PSC-02-1437-CFO-EI.

On October 28, 2004, Commission Order No. PSC-04-1057-CFO-EI was issued in docket 040001-EI granting the utility's request and providing an additional 18 months confidential classification for the specified material. That additional 18 month period has now tolled.

*[Handwritten signature]*

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

May 18, 2007  
Florida Power & Light Request for 2<sup>nd</sup> Extension

On April 28, 2006, FPL filed a second request for extension of the confidential classification period for this material.

Documents 06362-02 and 06955-02 are currently held by the Commission's Division of the Commission Clerk and Administrative Services as confidential pending resolution of FPL's request for a 2<sup>nd</sup> extension of confidential classification.

Pursuant to Section 119.07, F.S., 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 items of a statutory provision. Subsections 366.093(3)(c)(d) and (e), F.S., provide the following exemptions.

Subsection 366.093, F.S., provides; "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 business 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, 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 the Request**

Reading the FPL filing reveals the sensitive material consists of:

- 1). Contracts and contractual data such as pricing and other terms, customer names and related information, payment records, contractor rates and proprietary bank account information.

FPL asserts disclosure of this information would impair the efforts of FPL to contract for services on favorable terms and/or would impair the competitive interests of the providers of the information. FPL also asserts the information contains sensitive proprietary bank account information, the disclosure of which may cause harm to FPL's business operations. FPL reports this information remains sensitive and should be held as confidential for an additional 18 months.

FPL witness Gerald J. Yupp, FPL Energy Marketing and Trading Division, Director of Wholesale Operations, identifies this sensitive contractual information as contained within the PSC staff audit working papers entitled: "Transaction Agreement."

- 2). Sensitive information concerning competitive interests

FPL asserts disclosure of this sensitive information would harm the competitive business of the provider of the information.

FPL witness Yupp reports this sensitive competitive information is reported within staff working papers entitled: "May Purchases/Sales", "July Estimated", "Transmission of Elect", "Transmission Cost", "Transmission Recap", "Short Term Purchases", "Summary Report", "Payment Invoice", "Purchase Statement", and "August Transactions."

- 3). Sensitive internal company procedures release of which would cause harm.

FPL asserts this information relates to sensitive security measures, systems, or procedures.

FPL witness Yupp reports these sensitive procedures are reported within staff working papers entitled: "Accounting Handbook".

Witness Osvaldo J. Lom, FPL Supervisor of Purchased Power Contracts, reports sensitive internal procedures are reported within staff's working papers entitled: "May Estimate [supporting documents] Backup", "April Estimate Backup", "April Actual Backup", "July Estimated Backup", "June Estimate Backup", and "June Actual Backup".

**Information Held as Confidential**

Witnesses Yupp and Lom represent all the identified information continues to be held as confidential by FPL, and should be accorded a confidential classification by the Commission for a second extension of confidential classification for 18 months.

**Duration of the Confidential Classification Period**

FPL requests that this material be returned to the utility once the information is no longer needed to conduct Commission business. According to Section 366.093(4), F.S., absent good cause shown, confidential classification is limited to 18 months. Without cause shown for a longer period, we recommend that the 2<sup>nd</sup> extension of the confidential classification be limited to 18 months.

**Staff Recommendation**

Section 366.093, F. S., provides that the Commission may grant a confidential classification to information the release of which may harm the ratepayers or the person's or company's business operations. In part, the statute identifies certain types of information release of which will cause harm to include, but not be limited to:

Section 366.093 (c), F.S., provides security systems, measures and procedures may be granted a confidential classification;

Section 366.093(3)(d), F.S., provides that the Commission may grant a confidential classification to sensitive contractual or bid information release of which may harm the public utility or its affiliates ability to contract; and

Section 366.093(3)(e), F.S., provides that sensitive competitive business information the release of which would harm the provider of the information may be granted a confidential classification.

The detailed information gathered by the staff auditors pertains to payment of certain fees and charges, called capacity costs. These monies are paid to reserve energy sources as available to FPL. Additionally, the sensitive information also contains information about FPL's security measures and procedures that control and guide these energy capacity purchases. We agree with FPL and their witnesses that even after several years of confidential classification, this information remains sensitive and release of this information at this time could cause harm.

In a previous decision, the Commission granted a 5 year confidential classification period to commercial information which remained sensitive over an extended time period (See Order No. PSC-94-1224-CFO-EI, issued October 6, 1994, in Docket 940001-EI). In this matter, the utility also pleads that the material remains sensitive after an extended period. FPL's initial request for confidential classification was filed on July 8, 1992, a request for extension was made on April 19, 2004, and currently, FPL's April 28, 2006 request for 2<sup>nd</sup> extension of classification is pending. Given the Commission history of granting a confidential status for 5 years in similar matters, and the fact that the material has been held as confidential, staff recommends a 2<sup>nd</sup> extension of confidential classification be granted in this matter.

For the reasons presented above, we recommend the utility's request for a 2<sup>nd</sup> extension of classification period be granted and that the identified material be granted a 2<sup>nd</sup> extension of confidential classification for 18 months.

May 18, 2007

Florida Power & Light Request for Extension

A detailed recommendation, as found, follows:

**Detailed Recommendation, as found**

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend Second 18 Month Extension	Type of Information Classified Confidential
Documents 06362-02 and 06955-02					
42-1/1-2	May Purchases/Sales	1-2	All	Grant	Sensitive competitive business information
42-1/4	July Estimated	1	Col E, 3-24	Grant	Sensitive competitive business information
42-1/4-1	July Estimated	1	All	Grant	Sensitive competitive business information
42-3	Accounting Handbook	1	Col C, 2-7; 8-37	Grant	Security measures, systems or procedures
42-3	Accounting Handbook	2	Col C, 2-7; 8-39	Grant	Security measures, systems or procedures
42-3	Accounting Handbook	3	Col C, 2-7; 8-28	Grant	Security measures, systems or procedures
43-1/1-1	May Estimate Backup	1	11-13; Col D, 15-21	Grant	Security measures, systems or procedures
43-1/2-1	April Estimate Backup	1	10-12; Col C, 13-20	Grant	Security measures, systems or procedures
43-1/2-2	April Estimate Backup	1	10-12; Col C, 14-21	Grant	Security measures, systems or procedures
43-2/1-1	July Estimate Backup	1	10-12; Col C, 14-21	Grant	Security measures, systems or procedures
43-2/2-1	June Estimate Backup	1	11-13; Col D, 15-22	Grant	Security measures, systems or procedures
43-2/2-2	June Actual Backup	1	11-13; Col C, 15-22	Grant	Security measures, systems or procedures
44-1/1	Transmission of Elect	1	Col A, 2,5-6; Col B-C, 7; Col E-F, 7; 13,15,21	Grant	Sensitive competitive business information
44-1/1-1	Transmission Cost	1	Col E, 13-31	Grant	Sensitive competitive business information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend Second 18 Month Extension	Type of Information Classified Confidential
Documents 06362-02 and 06955-02					
44-1/1-2	Transmission Cost	1	Col E, 12-29	Grant	Sensitive competitive business information
44-1/1-2/1	Transmission Cost	1	1,3-8	Grant	Sensitive competitive business information
44-1/1-2/2	Transmission Cost	1	Col K, 1-3	Grant	Sensitive competitive business information
44-1/1-2/2	Transmission Cost	2	Col L, 3-46	Grant	Sensitive competitive business information
44-1/1-3	Transmission Recap	1	All	Grant	Sensitive competitive business information
44-2/1	Transmission of Elect	1	Col A, 2; 5,6; Col B-C, 7; Col E-F, 7; 13,15-21	Grant	Sensitive competitive business information
44-2/1-1	Trnasmission Cost	1	Col I, 3-24	Grant	Sensitive competitive business information
44-2/1-2	Transmission Cost	1	Col B, 11-29	Grant	Sensitive competitive business information
44-2/1-2/1	Transmission Cost	1	All	Grant	Sensitive competitive business information
45	Short Term Purchases	1	All	Grant	Sensitive competitive business information
45-1/1	Summary Report	1	Col B-C, 3-8; 9-70	Grant	Sensitive competitive business information
45-1/1	Summary Report	2	All	Grant	Sensitive competitive business information
45-1/1-1	Invoice Payment	1	1-2; Col A, 3; Col D, 6-8; 8-44	Grant	Sensitive competitive business information
45-1/1-1	Invoice Payment	2	3-25	Grant	Sensitive competitive business information
45-1/1-1/1	Transaction Agreement	1-9	All	Grant	Sensitive contractual information
45-1/1-2	Payment Invoice	1	All	Grant	Sensitive competitive business information
45-1/1-2	Payment Invoice	2	3-25	Grant	Sensitive competitive business information
45-1/1-2/1	Transaction Agreement	1-3	All	Grant	Sensitive contractual information
45-2/1	Summary Report	1-2	All	Grant	Sensitive competitive business information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend Second 18 Month Extension	Type of Information Classified Confidential
Documents 06362-02 and 06955-02					
45-2/1-1	Payment Invoice	1	Col C-D, 4-7; 7-41	Grant	Sensitive competitive business information
45-2/1-2	Payment Invoice	1	All	Grant	Sensitive competitive business information
45-2/1-3	Purchase Statement	1	3-32	Grant	Sensitive competitive business information
45-2/1-3	Purchase Statement	2	All	Grant	Sensitive competitive business information
45-2/1-3/1	Transaction Agreement	1	2-5,8-35	Grant	Sensitive competitive business information
45-2/1-3/1	Transaction Agreement	2	All	Grant	Sensitive competitive business information
45-2/2	August Transactions	1	All	Grant	Sensitive competitive business information

A temporary copy of this recommendation will be held at I:06955-02ext2raf.doc for a short period.

CC: Division of Regulatory Compliance and Consumer Assistance (Welch)  
Division of Commission Clerk and Administrative Services (Lockard, Cole)