

State of Florida



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Public Service Commission

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

DATE: January 29, 2008

TO: Martha Brown, Attorney, Office of General Counsel

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

RE: Docket 070432-EI, Recommendation concerning Florida Power & Light Company's (FPL) request for confidential classification concerning a portion of the staff audit report and working papers prepared during "Florida Power & Light Glades Power Park Project Audit for the Historical Year Ended August 31, 2007", Audit Control No. 07-221-4-1, Documents Numbered 09012-07, 09013-07 and 10994-07

On September 28, 2007, when copies of certain portions of staff's audit report and working papers obtained or prepared during the "Florida Power & Light Glades Power Park Project Audit for the Historical Year Ended August 31, 2007" were delivered to FPL at the audit exit conference, the utility requested that these materials be temporarily exempted from public access in accordance with provisions of Rule 25-22.006(3)(a)2., Florida Administrative Code (FAC).

On October 8, 2007, staff filed documents numbered 09012-07 and 09013-07 consisting of those specified portions of the staff's audit report and working papers.

On October 19, 2007, 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 a confidential classification. The utility's request included redacted copies for public inspection (Document No. 09577-07) and copies with the sensitive material highlighted (Document 09576-07).

CMP _____ On December 17, 2007, after discussions with the staff, FPL amended and superseded its
COM _____ request. The amendment included redacted copies for public inspection (Document 10995-07)
CTR _____ and copies with the sensitive information highlighted (Document 10994-07).
ECR _____ By the amended filing, confidential document numbered 09576-07 has been superseded and has
GCL _____ been returned to the source. See APM Section 11.04 C. 7. titled "Provisions relating to the
OPC _____ disposition of confidential information."
RCA _____ Documents numbered 09012-07, 09013-07, and 10994-07 are currently held by the Office of the
SCR _____ Commission Clerk as confidential pending resolution of FPL's request for confidential
SGA _____ classification.
SEC _____
OTH ML

DOCUMENT NUMBER-DATE

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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)(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:*

....

(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 as Revised

Reading the filing as revised reveals the sensitive material consists of:

Sensitive contractual information including pricing and other terms which also is sensitive competitive business information

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Section 366.093(3)(d), F.S., provides the Commission may grant a confidential classification to sensitive contractual materials if their release would impair the ability of FPL or its affiliates to contract for goods and services on favorable terms. Section 366.093(3)(e), F.S., provides the Commission may grant a confidential classification to sensitive competitive business information if release of that information would harm the competitive business of the provider of that information.

Witness Richard Blanchette, FPL Director of Construction and Engineering, identifies sensitive contractual and competitive business information within working papers titled: "Audit Report", "Audit Report Annotated", "Document Requests", "Summary of Expenses", "Contract", "Notice of Termination", "Negotiation of Termination", "Option to Exercise", "Contract Change Order", "Audit Finding", "Termination Fee", "Cancellation Agreement", "Termination Payment", "Purchase Order", "Change to Purchase Order", and "Scope of Work".

Witness Mary Lou Kromer, FPL Vice President of Marketing Communication, identifies sensitive contractual and competitive business information within working papers titled: "Audit Report", "Audit Report Annotated", "Document Requests", "Summary of Expenses", "Purchase Order" and "Audit Finding."

Witness David Hicks, FPL Director, Project Development, identifies further materials which report sensitive contractual and competitive business information within working papers titled: "Summary of Land", "Land", "Bid Form", "Option Agreement", "Purchase Option", "Issuance of Check", "Termination", "Summary of Expenses", "Estimated Costs", "Engineering and Site Certification Costs", "Sample Testing" and "Audit Finding."

Witness H. Antonio "Tony" Cuba, FPL Director of Regulatory Accounting, identifies sensitive contractual and competitive business information within working papers titled: "Termination Fee."

Witness Joseph Daley, FPL Sourcing Manager in Power Procurement Services, identifies sensitive contractual and competitive business information within working papers titled: "Waiver of Liens", "Purchase Order", and "Termination Fee."

Witness Eugene Ungar, employed by FPL as Manager of Fuel Analysis and Strategy in the Energy Marketing & Trading Division, identifies sensitive contractual and competitive business information within working papers titled: "Purchase Order" and "Scope of Work."

Upon reading the information identified here, technical staff agrees it is sensitive contractual information the release of which would impair the ability of FPL or its affiliates to purchase goods and services. We also agree the information reveals sensitive competitive business information the release of which would impair the competitive business of the provider of the information.

Therefore, we recommend that the described information identified above by FPL witnesses Blanchette, Hicks, Kromer, Cuba, Daley and Ungar be granted a confidential classification.

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Information Held as Confidential

To qualify as proprietary confidential business information, the material must also be held as private and not released to the public. FPL asserts that this sensitive information meets the statutory restrictions necessary for the material to be provided a confidential classification, and asserts that the information has not been disclosed to the Public. Further, FPL witnesses report FPL has maintained the confidentiality of these materials.

36-Month Duration of the Confidential Classification Period

FPL requests that this material be held as confidential for at least 36 months and that this material should be returned to FPL once the information is no longer needed for the Commission to conduct its business.

Section 366.093(4), F.S., provides that a confidential classification period should be limited to 18 months absent a showing of good cause for a longer period. Commission experience with FPL is that the utility regularly exercises their option to protect sensitive commercial information for 36 months by routinely seeking a confidential classification for an 18 month period and then routinely seeking an extension of the confidential period for an additional 18 months. The information at issue here is material and also provides sensitive commercial information such that it is reasonable to assume that release of the information before a 3 year period expires would either impair the ability of FPL to contract for goods and services and impair the competitive business of FPL or the provider of the information.

In the past, the Commission has granted a confidential classification for an extended period where the information was shown to be sensitive for a period longer than 18 months (See Commission Order No. PSC 94-1224-CFO-EI, issued October 6, 1994, in docket 950001-EI). In the instant case, the 6 FPL witnesses recommend that this information be granted a confidential classification for 36 months. Given the nature of the information, FPL's history of protecting its sensitive commercial information, and based upon the recommendations of 6 witnesses that the classification period be set as 36 months, the request for an extended classification period is convincing. Therefore, we recommend that the confidential classification period be set as 36 months.

Staff Recommendation

Based upon reading the filing as revised, and for the reasons presented above, we recommend the utility's request be granted and that the identified material be granted a confidential classification for 36 months.

A detailed recommendation as found follows:

Detailed Recommendation as Found

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend Confidential Classification For 36 Months	Type of Information
Documents 09012-07 and 10994-07					
1	Audit Report— Termination Fee	4	4-9,11-12,14-21, 23-25,28,37	Grant	Sensitive Contractual and Competitive Business Information
1	Audit Report— Termination Fee	5	4,8,10,13-16	Grant	Sensitive Contractual and Competitive Business Information
1	Audit Report – Legal Services, Lobbying, Community Outreach, Public Relations	8	6,8,10,12	Grant	Sensitive Contractual and Competitive Business Information
Documents 09013-07 and 10994-07					
1	Audit Report Annotated Termination Fee	4	4-9,11-12,14-21, 23-25,28,37	Grant	Sensitive Contractual and Competitive Business Information
1	Audit Report Annotated Termination Fee	5	4,8,10,13-16	Grant	Sensitive Contractual and Competitive Business Information
1	Audit Report Annotated Services, Lobbying, Community Outreach, Public Relations	8	6,8,10,12	Grant	Sensitive Contractual and Competitive Business Information
10	Document Requests	7	8	Grant	Sensitive Contractual and Competitive Business Information
10	Document Requests	8-9	10,14	Grant	Sensitive Contractual and Competitive Business Information
10	Document Requests	10-11	22-23	Grant	Sensitive Contractual and Competitive Business Information
10	Document Requests	12	8,9,11	Grant	Sensitive Contractual and Competitive Business Information
17	Summary of Land	1	All	Grant	Sensitive Contractual and Competitive Business Information
17-1	Land	1-2	All	Grant	Sensitive Contractual and Competitive Business Information
17-1/1	Bid Form	1-2	All	Grant	Sensitive Contractual and Competitive Business Information
17-2	Option Agreement	1-2	All	Grant	Sensitive Contractual and Competitive Business Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend Confidential Classification For 36 Months	Type of Information
Documents 09013-07 and 10994-07					
17-2/2	Issuance of Check	1	All	Grant	Sensitive Contractual and Competitive Business Information
17-2/3	Termination	1	All	Grant	Sensitive Contractual and Competitive Business Information
17-2/4	Termination	1-3	All	Grant	Sensitive Contractual and Competitive Business Information
17-3	Purchase Option	1-2	All	Grant	Sensitive Contractual and Competitive Business Information
17-3/2	Issuance of Check	1	All	Grant	Sensitive Contractual and Competitive Business Information
17-3/3	Termination	1	All	Grant	Sensitive Contractual and Competitive Business Information
17-3/4	Termination	1-2	All	Grant	Sensitive Contractual and Competitive Business Information
43	Summary of Expenses	1	20,26-32,34-35	Grant	Sensitive Contractual and Competitive Business Information
43	Summary of Expenses	3	4-9,11-12,14,16-18,20-25,28,37	Grant	Sensitive Contractual and Competitive Business Information
43	Summary of Expenses	4	4,8,10,13-16	Grant	Sensitive Contractual and Competitive Business Information
43	Summary of Expenses	7	11,13	Grant	Sensitive Contractual and Competitive Business Information
43-1	Estimated Costs	1	8	Grant	Sensitive Contractual and Competitive Business Information
43-2	Engineering and Site Certification Costs	1	Col. E, 18-19,25-32,37-38	Grant	Sensitive Contractual and Competitive Business Information
43-2/1	Costs Reconciliation	1	All	Grant	Sensitive Contractual and Competitive Business Information
43-3	Sample Testing	1	Col. O, 12-14	Grant	Sensitive Contractual and Competitive Business Information
43-3	Sample Testing	2	Col O, 1-12,14-16	Grant	Sensitive Contractual and Competitive Business Information
43-3	Sample Testing	3	Col. O, 1-13; Col. P, 12	Grant	Sensitive Contractual and Competitive Business Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend Confidential Classification For 36 Months	Type of Information
Documents 09013-07 and 10994-07					
43-3	Sample Testing	4	Col. O, 3-8,10-11	Grant	Sensitive Contractual and Competitive Business Information
43-3	Sample Testing	5	Col. O, 4,8-16	Grant	Sensitive Contractual and Competitive Business Information
43-3	Sample Testing	6	Col. O, 1-6,8-10,12-16	Grant	Sensitive Contractual and Competitive Business Information
43-3	Sample Testing	7	Col. O, 1-4,13-15; Col. P, 5-6	Grant	Sensitive Contractual and Competitive Business Information
43-3	Sample Testing	8	Col. O, 2-18	Grant	Sensitive Contractual and Competitive Business Information
43-3	Sample Testing	9	Col. F, 23-26; Col I, 18 Col J, 5,7-8,11-16	Grant	Sensitive Contractual and Competitive Business Information
43-3/1	Contract	1-10	All	Grant	Sensitive Contractual and Competitive Business Information
43-3/1-1	Notice of Termination	1-2	All	Grant	Sensitive Contractual and Competitive Business Information
43-3/1-2	Notice of Termination	1	7	Grant	Sensitive Contractual and Competitive Business Information
43-3/2	Contract	1-15	All	Grant	Sensitive Contractual and Competitive Business Information
43-3/2-1	Notice of Termination	1	1-5,8,11	Grant	Sensitive Contractual and Competitive Business Information
43-3/3	Contract	1-12	All	Grant	Sensitive Contractual and Competitive Business Information
43-3/3-1	Negotiation of Termination	1	All	Grant	Sensitive Contractual and Competitive Business Information
43-3/3-2	Negotiation of Termination	1	All	Grant	Sensitive Contractual and Competitive Business Information
43-3/3-3	Option to Exercise	1-4	All	Grant	Sensitive Contractual and Competitive Business Information
43-3/3-4	Contract Change Order	1	All	Grant	Sensitive Contractual and Competitive Business Information
43-3/3-5	Notice of Termination	1	1-5,7-10	Grant	Sensitive Contractual and Competitive Business Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend Confidential Classification For 36 Months	Type of Information
Documents 09013-07 and 10994-07					
43-3/3-6	Audit Finding	1	3-9,11-12,14,16-18, 20-25,28,37	Grant	Sensitive Contractual and Competitive Business Information
43-3/3-6	Audit Finding	2	4,8,10,13-16	Grant	Sensitive Contractual and Competitive Business Information
43-3/3-6/1	Contract Change Order	1-2	All	Grant	Sensitive Contractual and Competitive Business Information
43-3/3-6/2	Termination Fee	1	1-11	Grant	Sensitive Contractual and Competitive Business Information
43-3/3-6/2	Termination Fee	2-5	All	Grant	Sensitive Contractual and Competitive Business Information
43-3/3-6/3	Termination Fee	1-4	All	Grant	Sensitive Contractual and Competitive Business Information
43-3/3-7	Notice of Termination	1	All	Grant	Sensitive Contractual and Competitive Business Information
43-3/3-8	Cancellation Agreement	1-2	All	Grant	Sensitive Contractual and Competitive Business Information
43-3/4	Contract	1-3	All	Grant	Sensitive Contractual and Competitive Business Information
43-3/4-1	Termination Payment	1	All	Grant	Sensitive Contractual and Competitive Business Information
43-3/4-2	Contract	1-8	All	Grant	Sensitive Contractual and Competitive Business Information
43-3/4-3	Contract	1-5	All	Grant	Sensitive Contractual and Competitive Business Information
43-3/4-4	Notice of Termination	1	All	Grant	Sensitive Contractual and Competitive Business Information
43-3/4-4	Notice of Termination	2	3-11	Grant	Sensitive Contractual and Competitive Business Information
43-3/6	Waiver of Liens	1-8	All	Grant	Sensitive Contractual and Competitive Business Information
43-3/6-1	Purchase Order	1-13	All	Grant	Sensitive Contractual and Competitive Business Information
43-3/6-1/1	Termination Fee	1	All	Grant	Sensitive Contractual and Competitive Business Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend Confidential Classification For 36 Months	Type of Information
Documents 09013-07and 10994-07					
43-3/7	Purchase Order	1-4	All	Grant	Sensitive Contractual and Competitive Business Information
43-3/8	Purchase Order	1-5	All	Grant	Sensitive Contractual and Competitive Business Information
43-3/8-1	Scope of Work	1-2	All	Grant	Sensitive Contractual and Competitive Business Information
43-3/9	Purchase Order	1-5	All	Grant	Sensitive Contractual and Competitive Business Information
43-3/10	Purchase Order	1-4	All	Grant	Sensitive Contractual and Competitive Business Information
43-3/10-1	Purchase Order	1	All	Grant	Sensitive Contractual and Competitive Business Information
43-3/11	Purchase Order	1-2	All	Grant	Sensitive Contractual and Competitive Business Information
43-3/12	Purchase Order	1	2-6,11	Grant	Sensitive Contractual and Competitive Business Information
43-3/12	Purchase Order	2	1,23-25,28	Grant	Sensitive Contractual and Competitive Business Information
43-3/12	Purchase Order	3-4	All	Grant	Sensitive Contractual and Competitive Business Information
43-3/12	Purchase Order	5	1,22-24	Grant	Sensitive Contractual and Competitive Business Information
43-3/13	Purchase Order	1-13	All	Grant	Sensitive Contractual and Competitive Business Information
43-3/14	Purchase Order	1-7	All	Grant	Sensitive Contractual and Competitive Business Information
43-3/15	Purchase Order	1-5	All	Grant	Sensitive Contractual and Competitive Business Information
43-3/15-1	Change to Purchase Order	1-6	All	Grant	Sensitive Contractual and Competitive Business Information
43-3/16	Purchase Order	1-5	All	Grant	Sensitive Contractual and Competitive Business Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend Confidential Classification For 36 Months	Type of Information
Documents 09013-07 and 10994-07					
43-3/16-1	Purchase Order	1-2	All	Grant	Sensitive Contractual and Competitive Business Information
43-3/17	Purchase Order	1-3	All	Grant	Sensitive Contractual and Competitive Business Information
43-3/17-1	Scope of Work	1-3	All	Grant	Sensitive Contractual and Competitive Business Information
43-3/18	Purchase Order	1-3	All	Grant	Sensitive Contractual and Competitive Business Information
43-3/19	Purchase Order	1	All	Grant	Sensitive Contractual and Competitive Business Information
43-3/22	Audit Finding	1	8,10,12,14	Grant	Sensitive Contractual and Competitive Business Information
43-3/22-1	Audit Finding	1	Col. B, 23-33,36, 39-40,43-49,53-55	Grant	Sensitive Contractual and Competitive Business Information
43-3/22-1	Audit Finding	2	Col B, 2-16	Grant	Sensitive Contractual and Competitive Business Information
43-3/22-2	Audit Finding	1	Col. R, 2-35; Col U, 2-41	Grant	Sensitive Contractual and Competitive Business Information
43-3/22-2	Audit Finding	2	Col. R, 2-3; Col. U, 2,4-5	Grant	Sensitive Contractual and Competitive Business Information
43-4	Termination Fee	1	10-36	Grant	Sensitive Contractual and Competitive Business Information

A temporary copy of this recommendation will be held at I:09576-07 & 10994-07 FPL Glades Power Park raf.doc for a short period.

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