

State of Florida



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

DATE: March 6, 2008

TO: Lisa Bennett, Attorney, Office of General Counsel

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

RE: Docket 070001-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 Economy Sales Audit as of September 30, 2007", Audit Control No. 07-164-4-1, Documents Numbered 09414-07, 09415-07 and 09763-07

On October 8, 2007, when copies of certain portions of staff's audit report and working papers obtained or prepared during the "Florida Power & Light Economy Sales Audit as of September 30, 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 15, 2007, staff filed documents numbered 09414-07 and 09415-07 consisting of those specified portions of the staff's audit report and working papers.

On October 26, 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 audit report and 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. 09764-07) and copies with the sensitive material highlighted (Document No. 09763-07).

Documents numbered 09414-07, 09415-07 and 09763-07 are currently held by the Office of the Commission Clerk as confidential pending resolution of FPL's request for 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)(d) and (e), F.S., provide the following exemptions.

- CMP _____
- COM _____
- CTR _____
- ECR _____
- GCL _____
- OPC _____
- RCA _____
- SCR _____
- SGA _____
- SEC _____
- OTH Masquerade

DOCUMENT NUMBER-DATE

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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

Reading the filing reveals the sensitive material consists of:

- 1) Information disclosing sensitive competitive business information.

Witness Frank Izzarry, FPL Director of Production Assurance and Business Services in the Power Generation Division, identifies sensitive competitive business information, the disclosure of which would impair the competitive businesses of FPL and its vendors. According to witness Izzarry, some of the information would also place FPL at a disadvantage when coupled with other information which is publicly available. Working papers identified as sensitive by Mr. Izzarry are: “Audit Finding No. 1 concerning Operation and Maintenance Costs”; “Annotated Audit Finding Concerning Operation and Maintenance Costs”, “Requests, Page 27”, and “O&M Charge”.

Witness Gerard J. Yupp, FPL Director of Wholesale Operations, also identifies sensitive competitive information disclosed in working papers titled: “Reconciliation of Energy Purchases”, “Fuel Cost”, “Fuel Price Data”, “Oil Pricing”, “SO2 Allowance”, “Gas Prices”, “Peak Sale”, “O&M Charge”, and “Economy A Trans.”

In addition, Osvaldo J. Lom, FPL Supervisor of Purchased Power Contracts, identifies sensitive competitive business information disclosed in working papers titled: “Scherer Cost.”

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Section 366.093(3)(e), F.S., provides that 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. Reading the information identified by witnesses Izzarry, Yupp and Lom reveals it is sensitive competitive business information release of which would harm the provider of that information. Therefore, we recommend that this information be granted a confidential classification.

2) Information disclosing sensitive contractual information.

Witness Gerard J. Yupp, FPL Director of Wholesale Operations, identifies sensitive contractual information disclosed in working papers titled: "Requests", "Summary of Transactions", "Power Deal Ticket", "Scherer Cost", "Summary and Lambda Report", "Economy A Trans", "Deal Forms", "Deal Entry", and "Single Hour Deal Form." Witness Yupp explains sensitive contractual data includes pricing and other terms, payment records, and vendor and supplier rates, the disclosure of which would impair the efforts of FPL to contract for gas and oil procurements on favorable terms for the benefit of its customers.

Witness Robert A. Birch, FPL Manager of System Operation and Transmission Billing, identifies sensitive contractual information included within working paper titled "Economy A Transmission."

Section 366.093(3)(d), F.S., provides that the Commission may grant a confidential classification to sensitive contractual information if its release would impair the ability of a utility or its affiliates to contract on a favorable basis for goods and services. Reading the information identified by witnesses Yupp and Birch reveals it is sensitive contractual information release of which would impair the ability of FPL and its affiliates to contract favorably. Therefore, we recommend that this information be granted a confidential classification.

3) Information disclosing sensitive contractual information and sensitive competitive business information.

Witness Yupp explains sensitive contractual data includes pricing and other terms, payment records, and vendor and supplier rates, the disclosure of which would impair the efforts of FPL contract for gas and oil procurements on favorable terms for the benefit of its customers. Witness Yupp also reports release of certain contractual information could impair the competitive business of FPL and its vendors. Staff's working papers which disclose information which is contractually and competitively sensitive are titled: "Deal #215699" and "Fuel Cost."

Reading the information identified by witnesses Yupp reveals it is sensitive contractual and competitive business information release of which would impair the ability of FPL and its affiliates to contract favorably and would also impair the competitive businesses of the providers of that information. Therefore, we recommend that this information 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.

Duration of the Confidential Classification Period

FPL requests that this material be held as confidential for at least 18 months and that this material should be returned to FPL once the information is no longer needed for the Commission to conduct its business.

According to the provisions of 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 period of confidential classification be set as 18 months. As deemed necessary, the utility may request an extension of the confidential classification before the period tolls.

Staff Recommendation

Based upon reading the filing, 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 18 months.

A detailed recommendation, as found, follows:

Detailed Recommendation, as Found

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information
Documents 09414-07 and 09763-07					
1	Audit Report, Disclosure 1, Operation and Maintenance Costs	1	10-12,20-21	Grant	Sensitive Competitive Business Information
Documents 09415-07 and 09763-07					
1-1	Audit Report Annotated, Disclosure 1, Operation and Maintenance Costs	1	10-12,20-21	Grant	Sensitive Competitive Business Information
10	Requests	11	8-9	Grant	Sensitive Contractual Information
10	Requests	12	8-9	Grant	Sensitive Contractual Information
10	Requests	27	8	Grant	Sensitive Competitive Business Information
45	Summary of Transactions	1	6-7,12-15	Grant	Sensitive Contractual Information
45-1	Deal #215699	1	2-10	Grant	Sensitive Contractual and Competitive Business Information
45-1	Deal #215699	2-5	All	Grant	Sensitive Contractual and Competitive Business Information
45-1/1	Power Deal Ticket	1	1-7,12-13,21,24,26-27,31	Grant	Sensitive Contractual Information
45-1/1	Power Deal Ticket	2	2-4	Grant	Sensitive Contractual Information
45-1/2	Reconciliation of Energy Purchases	1	Cols. B-D	Grant	Sensitive Competitive Business Information
45-1/3	Scherer Cost	1	4,6-8,12-14	Grant	Sensitive Contractual Information
45-1/3	Scherer Cost	2	Cols. A-B	Grant	Sensitive Contractual Information
45-1/3	Scherer Cost	3	All	Grant	Sensitive Contractual Information
45-1/3-1	Scherer Cost	2	20	Grant	Sensitive Competitive Business Information
45-1/3-1/1	Scherer Cost	1	All	Grant	Sensitive Competitive Business Information
45-1/4	Fuel Cost	1	6-15,17-19	Grant	Sensitive Contractual and Competitive Business Information
46-1	Fuel Cost	1	All	Grant	Sensitive Competitive Business Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information
Documents 09415-07 and 09763-07					
46-1/1	Fuel Price Data	1-2	1-3,6,8-10,12-14	Grant	Sensitive Competitive Business Information
46-1/2	Oil Pricing	1	Cols. A-L; 1-9	Grant	Sensitive Competitive Business Information
46-1/2	Oil Pricing	2	2a-11,13-15	Grant	Sensitive Competitive Business Information
46-1/2-2	SO2 Allowance	1	Cols. A-L; 1-11	Grant	Sensitive Competitive Business Information
46-1/3	Gas Prices	1	1-2,5,7-9,11-13	Grant	Sensitive Competitive Business Information
46-1/3	Gas Prices	2	Cols. A-E	Grant	Sensitive Competitive Business Information
46-2	Peak Sale	1-2	All	Grant	Sensitive Competitive Business Information
46-3	O&M Charge	1-2	All	Grant	Sensitive Competitive Business Information
46-3/1	O&M Charge	1	6,18-20,22-23,26	Grant	Sensitive Competitive Business Information
46-3/2	O&M Charge	1	All	Grant	Sensitive Competitive Business Information
46-3/3	O&M Charge	1-9	All	Grant	Sensitive Competitive Business Information
46-3/3-1	O&M Charge	1	10-11	Grant	Sensitive Competitive Business Information
46-3/3-2	O&M Charge	1-2	All	Grant	Sensitive Competitive Business Information
46-3/3-2/1	O&M Charge	1	18-31	Grant	Sensitive Competitive Business Information
46-3/3-2/1	O&M Charge	2	3-15	Grant	Sensitive Competitive Business Information
46-3/3-2/1-1	O&M Charge	1	All	Grant	Sensitive Competitive Business Information
46-3/3-2/3	O&M Charge	1	All	Grant	Sensitive Competitive Business Information
46-3/3-4	O&M Charge	1	All	Grant	Sensitive Competitive Business Information
48	Summary and Lambda Report	1	5	Grant	Sensitive Contractual Information
48	Summary and Lambda Report	2-7	Cols. C,F,H-N	Grant	Sensitive Contractual Information
48-1	Economy A Trans	1	Cols. A-F	Grant	Sensitive Contractual Information
48-1	Economy A Trans	2	Cols. B-E,I	Grant	Sensitive Contractual Information
48-1	Economy A Trans	3	Cols. B-E	Grant	Sensitive Contractual Information
48-1/1	Deal Forms	1-3	1-7	Grant	Sensitive Contractual Information
48-1/1	Deal Forms	4	1-9	Grant	Sensitive Contractual Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information
Documents 09415-07 and 09763-07					
48-1/1	Deal Forms	5	1-10	Grant	Sensitive Contractual Information
48-1/1	Deal Forms	6-9	1-8	Grant	Sensitive Contractual Information
48-1/2	Deal Entry	1	Cols. A-J	Grant	Sensitive Contractual Information
48-1/2	Deal Entry	2	1-7,21,24-28	Grant	Sensitive Contractual Information
48-2	Economy A Trans	1	1-9	Grant	Sensitive Contractual Information
48-2	Economy A Trans	2	1-10	Grant	Sensitive Contractual Information
48-2/1	Single Hour Deal Form	1	1-7	Grant	Sensitive Contractual Information
48-2/2	Economy A Trans	1	4,7-8,11-13,16-17, 20-22	Grant	Sensitive Contractual Information
48-2/2-2	Economy A Trans	1	2-4,6-8,14-28	Grant	Sensitive Contractual Information
48-2/2-2/1	Economy A Trans	1	1-27,31-32,35,37-39, 41-43,47-48,50	Grant	Sensitive Competitive Business Information
48-2/2-2/2	Economy A Trans	1	Cols. D,G,H; 58	Grant	Sensitive Contractual Information
48-2/2-2/2	Economy A Trans	2	7,9	Grant	Sensitive Contractual Information
48-2/2-3	Economy A Trans	1	5; Col. A	Grant	Sensitive Contractual Information
48-2/2-3	Economy A Trans	3	Col. A	Grant	Sensitive Contractual Information
48-2/2-3	Economy A Trans	4	4,7,15-16	Grant	Sensitive Contractual Information
48-2/2-3	Economy A Trans	5	3-4; Cols. A,C,E,G	Grant	Sensitive Contractual Information
48-2/2-3	Economy A Trans	6	Cols. A,C	Grant	Sensitive Contractual Information
48-4	Power Deal Ticket	1	1-7,21,24,26-28,31	Grant	Sensitive Contractual Information

A temporary copy of this recommendation will be held at I:09763-07 fpl economy sales raf.doc for a short period.

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