

State of Florida



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

DATE: April 15, 2008

TO: Lisa Bennett, Attorney, General Counsel's Office

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

RE: Docket 080001-EI, Recommendation concerning Florida Power & Light Company's (FPL) request for a 2nd extension of 18 months of confidential classification concerning response to staff audit report entitled "FPL Fuel Cost Recovery Clause Audit for the Year Ended December 31, 2003", Audit Control No. 04-023-4-1, Documents Numbered 04848-04 and 01888-06

On April 5, 2004, Bureau of Auditing Chief Denise Vandiver sent a staff audit report titled "Florida Power and Light Company Fuel Cost Recovery Clause Audit for the Year Ended December 31, 2003" to Florida Power and Light Company.

On April 26, 2004, FPL filed a response to this audit (Document No. 04848-04) along with a Notice of Intent to Seek Confidential Classification for its audit response. This material has been held by the Commission in a confidential status since that time.

Filed on May 17, 2004, and amended on August 9, 2004, FPL requested a confidential classification for portions of its audit response. FPL's request included redacted copies of the response for public use (Document No. 05636-04, Exhibit B) and copies of its response with the sensitive portions highlighted (Document No. 05637-04). Document 05637-04 has since been returned to FPL as described further below.

CMP _____ On September 3, 2004, Commission Order No. PSC-04-0866-CFO-EI granted FPL's request, as amended, for confidential classification for 18 months. That confidential classification period has now tolled.

ECR _____ On March 3, 2006, FPL requested that the confidential classification period granted by Order PSC-04-0866-CFO-EI be extended for an additional 18 month period. FPL's request included redacted copies of FPL's audit response for public use (Document No. 01889-06) and copies of the audit response with the sensitive portions highlighted (Document No. 01888-06).

RCA _____

SCR _____

SGA _____

SEC _____

OTH *Marguents*

DOCUMENT NUMBER-DATE

03021 APR 17 08

April 15, 2008
Florida Power & Light Request

As part of the request for the first extension of confidential classification, the utility requested that Commission Documents Nos. 05636-04, Exhibit B, and 05367-04 be returned to FPL as these documents are superseded by Commission Documents Nos. 01889-06 and 01888-06, respectively. Document No. 05636-04, Exhibit B, is a public record in the Commission's files in explanation of FPL's 2004 request and may not be returned.

Confidential Document No. 05637-04 was returned to FPL on April 8, 2008. Confidential Document No. 05637-04 was fully superseded by confidential Document No. 01886-06.

On July 28, 2006, Commission Order No. PSC-06-0639-CFO-EI granted a first extension of confidential classification for an additional 18 month period to Documents numbered 04848-04 and 01888-06. That period has now tolled.

On February 6, 2007, Commission Order No. PSC-07-0103-CFO-EI provided a protective order for Document No. 01888-06 when copies of this material was requested by, and provided to, the Office of Public Counsel. This protective order pertains to the material held by the Office of Public Counsel and does not otherwise pertain to the matter at hand.

On January 28, 2008, FPL requested that the material be granted a second 18 month extension of confidential classification. FPL's request recognizes and refers to redacted copies (Document No. 01889-06) and copies with the sensitive portions highlighted (Document No. 01888-06).

Documents Nos. 04848-04 and 01888-06 are held by the Commission's Division of the Commission Clerk and Administrative Services as confidential pending resolution of FPL's request for a second 18 second 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. Subsection 366.093(3)(d), F.S., provides the following exemption.

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...."

April 15, 2008
Florida Power & Light Request

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 information related to FPL's overall procurement practices and strategies including vendor-specific and detailed procurement information.

Subsection 366.093(d), F.S., provides that sensitive contractual or bid information, release of which would harm the ability of a utility or its affiliates to contract for goods and services, may be granted a confidential classification.

According to FPL witness Gerald J. Yupp, Director of Wholesale Operations in the Energy Marketing and Trading Division, release of this sensitive vendor pricing information and materials concerning certain hedging-related expenses would impair FPL's competitive business interests. Mr. Yupp also states release of the information would impair the ability of FPL to contract on favorable terms in the future. Further, Mr. Yupp indicates the information is not stale and that continued confidential treatment is appropriate and a second extension of classification is needed.

Specifically, Mr. Yupp indicates this material is contained within the response to staff auditing disclosures concerning: "GenTrader License Fees" and "GenTrader License Fees in Incremental Hedging."

After reading this material, we agree it is reasonable to expect that release of this information would impair the ability of FPL or its affiliates to contract favorably for goods and services in the future. Therefore, we recommend the material identified by Mr. Yupp be granted a second 18 month extension confidential classification on the basis that this information meets the exemption requirements set out by Subsection 366.093(3)(d), Florida Statutes.

The utility includes information in its request for a second extension of the classification period through the use of references to other documents filed by FPL and held by the Commission. The information referenced by FPL is listed and described in the table below:

| Materials referenced by FPL | | | | |
|-----------------------------|-------------|----------------------------------|--|---|
| Date filed by FPL | Description | Commission Document No. | Type of Document | Comment |
| March 3, 2006 | Exhibit A | Confidential Document 01886-06 | Confidential highlighted copies | Filed with Request for First Extension of Classification |
| March 3, 2006 | Exhibit B | Document No. 01889-06 | Redacted public copies | Filed with Request for First Extension of Classification |
| March 3, 2006 | Exhibit C | Document No. 01887-06, Exhibit C | Listing of confidential material, by page and line | Filed with Request for First Extension of Classification |
| March 3, 2006 | Exhibit D | Document No. 01887-06, Exhibit D | March 3, 2006 Affidavit of Gerard Yupp | Filed with Request for First Extension of Classification |
| January 25, 2008 | Exhibit D | Document No. 00688-08 | January 23, 2008 Affidavit of Gerard Yupp | Filed with Request for Second Extension of Classification |

Duration of the Confidential Classification Period

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 2nd extension of confidential classification be set as 18 months.

FPL also requests that this sensitive material be returned to the utility once the information is no longer needed for the Commission to conduct its business. However, the Commission retains audit materials pertaining to rate-regulated utilities, so the option of returning this audit material in the near term is not possible. As deemed necessary, the utility may request and fully justify a further extension of the confidential classification before the period tolls.

April 15, 2008
 Florida Power & Light Request

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 2nd extension of confidential classification for 18 months.

A detailed recommendation follows:

Detailed Recommendation

| FPL Response to the Staff Audit, Page Number | Description | Line(s) | Recommend a second 18 month Extension | Type of Information Classified Confidential |
|--|---|----------|---------------------------------------|---|
| Documents 04848-04 and 01888-06 | | | | |
| 4 | FPL Audit response concerning GenTrader License Fees | 25,28-29 | Grant | Sensitive contractual information |
| 5 | FPL Audit response concerning GenTrader License Fees | 3 | Grant | Sensitive contractual information |
| 6 | FPL Audit response concerning GenTrader License Fees in Incremental Hedging | 3,5-6,12 | Grant | Sensitive contractual information |

A temporary copy of this recommendation will be held at I:01888-06 ext2 fplraf.doc for a short period.

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