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Public Service Commission

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COMMISSION
CLERK

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

DATE: October 17, 2008

TO: Katherine Fleming, Attorney, Office of General Counsel

FROM: Division of Regulatory Compliance (Freeman, Vandiver)

RE: Docket 080002-EG, Recommendation concerning Florida Power & Light Company's (FPL's) request for confidential classification concerning a portion of the staff audit working papers prepared during the "Florida Power & Light Conservation Cost Recovery Clause Audit for the Year Ended December 31, 2007", Audit Control No. 08-037-4-2, Documents Numbered 06439-08 and 07155-08

On July 22, 2008, when copies of certain portions of staff's audit working papers obtained or prepared during the "Florida Power & Light Conservation Cost Recovery Clause Audit for the Year Ended December 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 July 24, 2008, staff filed document numbered 06439-08 consisting of those specified portions of the staff's audit report and working papers.

On August 12, 2008, 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. 07156-08) and copies with the sensitive material highlighted (Document 07155-08).

Documents numbered 06439-08 and 07155-08 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)(b) and (e), F.S., provide the following exemptions.

- COM _____
- ECR _____
- GCL _____
- OPC _____
- RCP _____
- SSC _____
- SGA _____
- ADM _____
- CLK McLean

DOCUMENT NUMBER-DATE

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Subsection 366.093(3), 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:*

....

(b) Internal auditing controls and reports of internal auditors.

....

(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. Internal Auditing Controls and the Reports of Internal Auditors

By way of an affidavit, Robert Onsgard, FPL Manager, Internal Auditing, identifies internal audit information reported within staff audit working papers titled “Internal Audit List” and “Internal Audit Notes.” According to the requirements set out by Section 366.093(3)(b), F.S., internal audit information may be granted a confidential classification. Reading the information identified by Mr. Onsgard, we agree this is information pertaining to internal auditing controls and reports of internal auditors. Therefore, we recommend that this information be granted a confidential classification.

Staff Analysis of the Request (continued)

2. Customer-Specific Account Information

By way of an affidavit, Terry J. Keith, FPL Director of Cost Recovery Clauses in the Regulatory Affairs Department, identifies customer-specific account information within staff working papers titled: "Revenue Testing."

Mr. Keith reports "...It is FPL's corporate policy not to disclose customer-specific information. This policy includes, but is not limited to: customer names, addresses, telephone numbers, account numbers, rates, billing determinates, (kW and kWh usage), conservation savings in kW, kWh and bills. FPL treats such information as confidential and does not disclose it, except as required by law, to entities or persons other than the customer absent the customer's consent...."

The Commission policy concerning customer-specific account information has been to grant confidentiality pursuant to the exemption described within Section 366.093(3)(e), F.S., on the basis that release of this information would harm the competitive business of the provider of the information. Reading the material identified by Mr. Keith, we agree that release of this sensitive business information would cause harm to the provider of the information.

3. Contractual Information such as Pricing and Other Terms

By way of an affidavit, C. Dennis Brandt, FPL Director Product Management and Operations, identifies sensitive competitive business information within staff working papers titled: "Invoice", "Study", "Purchase Order", "Sample Items", and "JE [Journal Entry] Explanation."

Mr. Brandt explains the disclosure of this information would impair the efforts of FPL to contract for goods and services on favorable terms in the future to the detriment of FPL and its customers. Also, Mr. Brandt explains: " Certain documents contain or constitute competitively sensitive data, the disclosure of which could impair the competitive business of the provider of the information."

Subsection 366.093(3)(e), F.S., provides that the Commission may grant a confidential classification to sensitive business information if release of that information would harm the competitive business of the provider of that information. We have read the information identified by Mr. Brandt and agree its release could be expected to harm the competitive business of the provider of the information. Therefore, we recommend that this information be granted a confidential classification.

Review of the information identified by Mr. Brandt also revealed the information contained bank account number information which belongs to FPL. Such bank account information is *per se* confidential in the possession of a State of Florida agency pursuant to Subsection 119.071(5)(b), Florida Statutes. Because this extremely sensitive information is not explicitly necessary to support the findings and conclusions for staff's 2007 conservation audit, this bank account information contained in staff's audit working papers (Document No. 06439-08) was returned to the utility.

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 managers Onsgard, Keith and Brandt 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 06439-08 and 07155-08					
9	Internal Audit List	1	Col. B	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-1	Internal Audit Notes	1-5	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
41-2/2	Revenue Testing	1	Col I	Grant	Sensitive Competitive Business Information
41-2/3	Revenue Testing	1-5	Col. I	Grant	Sensitive Competitive Business Information
41-2/4	Revenue Testing	1	Col. I	Grant	Sensitive Competitive Business Information
41-2/5	Revenue Testing	1-3	Col. I	Grant	Sensitive Competitive Business Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information
Documents 06439-08 and 07155-08					
43-1/1-1/1	Invoice	1	2-5,7 <i>Note: Bank account information from document 06439-08, line 7, was returned to the utility.</i>	Grant	Sensitive Competitive Business Information
43-1/1-1/1	Invoice	2	4,7,14-16,25-29	Grant	Sensitive Competitive Business Information
43-1/1-1/1	Invoice	4-8,10-15	3	Grant	Sensitive Competitive Business Information
43-1/1-1/2	Invoice	1	2-5,7 <i>Note: Bank account information from document 06439-08, line 7, was returned to the utility.</i>	Grant	Sensitive Competitive Business Information
43-1/1-1/2	Invoice	2	3,6,14-16,25-28, 35-39	Grant	Sensitive Competitive Business Information
43-1/1-1/2	Invoice	4-5	3	Grant	Sensitive Competitive Business Information
43-1/1-1/2	Invoice	6	2-5,7 <i>Note: Bank account information from document 06439-08, line 7, was returned to the utility.</i>	Grant	Sensitive Competitive Business Information
43-1/1-1/2	Invoice	7	2,8,11,18-20,25, 27-30	Grant	Sensitive Competitive Business Information
43-1/1-1/2	Invoice	9-10	3	Grant	Sensitive Competitive Business Information
43-1/1-1/2	Invoice	11	2-5,7 <i>Note: Bank account information from document 06439-08, line 7, was returned to the utility.</i>	Grant	Sensitive Competitive Business Information
43-1/1-1/2	Invoice	12	4,8,16-18,23,25-29	Grant	Sensitive Competitive Business Information
43-1/1-1/2	Invoice	14-18, 20-25	3	Grant	Sensitive Competitive Business Information
43-1/1-7/1	Study	3-7,9-33, 35-62	All	Grant	Sensitive Competitive Business Information
43-1/1-7/2	Purchase Order	1	5-7,17-18	Grant	Sensitive Competitive Business Information
43-1/1-7/2	Purchase Order	2-13, 16-17	All	Grant	Sensitive Competitive Business Information
43-1/1-7/2	Purchase Order	18	3-5	Grant	Sensitive Competitive Business Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information
Documents 06439-08 and 07155-08					
43-1/1-7/2	Purchase Order	19	2,8,13,32	Grant	Sensitive Competitive Business Information
43-1/1-7/2	Purchase Order	20-22	2	Grant	Sensitive Competitive Business Information
43-1/1-7/2	Purchase Order	23-34	All	Grant	Sensitive Competitive Business Information
43-1/1-8/1	Purchase Order	1	7-9	Grant	Sensitive Competitive Business Information
43-1/1-8/1	Purchase Order	2	8,12-13,30	Grant	Sensitive Competitive Business Information
43-1/1-8/1	Purchase Order	3-5	2	Grant	Sensitive Competitive Business Information
43-1/1-8/1	Purchase Order	6-12	All	Grant	Sensitive Competitive Business Information
43-1/1-8/1	Purchase Order	13	9,18	Grant	Sensitive Competitive Business Information
43-1/1-8/1	Purchase Order	14	3	Grant	Sensitive Competitive Business Information
43-1/1-9/1	Purchase Order	1	3-5	Grant	Sensitive Competitive Business Information
43-1/1-9/1	Purchase Order	2	2,7,9,12,14	Grant	Sensitive Competitive Business Information
43-1/1-9/1	Purchase Order	3-5	2	Grant	Sensitive Competitive Business Information
43-1/1-9/1	Purchase Order	6-43	All	Grant	Sensitive Competitive Business Information
43-1/2-1	Sample Items	1	3,8-9,12-13,18-19a, 24-25,29-30,35-36	Grant	Sensitive Competitive Business Information
43-1/2-1	Sample Items	2	8-9	Grant	Sensitive Competitive Business Information
43-1/2-2	Sample Items	1	3-5	Grant	Sensitive Competitive Business Information
43-1/2-2	Sample Items	2	2	Grant	Sensitive Competitive Business Information
43-1/2-2	Sample Items	3-5	All	Grant	Sensitive Competitive Business Information
43-1/5-1/1	JE Explanation	1	1-4	Grant	Sensitive Competitive Business Information

A temporary copy of this recommendation will be held at I:06439-08 FPL 2007 conservation raf.doc for a short period.

CC: Division of Regulatory Compliance (Welch)
Office of the Commission Clerk (McLean, Cole)