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CLERK

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

DATE: November 13, 2008

TO: Katherine Fleming, Attorney, Office of General Counsel

FROM: Division of Regulatory Compliance (Freeman, Vandiver)

RE: Docket 070626-EI, Recommendation concerning Florida Power & Light Company's (FPL's) request for confidential classification concerning a portion of the staff audit report and working papers prepared during "Florida Power & Light Sunshine Energy Program Audit for the Year Ended December 31, 2007", Audit Control No. 08-086-4-1, Documents Numbered 04610-08, 04611-08, 04612-08, 04613-08, 05263-08, 05621-08 (Exhibit A, Part 4 of 4) and 05633-08 (Exhibit A, Part 3 of 3)

On May 29, 2008, when copies of certain portions of staff's audit report and working papers obtained or prepared during the "Florida Power & Light Sunshine Energy Program 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 May 30, 2008, staff filed documents numbered 04610-08, 04611-08, 04612-08 and 04613-08, consisting of those specified portions of the staff's audit report and working papers.

On June 19, 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. 05264-08) and copies with the sensitive material highlighted (Document No. 05263-08).

On June 27, 2008, after discussions with the staff, FPL amended its request for confidential classification. The amendment included additional redacted copies for public inspection (Document No. 05622-08, Exhibit B, June 19, 2008 Request) and copies with the sensitive information highlighted (Document No. 05621-08, Exhibit A, Part 4 of 4).

On June 30, 2008, FPL amended its request a second time including additional redacted copies for public inspection (Document No. 05634-08, Exhibit B, June 19, 2008 Request) and copies with the sensitive information highlighted (Document No. 05633-08, Exhibit A, Part 3 of 3).

On October 23, 2008, after further discussions with the staff, FPL made a third amendment to its request which did not require filing of additional redacted or highlighted copies of sensitive information. This recommendation discusses FPL's fully amended request.

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

DOCUMENT NUMBER-DATE

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Documents numbered 04610-08, 04611-08, 04612-08, 04613-08, 05263-08, 05621-08 (Exhibit A, Part 4 of 4) and 05633-08 (Exhibit A, Part 3 of 3) 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.

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:*

(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 Utility Request

Reading the filing reveals the sensitive material consists of:

- 1) Contractual obligations, terms and other information which is competitively sensitive to Green Mountain Energy Company (GMEC)

By way of an affidavit, Mr. Paul Markovich, Senior Vice President of the Green Mountain Energy Company, identifies sensitive competitive business information reported within the staff audit report and working papers titled: "Audit Report – Finding No. 3, Project Costs", "Annotated Audit Report – Finding No. 3, Project Costs", "Interrogatories", "Support for Payments", "GMEC Program Costs", "Rothenbach Park Agreement", "Assignment of Contract", "Green Tag Costs", "Summary of Contract", "GMEC Contract", "Summary Attestation", "GMEC Annual Review 2007", "Nov. Campaign Results", "Direct Wave 9", "Direct Wave 10", "Wave 11", "Wave 13", "Impact Data", "Tail Tally", "Purchases 2004-2008", and "Attribute Contract."

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 impair the competitive business of the provider of that information. Reading the information identified by Mr. Markovich reveals that the information is sensitive competitive business information release of which could harm the competitive business of the Green Mountain Energy Company.

- 2) Contractual vendor data such as pricing and other terms which are sensitive contractual information as well as sensitive competitive business information.

By way of an affidavit, Mr. C. Dennis Brandt, FPL Director Product Management and Operations, identifies sensitive contractual and sensitive competitive business information disclosed in the working papers titled: "Interrogatories", "Summary of Contract", "GMEC Contract", "Sterling Planet Contract", and "Summary Attestation."

Section 366.093(3)(d), F.S., provides that contractual and bid information may be granted a confidential classification if its release would impair the ability of the public utility or its affiliates to favorably contract for goods and services. Section 366.093(3)(e), F.S., provides material may be granted a confidential classification if the material is competitively sensitive such that its release would harm the competitive business of the provider of the information. We have read the sensitive information and find that its release would reasonably cause the contractual and competitive business harm as the utility suggests. Therefore, we recommend that the information identified by Mr. Brandt be granted a confidential classification.

Staff Analysis of the Utility Request (Continued)

- 3) Contractual vendor data such as pricing and other terms.

Also, Mr. Brandt identifies sensitive contractual information disclosed in working papers titled: “Science Museum”, “Summary Sample”, “Sample”, “Summary Vendor Selection”, “Business SP”, “Bids GM”, “Summary Contracts” and “Contract List.”

Section 366.093(3)(d), F.S., provides that the Commission may grant a confidential classification to contractual information if its release would impair the ability of the public utility or its affiliates to contract for goods and services. We have read the sensitive contractual information and find that its release would reasonably impair the ability of the utility and its affiliates to contract favorable for goods and services. Therefore, we recommend that the sensitive contractual information identified by Mr. Brandt be granted a confidential classification.

- 4) Contractual data such as pricing and other terms which are competitively sensitive information pertaining to the FPL vendor Sterling Planet Inc.

Ron Mitchell, Executive Vice President for Sterling Planet, Inc., identifies sensitive competitive business information reported within staff working papers titled: “Sterling Planet Contract”, “Changes SP Contract”, “Sterling Planet Bid”, and “Sterling Planet Commercial Bid.”

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 impair the competitive business of the provider of that information. Reading the information identified by Mr. Mitchell reveals that the information is sensitive competitive business information release of which could harm the competitive business of the vendor Sterling Planet, Inc.

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, FPL’s employees and FPL vendor “Sterling Planet, Inc.” assert that this sensitive information meets the statutory restrictions necessary for the material to be provided a confidential classification and assert that the information has not been disclosed to the Public.

FPL vendor “Green Mountain Energy Company” 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.

Duration of the Confidential Classification Period

FPL, FPL's employees and FPL vendor "Sterling Planet, Inc." assert that this material be held as confidential for at least 18 months and assert that this material should be returned to FPL once the information is no longer needed for the Commission to conduct its business.

FPL vendor "Green Mountain Energy Company" asserts that certain material be held as confidential for at least 18 months and asserts that this material should be returned to the Green Mountain Energy Company once the information is no longer needed for the Commission to conduct its business. The request that materials filed by FPL be returned to Green Mountain Energy Company is unusual in that FPL, a Public Utility, has filed the information and a third party requests by affidavit the return of a commingled portion of the sensitive materials.

Pursuant to Section 366.093(4), F.S., and Rule 25-22.006(9)(b), FAC, the Commission returns sensitive materials to the source when the materials are no longer needed to conduct Commission business. Here the source of the sensitive information is FPL, and the utility has not provided explicit instructions to return materials to the Green Mountain Energy Company; therefore staff recommends that if and when this sensitive information is no longer needed to conduct Commission business, then the sensitive material should be returned to FPL. The Green Mountain Energy Company may contact FPL directly concerning this matter and make those arrangements with FPL necessary to satisfy its concerns.

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, an extension of the confidential classification may be requested before the period tolls.

Staff Recommendation

Based upon reading the filing, and for the reasons presented above, we recommend the request be granted and that the identified material be granted a confidential classification for 18 months.

Document numbers 04610-08 through 04613-08 present the sensitive original copies of staff's audit report and working papers. Document Number 05263-08 presents sensitive highlighted copies of staff's materials in support of FPL's request for confidential classification. Document numbers 05621-08 (Exhibit A, Part 4 of 4) and 05633-08 (Exhibit A, Part 3 of 3) present revised copies of staff material included with FPL's modifications to its request for confidential classification. Lastly, Document No. 10077-08 presents FPL's fully amended justifications and a fully amended listing of information for which a confidential classification is requested.

Documents numbered 04610-08, 04611-08, 04612-08, 04613-08, 05263-08, 05621-08 (Exhibit A, Part 4 of 4) and 05633-08 (Exhibit A, Part 3 of 3) are all held by the Clerk in a confidential classification pending resolution of FPL's request concerning the audit materials.

A detailed recommendation, as fully amended, follows:

Detailed Recommendation, as fully amended

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information
04613-08 and 05263-08					
Report	Report	8	28,30,32,37-38	Grant	Sensitive Competitive Business Information
Report	Report	9	1-2,13-18	Grant	Sensitive Competitive Business Information
04610-08 and 05263-08					
1	Annotated Report	8	28,30,32,37-38	Grant	Sensitive Competitive Business Information
1	Annotated Report	9	1-2,13-18	Grant	Sensitive Competitive Business Information
5-7	Interrogatories	1	3,5,11-19	Grant	Sensitive Contractual and Competitive Business Information
5-7	Interrogatories	2	7,chart	Grant	Sensitive Contractual and Competitive Business Information
Documents Numbered 04610-08, 05263-08, 05621-08 (Exhibit A, Part 4 of 4) and 05633-08 (Exhibit A, Part 3 of 3)					
5-7	Interrogatories	10	10	Grant	Sensitive Contractual and Competitive Business Information
Documents Numbered 04610-08 and 05263-08					
5-7	Interrogatories	12-26	All	Grant	Sensitive Contractual and Competitive Business Information
43-1	Support for Payments	2	Cols. A-D	Grant	Sensitive Competitive Business Information
Documents Numbered 04610-08, 05263-08 and 05621-08 (Exhibit A, Part 4 of 4)					
43-1/1-1	GMEC Program Costs	1	21,34,38	Grant	Sensitive Competitive Business Information
Documents Numbered 04610-08 and 05263-08					
43-1/1-1/1	Science Museum	1	5-9	Grant	Sensitive Contractual Information
43-1/1-1/2	Science Museum	1-2	Cols. A-C	Grant	Sensitive Contractual Information
43-1/1-1/2	Science Museum	3-5	All	Grant	Sensitive Contractual Information
43-1/1-1/3	Rothenbach Park Agreement	1-42	All	Grant	Sensitive Competitive Business Information
43-1/1-1/3-1	Assignment of Contract	1-7	All	Grant	Sensitive Competitive Business Information
Documents Numbered 04610-08, 05263-08 and 05621-08 (Exhibit A, Part 4 of 4)					
43-1/1-2	Green Tag Costs	2	12-13	Grant	Sensitive Competitive Business Information
Documents Numbered 04610-08 and 05263-08					
43-1/1-2	Green Tag Costs	3-4	All	Grant	Sensitive Competitive Business Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information
Documents Numbered 04611-08, 05263-08 and 05621-08 (Exhibit A, Part 4 of 4)					
44, Page 2	Summary of Contract	1	1,14-15	Grant	Sensitive Contractual and Competitive Business Information
44-1	GMEC Contract	11	36	Grant	Sensitive Contractual and Competitive Business Information
44-1	GMEC Contract	16	21	Grant	Sensitive Contractual and Competitive Business Information
44-1	GMEC Contract	21	25-27	Grant	Sensitive Contractual and Competitive Business Information
44-1	GMEC Contract	22	7-10,39-42	Grant	Sensitive Contractual and Competitive Business Information
44-1	GMEC Contract	23	1	Grant	Sensitive Contractual and Competitive Business Information
Documents Numbered 04611-08 and 05263-08					
44-2	Sterling Planet Contract	1-14	All	Grant	Sensitive Contractual and Competitive Business Information
45	Summary Attestation	2-3	Cols. A,C-D,F	Grant	Sensitive Contractual and Competitive Business Information
45-1	Attestation Statement	2-205	All	Grant	Sensitive Competitive Business Information
47-1	GMEC Annual Review 2007	1-3	All	Grant	Sensitive Competitive Business Information
47-1	GMEC Annual Review 2007	4	3-5	Grant	Sensitive Competitive Business Information
47-1	GMEC Annual Review 2007	5	Chart	Grant	Sensitive Competitive Business Information
47-1	GMEC Annual Review 2007	6	4-5,7-10,12-14	Grant	Sensitive Competitive Business Information
47-1	GMEC Annual Review 2007	7	4-12	Grant	Sensitive Competitive Business Information
47-1	GMEC Annual Review 2007	8	4-13	Grant	Sensitive Competitive Business Information
47-1	GMEC Annual Review 2007	9	2-5,7-13	Grant	Sensitive Competitive Business Information
47-1	GMEC Annual Review 2007	10	3-16	Grant	Sensitive Competitive Business Information
47-1	GMEC Annual Review 2007	11	2-4; Chart	Grant	Sensitive Competitive Business Information
47-1	GMEC Annual Review 2007	14	5-11	Grant	Sensitive Competitive Business Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information
Documents Numbered 04611-08 and 05263-08					
47-1	GMEC Annual Review 2007	16	Chart	Grant	Sensitive Competitive Business Information
47-1	GMEC Annual Review 2007	17	Chart	Grant	Sensitive Competitive Business Information
47-1	GMEC Annual Review 2007	20	3-11	Grant	Sensitive Competitive Business Information
47-1	GMEC Annual Review 2007	23	4-5,7-12	Grant	Sensitive Competitive Business Information
47-1	GMEC Annual Review 2007	24	3,5-11	Grant	Sensitive Competitive Business Information
47-1	GMEC Annual Review 2007	25	3,5-9	Grant	Sensitive Competitive Business Information
47-1	GMEC Annual Review 2007	26	3,5-11	Grant	Sensitive Competitive Business Information
47-1	GMEC Annual Review 2007	27	3-5	Grant	Sensitive Competitive Business Information
47-1	GMEC Annual Review 2007	30	2-7	Grant	Sensitive Competitive Business Information
47-1	GMEC Annual Review 2007	31	2,7-8,11-12	Grant	Sensitive Competitive Business Information
47-1	GMEC Annual Review 2007	33	All	Grant	Sensitive Competitive Business Information
47-2	Nov. Campaign Results	1	4	Grant	Sensitive Competitive Business Information
47-2	Nov. Campaign Results	2-14	All	Grant	Sensitive Competitive Business Information
47-3	Direct Wave 9	1	3-4	Grant	Sensitive Competitive Business Information
47-3	Direct Wave 9	2-13	All	Grant	Sensitive Competitive Business Information
47-4	Direct Wave 10	1-2	3-5	Grant	Sensitive Competitive Business Information
47-4	Direct Wave 10	3-13	All	Grant	Sensitive Competitive Business Information
47-5	Wave 11	1-2	All	Grant	Sensitive Competitive Business Information
47-6	Wave 13	1-2	All	Grant	Sensitive Competitive Business Information
47-7	Impact Data	2	Cols. A-H	Grant	Sensitive Competitive Business Information
47-8	Tail Tally	1	A-J	Grant	Sensitive Competitive Business Information
47-9	Changes SP Contract	1-2	All	Grant	Sensitive Competitive Business Information
47-10	Purchases 2004-2008	1	Cols. A-C	Grant	Sensitive Competitive Business Information
47-10	Purchases 2004-2008	2	Cols. A-B,D-H	Grant	Sensitive Competitive Business Information
47-10	Purchases 2004-2008	3	Cols. A-G	Grant	Sensitive Competitive Business Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information
Documents Numbered 04612-08 and 05263-08					
48A	Summary Sample	1	9	Grant	Sensitive Contractual Information
48	Sample	1-2	Cols A,E	Grant	Sensitive Contractual Information
49	Summary Vendor Selection	1	All	Grant	Sensitive Contractual Information
49-1/1	Business SP	4	All	Grant	Sensitive Contractual Information
49-1/2	Eval GMEC	5-15	All	Grant	Sensitive Contractual and Competitive Business Information
Documents Numbered 04612-08, 05263-08, and 05621-08 (Exhibit A, Part 4 of 4)					
49-2	Bids GM	1	6	Grant	Sensitive Contractual Information
Documents Numbered 04612-08 and 05263-08					
49-2/3	Sterling Planet Bid	1-5	All	Grant	Sensitive Competitive Business Information
49-2/4	Sterling Planet Commercial Bid	1-96	All	Grant	Sensitive Competitive Business Information
52	Summary Contracts	1	All	Grant	Sensitive Contractual Information
52-1	Contract List	1	All	Grant	Sensitive Contractual Information
52-2	Attribute Contract	1-25	All	Grant	Sensitive Competitive Business Information
52-3	Attribute Contract	1-24	All	Grant	Sensitive Competitive Business Information
52-4	Attribute Contract	1-18	All	Grant	Sensitive Competitive Business Information
52-5	Attribute Contract	1-21	All	Grant	Sensitive Competitive Business Information
52-6	Attribute Contract	1-5	All	Grant	Sensitive Competitive Business Information
52-7	Attribute Contract	1-11	All	Grant	Sensitive Competitive Business Information
52-8	Attribute Contract	1-10	All	Grant	Sensitive Competitive Business Information
52-9	Attribute Contract	1-17	All	Grant	Sensitive Competitive Business Information
52-10	Attribute Contract	1-24	All	Grant	Sensitive Competitive Business Information

A temporary copy of this recommendation will be held at I:05263-08 fpl 2007 sunshine energy program raf.doc for a short period.

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