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State of Florida



Public Service Commission

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COMMISSION
CLERK

DATE: January 21, 2004
TO: Office of General Counsel (Rodan)
FROM: Division of Auditing and Safety (Freeman^F, Vandiver^a)
RE: Docket 040001-EI, Recommendation concerning Florida Power & Light Company's (FPL's) request for extension of confidential classification for a portion of the staff working papers obtained during the preparation of audit report numbered 01-037-4-1, entitled "FPL Capacity Cost Recovery Clause Audit for the year ended December 31, 2000", Documents Numbered 07924-01 and 08307-01

On June 15, 2001, when copies of certain portions of staff's working papers obtained or prepared during the "FPL Capacity Cost Recovery Clause Audit for the Year Ended December 31, 2000", were delivered to FPL at the audit exit conference, the utility requested that these materials be temporary excepted from public access in accordance with the provisions of Rule 25-22.006(3)(a)(2), Florida Administrative Code (FAC).

On June 26, 1002, staff filed document 07924-01 consisting of those specified portions of the staff audit report and working papers.

On July 6, 2001, the utility filed a request pursuant to Rule 25-22.006, FAC, and Section 366.093, Florida Statutes (F.S.), that selected portions of the working papers prepared by staff during the audit receive confidential classification. The utility's request included redacted copies for public inspection (Exhibit B, document 08306-01) and highlighted copies (document 08307-01).

On August 23, 2001, after discussions with the staff, FPL reduced the amount of audit material requested for confidential classification (document 10502-01).

On November 16, 2001, the Commission issued order PSC-01-2256-CFO-EI, granting a confidential classification lasting 18 months to identified portions of documents 07924-01 and 08307-01 in accordance with FPL's request as modified.

On May 15, 2003, FPL requested that the confidential classification granted to certain information be extended for an additional 18 month period.

On September 5, 2003, after discussions with the staff, FPL reduced the amount of material for which an extension of confidential period was requested (document 08350-03).

Documents 07924-01 and 08307-01 are currently held by the Commission's Division of Commission Clerk and Administrative Services as confidential pending resolution of FPL's request for confidential classification, as modified.

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. Subsection 366.093(3)(b)(d) and (e), F.S., provide the following exemptions:

“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....

(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 and services on favorable terms.

(e) Information relating to competitive 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 FPL filing reveals the sensitive materials consist of:

1. Information concerning internal audit reports and internal auditing controls;

Through written testimony filed along with the request, FPL Internal Audit Manager Rick Del Cueto identifies which internal audit material is considered sensitive and requests the confidential classification period for these materials be extended by 18 months. Mr. Del Cueto indicates the confidential material is located within the staff working papers entitled: “Internal Audit List”, “Review of Cogen Payments”, “Vendor Selection Process”, “Access to Payroll Records”, and “QF Summary.”

Staff Analysis of the Request (continued)

2. Business information relating to competitive business interests including some data concerning customer-specific contract prices and other contract-related information;

Through written testimony filed along with the request, FPL Supervisor of Purchased Power Contracts, Osvaldo Lom identifies sensitive vendor-specific information for which an 18 month extension of the confidential classification period is requested. According to Mr. Lom, release of this sensitive information could cause harm to the competitive business of FPL or impair FPL's ability to contract on favorable terms. Specifically Mr. Lom identifies the sensitive staff working papers entitled: "FPL Transfer Payment 12/31/00 Invoice, 4/12/00 Invoice, and 2/15/00 Invoice"; "Excel Worksheet", "Unit Power Sales Agreement Working Papers"; "Unit Power Sales Electric Capacity Billing Adjustment", "Unit Power Sales Transportation True-Up"; "Summary of Previous Month Adjustment"; and "QF Charges Invoice Summary."

3. Business information relating to competitive business interests including some data concerning vendor-specific and customer-specific contract prices and other contract-related information;

Through written testimony filed along with the request, Manager of Regulated Wholesale Power Trading Gerard Yupp for the Energy Marketing and Trading (EMT) Division of FPL, identifies sensitive competitive business information which includes customer-specific or vendor-specific information for which a 18 month extension of the classification period is requested. Mr. Yupp asserts release of this information would harm the competitive interest fo FPL or impair the ability of FPL to contract on favorable terms. Specifically, Mr. Yupp identifies this type of sensitive material as contained with staff working papers entitled: "Confirmation Agreement"; and "Brokered Power Sales."

4. Business information relating to competitive business interests

Mr. Lom identifies a working paper entitled "Billing Summary" as containing information pertaining only to sensitive competitive business interests.

Mr. Yupp identifies two working papers entitled "Revenues from Capacity Sales" and "Invoice" as containing only sensitive competitive business interests.

Mr. Del Cueto, Mr. Lom and Mr. Yupp report FPL maintains the confidentiality of this material.

Duration of the Confidential Classification Period

FPL requests that the material be granted an extension of the confidential classification period for at least 18 months. FPL goes on to request that this material be returned to the utility once this information is no longer needed for the Commission to conduct its business. However we note audit reports and the related working papers for this type of audit are retained on file by the Commission for 25 years.

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 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, regarding the material follows:

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 07924-01 and 08307-01				
9	1	Col C, 1-4	Grant	Internal Auditing Reports and Controls
9	2-3	Col C, 1-51	Grant	Internal Auditing Reports and Controls
9	4	Col C, 1-22	Grant	Internal Auditing Reports and Controls
9-1	1	1-18	Grant	Internal Auditing Reports and Controls
9-1	2	1-21	Grant	Internal Auditing Reports and Controls
9-1	33	1-24	Grant	Internal Auditing Reports and Controls

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 07924-01 and 08307-01				
9-1	4	1-21	Grant	Internal Auditing Reports and Controls
9-1	5-6	1-22	Grant	Internal Auditing Reports and Controls
9-1	7-8	1-21	Grant	Internal Auditing Reports and Controls
9-1	9	1-20	Grant	Internal Auditing Reports and Controls
9-1	10	1-23	Grant	Internal Auditing Reports and Controls
9-1	11	1-21	Grant	Internal Auditing Reports and Controls
9-1	12	1-23	Grant	Internal Auditing Reports and Controls
9-1	13	1-21	Grant	Internal Auditing Reports and Controls
9-1	14	1-11	Grant	Internal Auditing Reports and Controls
9-2	1	1-6	Grant	Internal Auditing Reports and Controls
9-3	1	1-23	Grant	Internal Auditing Reports and Controls
9-3	2	1-22	Grant	Internal Auditing Reports and Controls
9-3	3	1-8	Grant	Internal Auditing Reports and Controls
44-1/1	1	1,14-17; Col G, 5-7,11	Grant	Sensitive Contractual and Competitive Information

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 07924-01 and 08307-01				
44-1/1	2	Col B, 1-12; Col C, 1-13; Col D, 1-23	Grant	Sensitive Contractual and Competitive Information
44-1/2	1	1,13-17; Col G, 5-7,9	Grant	Sensitive Contractual and Competitive Information
44-1/2	2	Col B, 1-12; Col C, 1-13; Col D, 1-23	Grant	Sensitive Contractual and Competitive Information
44-1/3	1	1,13-15; Col G, 5-7,9	Grant	Sensitive Contractual and Competitive Information
44-1/3	2	Col B, 1-12; Col C, 1-13; Col D, 1-23	Grant	Sensitive Contractual and Competitive Information
44-1/3-1/1	1-6	Col A-D, 1-40; Col E-L, 1-2	Grant	Sensitive Contractual and Competitive Information
44-1/3-1/1	7	Col A, 1-2; Col B, 1-5; Col C, 1-2; Col D, 1-5; Col E-L, 1-2	Grant	Sensitive Contractual and Competitive Information

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 07924-01 and 08307-01				
44-1/3-1/1	8-13	Col A-L, 1-40	Grant	Sensitive Contractual and Competitive Information
44-1/3-1/1	14	Col A-L, 1-2; Col B,D,F,H,J,L, 3-5	Grant	Sensitive Contractual and Competitive Information
44-1/3-1/1-1	1	Col A-D, 1-16	Grant	Sensitive Contractual and Competitive Information
44-1/3-1/1-1	2	Col A-D, 1-25	Grant	Sensitive Contractual and Competitive Information
44-1/3-1/1-1	3	Col A-D, 1-22	Grant	Sensitive Contractual and Competitive Information
44-1/3-1/1-1	4	Col A-D, 1-15	Grant	Sensitive Contractual and Competitive Information
44-1/3-1/1-1	5	Col A-E, 1-32	Grant	Sensitive Contractual and Competitive Information
44-1/3-1/1-1	6	Col A-D, 1-14	Grant	Sensitive Contractual and Competitive Information
44-1/3-1/1-1	7-8	Col A, 1-13; Col B, 1-11; Col C, 1-4	Grant	Sensitive Contractual and Competitive Information
44-1/3-1/1-1	9	Col A, 1-16	Grant	Sensitive Contractual and Competitive Information
44-1/3-1/1-1	10	Col A, 1-19	Grant	Sensitive Contractual and Competitive Information
44-1/3-1/1-1	11	Col A, 1-22	Grant	Sensitive Contractual and Competitive Information
44-1/3-1/1-1	12	Col A, 1-15	Grant	Sensitive Contractual and Competitive Information

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 07924-01 and 08307-01				
44-1/3-1/1-1	13	Col A-B, 1-32	Grant	Sensitive Contractual and Competitive Information
44-1/3-1/1-1	14	Col A, 1-14	Grant	Sensitive Contractual and Competitive Information
44-1/3-1/1-1	15	Col A, 1-13; Col B, 1-11; Col C, 1-4	Grant	Sensitive Contractual and Competitive Information
44-1/3-1/1-1	16	Col A, 1-16	Grant	Sensitive Contractual and Competitive Information
44-1/3-1/1-1	17	Col A, 1-19	Grant	Sensitive Contractual and Competitive Information
44-1/3-1/1-1	18	Col A, 1-22	Grant	Sensitive Contractual and Competitive Information
44-1/3-1/1-1	19	Col A, 1-15	Grant	Sensitive Contractual and Competitive Information
44-1/3-1/1-1	20	Col A-B, 1-32	Grant	Sensitive Contractual and Competitive Information
44-1/3-1/1-1	21	Col A, 1-14	Grant	Sensitive Contractual and Competitive Information
44-1/3-1/1-1	22	Col A, 1-13; Col B, 1-11; Col C, 1-4	Grant	Sensitive Contractual and Competitive Information
44-1/4	1	Col A-G, 1-41	Grant	Sensitive Contractual and Competitive Information
44-1/4	2	Col A-G, 1-38	Grant	Sensitive Contractual and Competitive Information

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 07924-01 and 08307-01				
44-1/4-1	1	Col A-C, 1-41; Col D-F, 19-20, 27-29	Grant	Sensitive Contractual and Competitive Information
44-1/4-1	2	Col A-C, 1-39	Grant	Sensitive Contractual and Competitive Information
√ 44-1/4-1	3-4	Col A, 1-17; Col B, 1-16; Col C-D, 1-14	Grant	Sensitive Contractual and Competitive Information
44-1/5	1	Col A, 1-4	Grant	Sensitive Contractual and Competitive Information
44-1/5	2	Col A-C, 1-39	Grant	Sensitive Contractual and Competitive Information
44-1/5	3	Col A-G, 1-39 40-42	Grant	Sensitive Contractual and Competitive Information
44-1/5	4	Col A-G, 1-43	Grant	Sensitive Contractual and Competitive Information
44-1/5	5	Col A, 1-17; Col B, 1-16; Col C-D, 1-14	Grant	Sensitive Contractual and Competitive Information
44-1/5	6	Col A-B, 1-29;	Grant	Sensitive Contractual and Competitive Information
44-1/5	7	Col A, 1-17; Col B, 1-16; Col C-D, 1-14	Grant	Sensitive Contractual and Competitive Information

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 07924-01 and 08307-01				
44-1/5	8	Col A-B, 1-29	Grant	Sensitive Contractual and Competitive Information
44-1/5	9	Col A, 1-17; Col B, 1-16; Col C-D, 1-14	Grant	Sensitive Contractual and Competitive Information
44-1/5	10	Col A-B, 1-29	Grant	Sensitive Contractual and Competitive Information
44-2	7	1-33	Grant	Sensitive Contractual and Competitive Information
44-2	8	1-37	Grant	Sensitive Contractual and Competitive Information
44-2	9	1-27	Grant	Sensitive Contractual and Competitive Information
48-1/1	1	Col A, 1-33; Col B, 1-34	Grant	Sensitive Competitive Business Information
48-1/1-1	1	Col A, 2-4,6-9; Col B, 1-5,10-11	Grant	Sensitive Competitive Business Information
48-1/1-1/1	1	Col B, 36; Col E-H, 1-35	Grant	Sensitive Contractual and Competitive Information
48-1/1-1/1	2	Col C, 23; Col E, 1-20; Col F, 1-20, 22-23; Col G, 1-20; Col H, 1-23	Grant	Sensitive Contractual and Competitive Information

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 07924-01 and 08307-01				
48-1/1-2	1	Col A, 10,18,19,23; Col B, 1,5-7,12-17, 24-27	Grant	Sensitive Contractual and Competitive Information
✓ 48-1/1-2	2	Col A-D, 3-5; Col E, 1; Col F, 3-6,8; Col G-H, 3-6,8; Col I, 3-8	Grant	Sensitive Contractual and Competitive Information
48-1/1-3	1	1-39	Grant	Sensitive Contractual and Competitive Information
48-1/1-3	2	1-55	Grant	Sensitive Contractual and Competitive Information
48-1/1-3	3	1-56	Grant	Sensitive Contractual and Competitive Information
48-1/1-3	4	1-55	Grant	Sensitive Contractual and Competitive Information
48-1/1-3	5	1-8	Grant	Sensitive Contractual and Competitive Information
48-1/1-3	6	2; Col B-E, 6-42	Grant	Sensitive Contractual and Competitive Information
48-1/1-3	7	2-3; Col A, 4-9; Col B, 4-10	Grant	Sensitive Contractual and Competitive Information

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 07924-01 and 08307-01				
48-1/1-4	1	Col A, 4,6-9; Col B, 1,10-21; Col C-D, 10-21	Grant	Sensitive Contractual and Competitive Information
48-1/1-4	2	Col A, 3; Col B-D, 4-18	Grant	Sensitive Contractual and Competitive Information
48-1/1-4	3	Col A, 3; Col B-D, 4-17	Grant	Sensitive Contractual and Competitive Information
48-1/1-4	4	Col A, 3; Col B-D, 4-18	Grant	Sensitive Contractual and Competitive Information
48-1/1-4	5	Col A, 3; Col B-D, 4-17	Grant	Sensitive Contractual and Competitive Information
48-1/1-4	6	Col A, 3,13-16; Col B, 4-12; Col C, 4-10,13-14; Col D, 4-12	Grant	Sensitive Contractual and Competitive Information

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 07924-01 and 08307-01				
48-1/1-5	1	Col A, 1-2,4-5,8, 10-11,13-14; Col B, 1-17,20-21; Col C-D; 1-17; Col E; 1-17,20; Col F-H, 1-17; Col I, 1-20	Grant	Sensitive Contractual and Competitive Information
48-1/7	1	Col A-H, Line 1-18	Grant	Sensitive Competitive Information
49	2	1-35	Grant	Internal Auditing Reports and Controls
49-1/1	1-4	Col A-J, 1-9	Grant	Sensitive Contractual and Competitive Information
49-2	2	Col B-C, 1-14; Col D, 15-17	Grant	Sensitive Competitive Business Information
49-2	3	Col A-B, Line 1	Grant	Sensitive Competitive Business Information

A temporary copy of this recommendation will be held at I:08307-01.Extend1.FPL.wpd for a short period.

CC: Division of Auditing and Safety (Welch)
 Bureau of Records and Hearing Services (Flynn)