

State of Florida



ORIGINAL
Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: May 28, 2004

TO: Jennifer Rodan, Attorney, General Counsel

FROM: Division of Regulatory Compliance and Consumer Assistance (Freeman, Vandiver) ^{F a}

RE: Docket 040001-EI, Recommendation concerning Florida Power & Light Company's (FPL) request for confidential classification concerning portions of staff's audit report and working papers regarding staff audit report entitled "Florida Power and Light Security Hedging Base Costs for the Year Ended December 31, 2002", Audit Control No. 02-340-4-1, Documents Numbered 05788-03, 05789-03, and 05593-04

On June 23, 2003, at the audit exit conference for the audit entitled "Florida Power and Light Security and Hedging Costs for the Year ended December 31, 2002", FPL requested that certain portions of the staff audit report and working papers be held in a temporary confidential status pursuant to the provisions of Rule 25-22.006(3)(a)2., Florida Administrative Code.

On June 30, 2003, staff filed these materials as confidential Document Nos. 05788-03 and 05789-03.

On July 14, 2003, FPL filed a request for confidential classification concerning this material. This request includes highlighted (Document No. 06180-03) and redacted information (Document No. 06181-03).

On May 14, 2004, after discussions with the staff, FPL modified its request for a confidential classification for documents 05788-03, 05789-03, and 06180-03. FPL's filing includes a redacted copy of the material for public use (Document 05594-04) and a copy with the sensitive information highlighted (Document 05593-04).

CMP _____

COM _____ In part, FPL's request in this case covers the initial version of the FPL Security and Hedging Base Cost audit (Document 05789-03) which was subsequently modified to better explain the

CTR _____ issues, filed by staff auditor Welch in support of her testimony in the 2003 fuel hearings

ECR _____ (Document 09881-03), and granted a confidential classification by Commission Order No. PSC-03-1280-CFO-EI. The final audit report, as modified, is available in a redacted format for public

GCL _____ use (Document 10741-03) and as a confidential document with the sensitive portions

OPC _____ highlighted. (Document 10740-03). At issue in this filing are the sensitive portions identified in

MMS _____ the earliest version of this audit report (Document 05789-03).

RCA _____

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DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

May 28, 2004
Florida Power & Light Request

Documents 05788-03, 05789-03, 06180-03 and 05593-04 are currently held in a temporary confidential status by the Commission's Bureau of Records and Hearing Services 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 399.093(3)(b),(c),(d) and (e), F.S., provide the following exemptions.

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:

....

- (b) Internal auditing controls and reports of internal auditors.
- (c) Security measures, systems or procedures.
- (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 FPL filings reveal the sensitive material consists of:

A) Information from Internal Audit Reports;

FPL's requests that internal audit reports be granted a confidential classification based upon the provisions of Section 366.093(3)(b), Florida Statutes, which provide that information from internal audits may be granted a confidential classification. FPL witness John Hartzog, Manager of Nuclear Financial and Information Services identifies staff working papers containing internal audit information entitled as "Internal Audit."

After reading the sensitive material, we recommend that the information identified as pertaining to internal audits in this filing be granted a confidential classification. Section 366.093(b), Florida Statutes, provides that reports of internal auditors may be granted a confidential classification.

B) Information pertaining to Security Measures, Systems and Procedures;

FPL asserts staff's working papers contain information pertaining to FPL security measures, systems and procedures. FPL indicates security measures, systems and procedures are protected from disclosure by Section 366.093(3)(c), Florida Statutes. FPL is very concerned that access to system details could compromise security at the power plants if it got into the wrong hands. FPL also indicates that; "In some instances, access to the details would also disclose information about the terms of FPL's contracting for security services, which would impair FPL's competitive interests, the competitive interests of the vendors and/or FPL's ability to contract on favorable terms."

FPL witness John Hartzog identifies security information found in staff working papers entitled; "Internal Audit", "Summary Security", "Fins Security report", "Sample Item", "EAC Selected CV", and "Interrogatories." FPL witness Gerard Yupp, Manager of Regulated Wholesale Power Trading in the Energy Marketing and Trading Division ("EMT") identifies security information found in staff working papers entitled: "Document Record Request."

After reading the sensitive materials concerning FPL's security measures, and in consideration of the extraordinary circumstances related to the importance of security measures at this time, we recommend that FPL's request for a confidential classification for this detailed security information be granted. Section 366.093(3)(c), Florida Statutes, provides that information pertaining to security measures, systems and procedures may be granted a confidential classification.

C) Sensitive contractual data, release of which would impair FPL's efforts to contract for goods and service on favorable terms or would otherwise harm the competitive interests of those providing goods and services; and

D) Sensitive business information release of which would harm the competitive business of the provider of that information.

FPL reports that detailed disclosure of expenditure information could provide inappropriate insight into the operations of its competitive business and its contracts with vendors, which would impair FPL's competitive interests, the competitive interests of its vendors and/or FPL's ability to contract on favorable terms. Therefore, FPL continues to request confidential classification for the budgeted and actual detailed expenditure information concerning hedging. FPL has publicly reported this information at the "totals" level. Among the detailed expenditure information, FPL also points out there are several verbatim excerpts from FPL's vendors reported in staff's working papers. Disclosures of these contract excerpts would also impair FPL's competitive interests and/or its ability to contract on favorable terms.

According to FPL witness Gerald J. Yupp, Manager of Regulated Wholesale Power Trading in the Energy Marketing and Trading Division, release of this sensitive contractual and/or competitive business information is contained in the working papers entitled: "Audit Report Disclosure No. 4 – EMT Payroll Comparison"; "Actual 2002"; "YTD 2002"; "Budget 3 Years"; "Contracts 2001"; "Contracts 2002"; "Actuals for 2002"; "Contracts 2003"; "Employee List"; "Duties"; "Salary Bands"; "Incentives"; "2003 YTD"; "Actual vs. Budget 03"; "Actual Payroll 02"; "Budget by Salary Bands"; "Long Term Incentive"; "Long term Incentives"; "Salaries and Wages"; "Employee Related Exp."; "Dec. 03"; "Interrogatories"; "Hedging Actuals"; "FINS"; and "Contract."

After reading this material, we agree it is reasonable to expect that release of this information could impair the competitive business of FPL, its vendors, or otherwise 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 concerning sensitive contractual and/or competitive information be granted a confidential classification on the basis that this information meets the exemption requirements set out by Subsections 366.093(d) and (e), Florida Statutes.

Duration of the Confidential Classification Period

FPL requests that this material be returned to the utility once the information is no longer needed for the Commission to conduct its business. FPL also adds the materials in this case contain extremely sensitive power plant security information. We note the Commission materials related to audits of this type are retained on file by the Commission for 25 years.

However in response to FPL's request for return of the sensitive information where possible, Documents 06180-03 and 05593-04 are copies of staff working papers filed by FPL to support its request for confidential classification. Document 05593-04 fully supersedes document 06180-03, therefore document 06180-03 may be returned to FPL in accordance with FPL's need to protect sensitive security information.

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, as found, a confidential classification for 18 months.

A detailed recommendation follows:

Detailed Recommendation. As Found

Staff Working Paper Number	Page(s)	Line(s)	Recommendation Concerning Confidential Classification	Type of Information Classified Confidential
Audit Report, Working Paper 1	Page 6	17-18	Grant	Sensitive competitive business information
9	1-7	All	Grant	Reports of an internal auditor which also contain sensitive information concerning security measures.
10-16	1	17-18	Grant	Sensitive information concerning security measures and competitive business information

Staff Working Paper Number	Page(s)	Line(s)	Recommendation Concerning Confidential Classification	Type of Information Classified Confidential
10-23	1	12	Grant	Sensitive information concerning security measures and competitive business information
43	1	4	Grant	Sensitive information concerning security measures
43-1/3	1-18	All	Grant	Sensitive information concerning security measures
43-1/6	1-44	All	Grant	Sensitive information concerning security measures and competitive business information
43-1/6-3	1-4	All	Grant	Sensitive information concerning security measures and competitive business information
43-1/6-5	1-3	All	Grant	Sensitive information concerning security measures and competitive business information
43-1/6-5/1	1-4	All	Grant	Sensitive information concerning security measures and competitive business information
43-1/6-5/1-1	1-3	All	Grant	Sensitive information concerning security measures and competitive business information
43-1/8-1	1-33	All	Grant	Sensitive information concerning security measures
43-1/8-1/1	1	All	Grant	Sensitive information concerning security measures and competitive business information
43-1/8-1/1-1	1-4	All	Grant	Sensitive information concerning security measures
43-2/1-3/3	1	10-14	Grant	Sensitive information concerning security measures and competitive business information

Staff Working Paper Number	Page(s)	Line(s)	Recommendation Concerning Confidential Classification	Type of Information Classified Confidential
Documents 05788-03 and 05593-04				
45-1/1	1	Col. C, 6-12,14-21, 23-29; Col. D, 6-12,14-18, 21,23-29; Col. E, 19-20; Col. F, 6-12,14-21, 23-29	Grant	Sensitive contractual and competitive businesses information
45-2	1-2	Col. C, 6-12,16-22, 25-31; Col. D, 6-7,9,11-12, 16-21,23,25-28, 30-31; Col. E, 8,10,22-23, 29; Col. F, 6-12,16-23, 25-31	Grant	Sensitive contractual and competitive businesses information
45-2/1	1	Col. C, 3-6,8-9,17-19, 22,24-30: Col. D, 3-4,6,8-9, 17-20,22,24-27,29-30; Col. E, 3-6,8-9,11-13, 17-20,22,24-27, 29-30	Grant	Sensitive contractual and competitive businesses information
45-2/1-3	1	Col. B, 3-39,41-46; Col. C 3-39,41-50; Col. E, 3-13,41-43; Col. F, 3-13,41-43, 47-50	Grant	Sensitive contractual and competitive businesses information

Staff Working Paper Number	Page(s)	Line(s)	Recommendation Concerning Confidential Classification	Type of Information Classified Confidential
Documents 05788-03 and 05593-04				
✓ 45-2/1-4	1	Col. B, 3-27; Col. C, 3-28,30-31; Col. E, 4,23; Col. F, 23,30-31	Grant	Sensitive contractual and competitive businesses information
✓ 45-2/1-4	2	Col. B, 3-27; Col. C, 3-28,30-31; Col. E, 4,23; Col. F, 23,30-31	Grant	Sensitive contractual and competitive businesses information
✓ 45-2/1-4/1	1	Col. A, 5,10,17,22,27, 31; Col. B, 5,10,17,22, 27,31; Col. C, 3-5,10-11, 13-16	Grant	Sensitive contractual and competitive businesses information
45-2/1-5	1	Col. B, 3-12; Col. C, 3-16; Col. E, 3-5,11; Col F, 3-5,9,11,13-16	Grant	Sensitive contractual and competitive businesses information
45-2/2	1-2	All	Grant	Sensitive contractual and competitive businesses information
45-2/2-1	1-36	Col. A, 6	Grant	Sensitive contractual and competitive businesses information
45-2/2-2	1-4	All	Grant	Sensitive contractual and competitive businesses information
45-2/2-3	1	All	Grant	Sensitive contractual and competitive businesses information
45-2/2-4	1	All	Grant	Sensitive contractual and competitive businesses information

Working Paper Number	Page(s)	Line(s)	Concerning Confidential Classification	Type of Information Classified Confidential
45-2/2-5/1	3	Col A, 6	Grant	Sensitive contractual and competitive businesses information
45-2/2-5/3	3	Col A, 6	Grant	Sensitive contractual and competitive businesses information
45-2/2-5/4	3-4	Col A, 6	Grant	Sensitive contractual and competitive businesses information
45-2/3	1	Cols. C-D,F, 6-13, 15-18,20-27,29-36	Grant	Sensitive contractual and competitive businesses information
45-2/3-1	1	Cols. B-C, 6-10	Grant	Sensitive contractual and competitive businesses information
45-2/3-2	1	Cols. B-E, 7-11	Grant	Sensitive contractual and competitive businesses information
45-2/4	1	All	Grant	Sensitive contractual and competitive businesses information
45-2/4-1	1	All	Grant	Sensitive contractual and competitive businesses information
45-2/6	1	1,3-6; Col. C, 8-12; Col D. 11-12,15; Col. E, 8-11,13-14	Grant	Sensitive contractual and competitive businesses information
45-2/6-1	1	Col. A, 1-6; Col. B, 7;	Grant	Sensitive contractual and competitive businesses information
45-2/6-1	2	Col. A, 1-8,12-13, 15-17,20-21,23; Col. B, 1-5, 9-12, 14-15,18-20,22-23; Cols. C-F, 1-5; 24-25	Grant	Sensitive contractual and competitive businesses information

Staff Working Paper Number	Page(s)	Line(s)	Recommendation Concerning Confidential Classification	Type of Information Classified Confidential
Documents 05788-03 and 05593-04				
45-2/6-1	3	Cols. B-C, 4-42; Col. D, 16-18	Grant	Sensitive contractual and competitive businesses information
45-2/6-2	1	Col. A, 1-19; Col. B, 5,8,12	Grant	Sensitive contractual and competitive businesses information
45-2/6-2	2	Col. A, 1-27	Grant	Sensitive contractual and competitive businesses information
45-2/6-2	3	Col A. 1-5	Grant	Sensitive contractual and competitive businesses information
45-2/6-3	1	Col. B, 2-5; Col. C, 1,7; Col. D, 3	Grant	Sensitive contractual and competitive businesses information
45-2/7	1	Cols. C-D, 1-18	Grant	Sensitive contractual and competitive businesses information
45-3	1	Col. C, 1-6,8-10,12-16,18-23	Grant	Sensitive contractual and competitive businesses information
45-4/1	1	10-11	Grant	Sensitive contractual and competitive businesses information
45-4/1	2	1-2, 14-15,27-28	Grant	Sensitive contractual and competitive businesses information
45-4/2	1	11	Grant	Sensitive contractual and competitive businesses information
45-5	1	2-4,6-12	Grant	Sensitive contractual and competitive businesses information
45-5	2	Cols. F,H-M, 3-47	Grant	Sensitive contractual and competitive businesses information
45-6	1	Cols. G,I-N, 3,6,9, 12-17	Grant	Sensitive contractual and competitive businesses information

Working Paper Number	Page(s)	Line(s)	Concerning Confidential Classification	Type of Information Classified Confidential
	1	3-5,11-12,15-16,19	Grant	Sensitive contractual and competitive businesses information
45-10	1	Col. A, 1-27	Grant	Sensitive contractual and competitive businesses information
45-10	2	Col. A, 1-20; Col. B, 19,21-22	Grant	Sensitive contractual and competitive businesses information
45-10	3	Col. A, 1-21	Grant	Sensitive contractual and competitive businesses information
45-10	4	Col. A, 1	Grant	Sensitive contractual and competitive businesses information
45-10/1	1	18-21,23-26	Grant	Sensitive contractual and competitive businesses information
45-10/1	2	5-7,11-22,25-26	Grant	Sensitive contractual and competitive businesses information
45-10/1	3	Cols. A-B, 1-4	Grant	Sensitive contractual and competitive businesses information
45-10/2	1-3	All	Grant	Sensitive contractual and competitive businesses information
45-10/2-1	1-3	All	Grant	Sensitive contractual and competitive businesses information

A temporary copy of this recommendation will be held at I:05593-04.fplraf.doc for a short period.

CC: Division of Regulatory Compliance and Consumer Assistance (Welch)
Division of Commission Clerk and Administrative Services (Flynn)