



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: August 12, 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 a portion of the staff audit report and working papers prepared during "FPL Fuel Cost Recovery Clause Audit for the Year Ended December 31, 2003, Audit Control No. 04-023-4-1, Documents Numbered 04354-04, 04355-04, and 04646-04 *Amr*

On March 30, 2004, when copies of certain portions of staff's audit report and working papers obtained or prepared during the "FPL Fuel Cost Recovery Clause Audit for the Year Ended December 31, 2003", were delivered to FPL at the audit exit conference, the utility requested that these materials be temporarily exempted from public access in accordance with the provisions of Rule 25-22.006(3)(a)2., Florida Administrative Code (FAC).

On April 7, 2004, staff filed documents 04354-04 and 4355-04 consisting of those specified portions of the staff audit report and working papers.

On April 19, 2004, 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 confidential classification. The utility's request included redacted copies for public inspection (Exhibit B, document 04645-04) and highlighted copies (document 04646-03).

On August 9, 2004, after discussions with the staff, FPL reduced the amount of material requested for confidential treatment. This recommendation reflects that modification.

- CMP** _____
- COM** _____ Documents 04354-04, 04355-04 and 04646-04 are currently held by the Commission's Division of the Commission Clerk and Administrative Services as confidential pending resolution of
- CTR** _____ FPL's request for confidential classification.
- ECR** _____
- GCL** _____ 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
- OPC** _____ governmental agencies pursuant to the specific items of a statutory provision. Subsections
- MMS** _____ 366.093(3)(d) and (e), F.S., provide the following exemptions.
- RCA** _____
- SCR** _____
- SEC** 1
- OTH** Maig.

DOCUMENT NUMBER-DATE

08820 AUG 13 04

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.

(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 filing reveals the sensitive material consists of:

1. Energy Decontamination and Decommissioning Expenses and Sensitive Contractual Information Related to Deliveries of Nuclear Fuel.

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.

Subsection 366.093(e), F.S., provides that sensitive competitive business information, release of which would harm the competitive business of the provider of that information, may be granted a confidential classification.

August 12, 2004
Florida Power & Light Request

According to FPL witness John R. Hartzog, Manager, Nuclear Financial and Information Services, release of sensitive decommissioning and decontamination expense information could harm FPL or the provider of that information. Also Mr. Hartzog indicates release of contractual delivery information pertaining to nuclear fuel could harm FPL or the provider of the information. In its pleading, FPL indicates this material includes information concerning FPL's overall procurement practices and strategies as well as vendor-specific information. Witness Hartzog indicates release of this information could harm the competitive businesses of FPL or its vendors. Witness Hartzog also indicates FPL or its affiliates may have their ability to contract for goods and services impaired if this information was released.

Specifically, Mr. Hartzog indicates this material is contained within staff's working papers entitled: "Summary of Decontamination and Decommissioning Fund"; "Allocation of DOE's D&D Fund Payment"; "Payment Request", "Summary of Payment", "Invoice", and "Deliveries in Work Units."

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. Hartzog be granted a confidential classification on the basis that this information meets the exemption requirements set out by Subsection 366.093(d) and (e), Florida Statutes.

2. Information related to vendor-specific pricing and hedging expenditures.

Mr. Gerard J. Yupp, Manager of Regulated Wholesale Power Trading in the Energy Marketing and Trading Division, has identified sensitive vendor-specific pricing information and sensitive information concerning hedging expenditures. Mr. Yupp asserts disclosure of this information could impair FPL's competitive business and its ability to contract favorably for goods and services in the future.

Specifically, Mr. Yupp identifies the following staff audit working papers as disclosing sensitive vendor-specific pricing information and hedging expenditures: "Audit Report, Audit Disclosure No.1, Subject: Base Costs in Incremental Hedging and Audit disclosure No. 2, Subject: Gen Trader license Fees in Incremental Hedging"; "Gas Consumption"; "Natural Gas Consumption"; "Gas Purchases"; "Fuel Sample"; "Deal Journal"; "Inventory Sample"; "Audit Request 27"; "Receiving Report"; "Gas Sales"; "Natural Gas Consumption Report"; "Natural Gas Price Computations"; "Incremental Hedging Summary"; and "Support for Incremental Costs".

After reading the material identified by witness Yupp, we agree that release of this material would reasonably be expected to impair the ability of FPL or its affiliates to contract favorably for goods and services and release of this material could impair FPL's competitive business. We therefore recommend that the material be granted a confidential classification on the basis that the material meets the exemption provided by Subsection 366.093(3)(d) and (e). F.S.

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. However, we note the Commission staff's 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 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 as modified, 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 follows:

Detailed Recommendation

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 04354-04 and 04646-04				
1	4	22-23	Grant	Sensitive contractual information
1	6	5-6,12	Grant	Sensitive contractual information
43-3/1-1/1	1	47,49-51	Grant	Sensitive contractual information
43-3/1-1/1-1	1	Col B, 24,26-31; Col C, 28-31; Col D, 5-20	Grant	Sensitive contractual information
43-3/1-1/1-1/1	1	8-39,42-52,58-61, 64-65	Grant	Sensitive contractual information
43-3/1-1/1-1/1-1	1	Col C, 8-10, 12-14,16-17, 19-20,23-24, 27-28,30-31, 33-34,36-37	Grant	Sensitive contractual and competitive business information

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 04355-04 and 04646-04				
43-3/1-1/1-1/1-2	1	5; Col A,C, 7-39; Col F,G,H, 7-40; Col J,K, 7-39	Grant	Sensitive contractual information
43-4/1	3	Cols B,C,D, 16	Grant	Sensitive contractual information
43-4/1	6	Cols, B,C,D, 36	Grant	Sensitive contractual information
43-4/1	8	Cols B,C,D, 48	Grant	Sensitive contractual information
43-4/1-1	1	21-22	Grant	Sensitive contractual information
43-4/1-1/1	1	51,53-55	Grant	Sensitive contractual information
43-4/1-1/1-2	1	Col B, 23,25-30; Col C, 27-30; Col D, 5-19	Grant	Sensitive contractual information
43-4/1-1/1-1/1-2/1	1	Cols, A-E, 4-19; 21-26	Grant	Sensitive contractual and competitive business information
47-2/2-1	1	58,60-62	Grant	Sensitive contractual information
47-2/2-1/1	1	Col B, 18,20-25; Col C, 22-25; Col D, 2-16; Col E, 22-25	Grant	Sensitive contractual information
48	1	Col B, 12-14	Grant	Sensitive competitive business information
48-1	1	Cols A-B, 26; Col C, 8-10, 12,17,19	Grant	Sensitive competitive business information
48-1/1	1	Col A, 9-14	Grant	Sensitive competitive business information

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
I				
48-1/2	1	Cols A-B, 4-7; Col C, 4-7,9-12; Col D, 4-7; Col E, 4-5	Grant	Sensitive competitive business information
48-2	1	Col A, 18-19, 22-23; Col B, 17,20-21, 24-26;	Grant	Sensitive contractual and competitive business information
48-2/1	1	All	Grant	Sensitive contractual and competitive business information
52	3	23-24	Grant	Sensitive contractual and competitive business information
52	5	5-6,12	Grant	Sensitive contractual and competitive business information
52-1	2	Col A, 4,9-11; Col B, 1-3	Grant	Sensitive contractual and competitive business information
52-1	3	Col C, 12-14; Col D, 12,14,16	Grant	Sensitive contractual and competitive business information
52-1	4	Cols A-B, 14-15; Col D, 10,16	Grant	Sensitive contractual and competitive business information
52-1	5	Cols D-G,J, 9-28	Grant	Sensitive contractual and competitive business information
52-1	6	2-3,5-7	Grant	Sensitive contractual and competitive business information
52-1	7	11-12,18-19, 21-23,25-34	Grant	Sensitive contractual and competitive business information
52-1	8	Col B, 19-20, 22-25	Grant	Sensitive contractual and competitive business information

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 04355-04 and 04646-04				
52-1	9	Col B, 12-16, 18-19,20-21	Grant	Sensitive contractual and competitive business information
52-2	1	Col A, 2; Col B, 3-8;	Grant	Sensitive contractual and competitive business information
52-2	2	Col N, 2-18	Grant	Sensitive contractual and competitive business information
52-2	3-5	Col B, 10-11	Grant	Sensitive contractual and competitive business information
52-3	1	2-4	Grant	Sensitive contractual and competitive business information
52-3	2	Col F, 8	Grant	Sensitive contractual and competitive business information
52-3	3	Col B, 10-11	Grant	Sensitive contractual and competitive business information
52-9	1	Col B, 15-18,31	Grant	Sensitive contractual and competitive business information

A temporary copy of this recommendation will be held at I:04646-04.fplraf.doc for a short period.

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