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ORIGINAL

July 17, 2006

- VIA HAND DELIVERY -

Ms. Blanca S. Bayó, Director
Division of the Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

RECEIVED-FPSC
06 JUL 17 PM 3:58
COMMISSION
CLERK

Re: Docket No. 060001-EI

Dear Ms. Bayó:

I am enclosing for filing in the above docket the originals and seven (7) copies each of Florida Power & Light Company's Motion for Reconsideration of Order No. PSC-05-0568-CFO-EI and its Request for Oral Argument, together with a diskette containing the electronic versions of same. The enclosed diskette is HD density, the operating system is Windows XP, and the word processing software is Word 2003. Please note that the affidavit of Gerard J. Yupp that is attached to the Motion for Reconsideration as Exhibit 1 is a facsimile of the original. I will file the original affidavit shortly under separate cover.

If there are any questions regarding this transmittal, please contact me at 305-552-3867.

Sincerely,

John T. Butler
John T. Butler

- MP _____
- OM 5
- TR _____
- CR _____
- CL _____
- PC _____
- CA _____
- EC 1
- TH Kim P.

Enclosures

Cc: Counsel for parties of record (w/encls.)

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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

06273 JUL 17 8

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and Purchased Power)
Cost Recovery Clause and Generating)
Performance Incentive Factor)
_____)

DOCKET NO. 060001-EI

FILED: July 17, 2006

**FLORIDA POWER & LIGHT COMPANY'S MOTION
FOR RECONSIDERATION OF ORDER NO. PSC-06-0568-CFO-EI**

Florida Power & Light Company ("FPL"), pursuant to Rule 25-22.060, F.A.C., hereby moves for reconsideration of that portion of Order No. PSC-06-0568-CFO-EI, dated June 30, 2006 ("Order 0568") that denies confidential classification for Tabs 1-6, 9 and 10 of the response to Staff's Request for Production of Documents No. 3. FPL asks the Commission to amend Order 0464 to grant confidential classification to Tabs 1, 2, 4, 5 and 10, consistent with the supporting evidence and arguments discussed below. The grounds for FPL's motion are as follows:

INTRODUCTION AND BACKGROUND

On September 14, 2005, Staff served its First Request for Production of Documents on FPL in Docket No. 050001-EI. Staff's Request No. 3 asked FPL to produce documents memorializing FPL's policies and procedures regarding fuel procurement and conservation when the delivery of fuel is delayed due to a natural disaster, which had been updated based on lessons learned in the 2004 hurricane season. In response to Request No. 3, FPL produced its "EMT Operations – 2005 Hurricane Response Plan" (the "EMT Plan"), which sets forth the procedures and logistics for how FPL's Energy Management and Trading division ("EMT") will respond in hurricane conditions to ensure continuing, adequate supplies of fuel to FPL's power plants.

DOCUMENT NUMBER-DATE

06273 JUL 17 06

FPSC-COMMISSION CLERK

On November 3, 2005, FPL filed a request for confidential classification of, *inter alia*, the EMT Plan (the “Confidentiality Request”). In Exhibit C to the Confidentiality Request, FPL identified subsections (d) and (e) of Florida Statutes Section 366.093(3) as the basis for its claim of confidentiality with respect to the EMT Plan. Subsection (d) provides for confidential classification of “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,” while subsection (e) provides for confidential classification of “information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.” The Confidentiality Request did not cite subsection (c) (“security measures, systems, or procedures”) or subsection (f) (“employee personnel information unrelated to compensation, duties, qualifications, or responsibilities”) as bases for the confidentiality of the EMT Plan.

Order 0568 granted most of the confidential classification sought by the Confidentiality Request. However, it denied confidential classification for the information in Tabs 1-6, 9 and 10 of the EMT Plan. Order 0568 states that

[t]hese pages [in Tabs 1-6, 9 and 10] contain generic information regarding FPL’s pre-hurricane and post-hurricane plans. They do not reflect information containing bids or other contractual data or information related to competitive interests nor do they include employee personnel information.

In the course of evaluating the Confidentiality Request, Order 0568 cites to Section 366.093(3)(d) and (e). It correctly cites subsection (d) as related to “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,” but mis-cites subsection (e) as relating to ““employee personnel information unrelated to compensation, duties, qualifications,

or responsibilities.” As noted above, employee personnel information is actually the subject of subsection (f).

ARGUMENT

1. The Standard for Reconsideration.

The Commission has recited the following standard for review on reconsideration:

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its Order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So.2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So.2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So.2d 96 (Fla. 3rd DCA 1959); citing State ex. rel. Jaytex Realty Co. v. Green, 105 So.2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315, 317 (Fla. 1974).

In re: Review of Florida Power Corporation's earnings, including effects of proposed acquisition of Florida Power Corporation by Carolina Power & Light. Docket No. 000824-EI; Order No. PSC-01-2313-PCO-EI, November 26, 2001.

As will be shown below, the Commission overlooked or failed to consider important points of fact and/or law in denying confidential classification for Tabs 1, 2 4, 5 and 10 of the EMT Plan.

2. The EMT Plan constitutes and/or relates to “security measures, systems, or procedures” as contemplated by Section 366.093(3)(c).

The EMT Plan clearly constitutes and/or relates to “security measures, systems or procedures” that are important to maintaining the operability of FPL’s electric generating system in the wake of hurricanes. Substantial disruptions of the fuel supply to that system could easily result in major shortfalls in available generating output relative to system demand, putting severe strains on the economy, social and governmental services, and individual customers in FPL’s service territory at a time when challenges to recovery efforts already abound. The EMT Plan outlines logistics and procedures FPL intends to use to avoid or at least minimize those fuel-supply disruptions. FPL is concerned about allowing security-related information such as the EMT Plan to become public. Attached hereto as Exhibit 1 is an affidavit of Gerard J. Yupp attesting to the security sensitivity of the EMT Plan.

FPL has reviewed the EMT Plan to determine which tabs contain security-sensitive information and hence need to be classified as confidential. Tabs 3, 6 and 9 do not require confidential classification. Order 0568 already has granted confidential classification to Tabs 7 and 8. This leaves Tabs 1, 2, 4, 5 and 10, which contain security-sensitive information but were denied confidential classification by Order 0568. Attached hereto as Exhibit 2 is a table in the form of Exhibit C to FPL’s confidentiality requests, which identifies FPL’s claim to confidential classification of Tabs 1, 2, 4, 5 and 10 based on Section 366.093(3)(c). FPL asks that the Commission reconsider Order 0568 as to Tabs 1, 2, 4, 5 and 10 of the EMT Plan and grant confidential classification under Section 366.093(3)(c) for that information.

As noted above, FPL did not cite Section 366.093(3)(c) as a basis for the confidentiality of the EMT Plan. This was an inadvertent omission by FPL, which understandably led to the Commission’s overlooking and failing to consider this important basis for the confidentiality of

the EMT Plan. FPL respectfully submits that, despite its omission of a citation to Section 366.093(3)(c), the interests of its customers and the State of Florida would be best served by the Commission's granting confidential classification to Tabs 1, 2, 4, 5 and 10 of the EMT Plan.

3. The EMT Plan contains employee-specific contact information, the disclosure of which would constitute an unwarranted intrusion into the privacy of the affected employees and could disrupt EMT's efforts to ensure post-hurricane fuel supplies.

One of the functions of the EMT Plan is to identify key EMT and other FPL personnel who would need to be contacted in hurricane emergency conditions and to provide contact information for those employees, including their home and personal cell phone numbers, as well as satellite phone numbers in certain instances. While it is extremely important for that information to be available internally within FPL to facilitate rapid and reliable communications in connection with hurricane responses, there is no corresponding need or justification for personal contact information to be made known to the general public. Rather, providing personal contact information to the general public would be an unwarranted intrusion into the privacy of the affected FPL employees. It is that sort of privacy interest that Section 366.093(3)(e) is intended to protect ("employee personnel information unrelated to compensation, duties, qualification, or responsibilities"). Moreover, providing personal contact information to the general public could result in key EMT employees receiving calls from the general public following a hurricane, which could disrupt the performance of their responsibilities for ensuring post-hurricane fuel supply and which would be better handled through FPL's established customer communications channels. Mr. Yupp's affidavit (Exhibit 1) attests to the basis for confidential classification of the personal contact information contained in the EMT Plan, and Exhibit 2 identifies the tabs and pages of the EMT Plan in which the personal contact

information appears. All of the personal contact information is in the same Tabs 1, 2, 4, 5 and 10 for which FPL seeks confidential classification as security-sensitive under Section 366.093(3)(c).

Order 0568 references the wording of Section 366.093(3)(f), although it is mis-cited as appearing in subsection (e). Without giving any explanation, Order 0568 concludes that the EMT Plan does not include employee personnel information. FPL believes that the Commission must have overlooked or misapprehended the significance of the personal contact information contained in the EMT Plan. That information is clearly “employee personnel information” that is “unrelated to compensation, duties, qualification, or responsibilities.” Therefore, it fits squarely within the basis for confidential classification set forth in Section 366.093(3)(f). FPL suspects that the Commission’s oversight is a result of FPL’s inadvertent omission of a reference or discussion of Section 366.093(3)(f) in the Confidentiality Request, but again urges the Commission not to deny confidential classification because of FPL’s inadvertent omission.

POSITIONS OF OTHER PARTIES

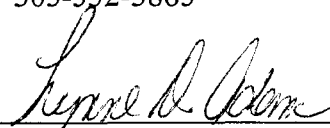
In accordance with Rule 28-106.204(3), Florida Administrative Code, FPL attempted to contact the Office of Public Counsel and counsel for each of the interveners in this docket to determine whether they object to this Motion. FPL is authorized to represent that the AARP and FIPUG do not object to the Motion and that the Office of Public Counsel and the Florida Retail Federation take no position. Counsel for FPL left a telephone message and sent an e-mail to counsel for the Federal Executive Agencies but was unable to contact said counsel prior to filing the Motion.

WHEREFORE, for the foregoing reasons, FPL respectfully requests the Commission to reconsider Order 0568 and to grant confidential classification of Tabs 1, 2, 4, 5 and 10 of the EMT Plan.

Respectfully submitted,

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Senior Attorney
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Telephone: 305-552-3867
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By:



John T. Butler
Fla. Bar No. 283479

CERTIFICATE OF SERVICE

Docket No. 060001-EI

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Motion for Reconsideration of Order PSC-06-0568-CFO-EI has been furnished by hand delivery (*) or U.S. Mail on this 17th day of July 2006, to the following:

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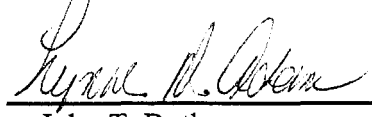
By: 
ca John T. Butler

EXHIBIT 1

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Fuel and Purchase Power Cost Recovery)	
Clause with Generating Performance)	DOCKET NO. 060001-EI
Incentive Factor)	
)	
)	
)	

STATE OF FLORIDA)	
)	AFFIDAVIT OF GERARD J. YUPP
PALM BEACH COUNTY)	

BEFORE ME, the undersigned authority, personally appeared Gerard J. Yupp who, being first duly sworn, deposes and says:

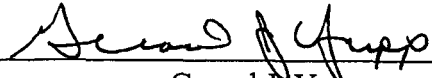
1. My name is Gerard J. Yupp. I am currently employed by Florida Power & Light Company ("FPL") as Director of Wholesale Operations in the Energy Marketing and Trading Division ("EMT"). I have personal knowledge of the matters stated in this affidavit.

2. I am familiar with the EMT Operations - 2005 Hurricane Response Plan (the "EMT Plan"), which I participated in developing and have substantial responsibilities for implementing. The EMT Plan is organized into ten tabbed sections and sets forth in detail the procedures and logistics for how EMT will respond in hurricane conditions to ensure continuing, adequate supplies of fuel to FPL's power plants. FPL considers the EMT Plan to be security-sensitive and accordingly maintains its confidentiality. I have confirmed that Tabs 1, 2, 4, 5 and 10 of the EMT Plan each constitute and/or relate in their entirety to security-sensitive procedures for ensuring fuel supply during and following hurricane conditions. The information contained in Tabs 1, 2, 4, 5 and 10 should be kept confidential because public disclosure could compromise FPL's ability to ensure fuel supplies during and following hurricane conditions.

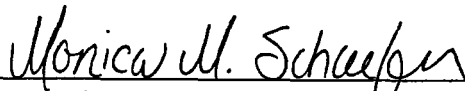
3. One of the functions of the EMT Plan is to identify key EMT and other FPL personnel who would need to be contacted in hurricane conditions and to provide contact information for those employees, including their home and personal cell phone numbers as well as satellite phone numbers in certain instances. FPL needs to make this information available internally in order to facilitate rapid and reliable communications in connection with hurricane responses. FPL personnel do not expect their personal contact information to be publicized as a result of its inclusion in the EMT Plan; to the contrary, they expect that the personal contact information will be disseminated and used solely for the hurricane-response purposes of the EMT Plan. Moreover, providing personal contact information to the general public could result in key EMT employees receiving calls from the general public following a hurricane, which could disrupt the performance of their responsibilities for ensuring post-hurricane fuel supply and which would be better handled through FPL's established customer communications channels.

Accordingly, FPL maintains the confidentiality of the personal contact information in the EMT Plan.

4. Affiant says nothing further.


Gerard J. Yupp

SWORN TO AND SUBSCRIBED before me this 17th day of July 2006, by Gerard J. Yupp, who is personally known to me or who has produced personally known (type of identification) as identification and who did take an oath.


Notary Public, State of Florida

My Commission Expires: 5/1/10

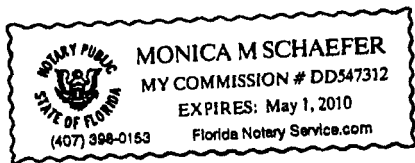


EXHIBIT 2

COMPANY: Florida Power & Light Company
TITLE: List of Confidential Documents
DOCKET NO.: 050001-EI/ 060001-EI
DOCKET TITLE: Levelized Fuel Cost Recovery and Capacity Cost Recovery
SUBJECT: Responses to Staff's First Request for Production of Documents, Request No. 3
DATE: July 17, 2006

Discovery POD No.	Description	Section	No. of Pages	Conf Y/N	Line No.	Florida Statute 366.093(3) Subsection	Affiant
3	2005 Hurricane Response Plan	Tab No. 1	21	Y	All	(c)	G. Yupp
		5 th , 6 th and 10 th page of Tab No. 1	3	Y	All	(f)	G. Yupp
3	2005 Hurricane Response Plan	Tab No. 2	35	Y	All	(c)	G. Yupp
		29 th -35 th page of Tab No. 2	7	Y	All	(f)	G. Yupp
3	2005 Hurricane Response Plan	Tab No. 3	1	N	N/A	N/A	N/A
3	2005 Hurricane Response Plan	Tab No. 4	6	Y	All	(c)	G. Yupp
3	2005 Hurricane Response Plan	Tab No. 5	5	Y	All	(c)	G. Yupp
		2 nd - 5 th page of Tab No. 5	4	Y	All	(f)	G. Yupp
3	2005 Hurricane Response Plan	Tab No. 6	1	N	N/A	N/A	N/A

Discovery POD No.	Description	Section	No. of Pages	Conf Y/N	Line No.	Florida Statute 366.093(3) Subsection	Affiant
3	2005 Hurricane Response Plan	Tab No. 7 Confidential per Order No. PSC- 06-0568-CFO-EI	6	Y	N/A	N/A	N/A
3	2005 Hurricane Response Plan	Tab No. 8 Confidential per Order No. PSC- 06-0568-CFO-EI	12	Y	N/A	N/A	N/A
3	2005 Hurricane Response Plan	Tab No. 9	68	N	N/A	N/A	N/A
3	2005 Hurricane Response Plan	Tab No. 10	10	Y	All	(c)	G. Yupp
		2 nd and 7 th page of Tab No. 10	2	Y	All	(f)	G. Yupp