



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-

070009

DATE: February 14, 2007

TO: Lisa Bennett, Attorney, Office of General Counsel

FROM: Division of Regulatory Compliance and Consumer Assistance (Freeman, Vandiver)

RE: Docket 060001-EI, Recommendation concerning Florida Power & Light Company's (FPL) request for confidential classification concerning a portion of the audit report and staff working papers prepared during "Florida Power & Light Capacity Cost Recovery Clause Audit for the Historical Year Ended December 31, 2005", Audit Control No. 06-045-4-1, Documents Numbered 03638-06, and 04040-06

On April 18, 2006, when copies of certain portions of staff's working papers obtained or prepared during the "Florida Power & Light Capacity Cost Recovery Clause Audit for the Historical Year Ended December 31, 2005", 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 April 24, 2006, staff filed document numbered 03638-06 consisting of those specified portions of the staff's working papers.

On May 8, 2006, 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 (document No. 04041-06) and copies with the sensitive material highlighted (document 04040-06).

Documents numbered 03638-06 and 04040-06 are held by the Commission's Division of the Commission Clerk and Administrative Services 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)(b)(c)(d) and (e), F.S., provide the following exemptions.

- MP _____
- OM _____
- TR _____
- CR _____
- ICL _____
- IPC _____
- ICA _____
- ICR _____
- IGA _____
- IEC _____

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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 filing reveals the sensitive material consists of:

1) Information concerning internal auditing controls and reports of internal auditors

Witness Robert Onsgard, FPL Manager of Internal Auditing, identifies sensitive information concerning Internal Audit Information in the working paper: “List of Internal Audits.”

Section 366.093(3)(b), F.S. provides that the Commission may grant a confidential classification to Internal Auditing Controls and Reports of Internal Auditors. Reading the material identified by witness Onsgard reveals it pertains to internal audit reports and may be granted a confidential classification.

2) Customer-specific account information including bank account numbers

Witness Korel Dubin, FPL Regulatory Affairs Department, Manager of Regulatory Issues, identifies customer-specific account information including bank account numbers within staff working papers titled: "Company Schedule of Demand Accounts", "Customer Bills" and "Billing Rates."

Witness Dubin also reports "...It is FPL's corporate policy not to disclose customer information. This policy includes, but is not limited to: customer names, addresses, telephone numbers, account numbers, rates, billing determinates, (kW and kWh usage), conservation savings in kW, kWh and bills. FPL treats such information as confidential and does not disclose it, except as required by law, to entities or persons other than the customer absent the customer's consent."

The Commission policy concerning customer-specific account information has been to grant confidentiality pursuant the provisions contained within Section 366.093(3)(e), F.S., on the basis that release of this information would harm the competitive business of the provider of the information. Reading the material identified by Witness Dubin, we agree that its release would cause harm to the provider of the information. Further, bank account information is held as confidential pursuant to the provisions set out in Section 119.071(5)(b), F.S.

3) Competitively sensitive business information

FPL witness, Osvaldo J. Lom, FPL Supervisor of Purchased Power Contracts, identifies competitively sensitive business information within staff working papers titled: "GL of QF Account", "Journal Detail Sheet", "QF Estimate Billing", "Estimate by Month", "True UP QF", "GL of 555.410", "UPS Check Request", "Invoice", "GL 555.430", "JEA Billing Schedules", "SJRPP Accrual", "Debt Service", "Debt Service Check Request", "Debt Service Deposit", "SJRPP Revenue Req.", "SJRPP Transmission", "SJRPP Transmission Payments", "SJRPP Debt Service", "JEA Billing Statement", "CCRA Payment Schedule", "Check Request", "Property Taxes", "JEA Revenue Req.", "Deferred Interest", "Dismantlement", and "SJRPP Estimates."

Witness Lom also points out some of this proprietary information concerns St. Johns River Power Park, a Jacksonville Electric Authority (JEA) and FPL venture. Ordinarily because of JEA's participation in the venture, St. Johns River Power Park would be considered a Florida government entity, and the Power Park's records would be considered public. However as witness Lom points out, JEA may maintain certain Power Park information as confidential pursuant to Section 163.01(15)(m), Florida Statutes. Because JEA and FPL hold that these records consist of sensitive competitive business information, and they maintain disclosure of this information would harm JEA and FPL in the marketplace, then pursuant the provisions provided by Section 366.093(3)(e), F.S., the Commission may grant this information a confidential classification. We have read the sensitive information identified by witness Lom and we agree release of it would harm the competitive business of the provider of that information.

February 14, 2007
Florida Power and Light Request

4) Contractual and competitively sensitive business data such as pricing and other terms, payment records, and vendor and supplier rates.

FPL witness, Gerard J. Yupp, FPL Director of Wholesale Operations in the Energy Marketing and Trading Division, identifies the sensitive contractual and competitive business information contained within the following staff working papers: "GL of Acct. [5]55.441", "Invoice", "Fins Report and Invoice", "Purchase Statement", "EMT Report", "GL Account 555.429", and SJRPP Suspension Accrual."

Also witness Yupp points out, release of some of this information would place FPL at a competitive disadvantage when coupled with other information that is publicly available.

Section 366.093(3)(d), F.S., provides that the Commission may grant a confidential classification to sensitive contractual information if release of that information would harm the ability of a utility or its affiliates to contract favorably. 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 harm the competitive business of the provider of that information.

We have read the contractual and sensitive business information presented here and agree this information if released could harm the ability of FPL and its affiliates to contract on favorable terms, and in addition, release of this information could harm the competitive business of the provider of the information.

5) Security measures and negotiated agreements for the protection of FPL facilities

FPL witness, Walter E. Gwinn, FPL Manager of Financial Performance in the Nuclear Business Unit identifies the following staff working papers as reporting information about security measures and related Security Agreements: "Security Cost – Sample of Cash Vouchers."

Section 366.093(3)(c), F.S. provides that the Commission may grant a confidential classification to "Security measures, systems or procedures." Section 366.093(3)(d), F.S., provides that the Commission may grant a confidential classification to contractual information if release of that information would impair the ability of the utility or its affiliates to contract favorably.

We have read the information as identified by witness Gwinn and agree it is sensitive security and contractual information and recommend that this information be granted a confidential classification.

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 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. Further, FPL witnesses report FPL has maintained the confidentiality of these materials.

Duration of the Confidential Classification Period

FPL requests that this material be held as confidential for at least 18 months and that this material should be returned to FPL once the information is no longer needed for the Commission to conduct its business.

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 a confidential classification for 18 months.

A detailed recommendation follows:

Detailed Recommendation, As Found

| Staff Work Paper Number | Description | Page(s) | Line(s) | Recommend | Type of Information |
|---------------------------------|-------------------------------------|------------------|------------------|-----------|---|
| Documents 03638-06 and 04040-06 | | | | | |
| 9 | List of Internal audits | 1-4 | Col B | Grant | Internal auditing controls and reports of internal auditors |
| 41-2/3 | Company Schedule of Demand Accounts | 1-12 | Col 1 | Grant | Customer-specific account information |
| 41-2/3-1 | Customer Bills | 2, 5-6, 8, 10-13 | 3-6,9-20,24-25 | Grant | Customer-specific account information |
| 41-2/3-1 | Customer Bills | 14 | 3-5A,18-19,23-24 | Grant | Customer-specific account information |
| 41-2/3-1 | Customer Bills | 15-23 | 3-6,9-20,24-25 | Grant | Customer-specific account information |
| 41-2/3-1 | Customer Bills | 25-27 | 3-6,9-20,24-25 | Grant | Customer-specific account information |

| Staff Work Paper Number | Description | Page(s) | Line(s) | Recommend | Type of Information |
|---------------------------------|-------------------------------------|---------|--------------------------|-----------|--|
| Documents 03638-06 and 04040-06 | | | | | |
| 41-2/3-2 | Customer Bills | 1-2 | 3-6,9-20,24-25 | Grant | Customer-specific account information |
| 41-2/3-2 | Customer Bills | 3 | 3-6,9-20 | Grant | Customer-specific account information |
| 41-2/3-3 | Customer Bills | 1-2 | 3-6,9-20,24-31 | Grant | Customer-specific account information |
| 41-2/3-3 | Customer Bills | 3 | 3-6,9-20,24-25 | Grant | Customer-specific account information |
| 41-2/3-3 | Customer Bills | 4-6 | 3-6,9-20,24,26 | Grant | Customer-specific account information |
| 41-2/3-4 | Company Schedule of Demand Accounts | 1-3 | Col. 1 | Grant | Customer-specific account information |
| 41-2/3-4/1 | Customer Bills | 1-3 | 3-6,9-20,24 | Grant | Customer-specific account information |
| 41-2/3-4/3 | Customer Bills | 1 | 3-6,9-20,24 | Grant | Customer-specific account information |
| 41-2/3-4/5 | Customer Bills | 1 | 3,5-13,15-17,19-37 | Grant | Customer-specific account information |
| 41-2/3-4/5 | Customer Bills | 2 | 3,5-17,19-30,32-33 | Grant | Customer-specific account information |
| 41-2/3-4/5 | Customer Bills | 3 | 3,5-17,19-37,39-40 | Grant | Customer-specific account information |
| 41-2/3-4/5 | Customer Bills | 5 | 3,5-13,15-17,19-37 | Grant | Customer-specific account information |
| 41-2/3-4/5 | Customer Bills | 6 | 3,5-17,19-37,39-40 | Grant | Customer-specific account information |
| 41-2/3-4/5 | Customer Bills | 9 | 3,5-13,15-17,19-34,36-37 | Grant | Customer-specific account information |
| 41-2/3-4/5 | Customer Bills | 10 | 3,5-13,15-17,19-33,35-36 | Grant | Customer-specific account information |
| 41-2/3-4/5 | Customer Bills | 12 | 3,5-13,15-17,19-34,36-37 | Grant | Customer-specific account information |
| 42, p2 | GL of QF Account | 1 | All | Grant | Sensitive competitive business information |
| 42-1 | Journal Detail Sheet | 1-2 | All | Grant | Sensitive competitive business information |
| 42-2 | QF Estimate Billing | 1 | All | Grant | Sensitive competitive business information |
| 42-2/1 | Estimate by Month | 1 | All | Grant | Sensitive competitive business information |
| 42-3 | True Up QF | 1 | All | Grant | Sensitive competitive business information |
| 43, p2 | GL of 555.410 | 1 | All | Grant | Sensitive competitive business information |
| 43-1 | UPS Check Request | 1 | All | Grant | Sensitive competitive business information |
| 43-1/1 | Invoice | 1 | All | Grant | Sensitive competitive business information |
| 44A | GL 555.430 | 1 | All | Grant | Sensitive competitive business information |
| 44, p3-10 | JEA Billing Schedules | 1-8 | All | Grant | Sensitive competitive business information |

| Staff Work Paper Number | Description | Page(s) | Line(s) | Recommend | Type of Information |
|---------------------------------|----------------------------------|---------|-----------------------|-----------|--|
| Documents 03638-06 and 04040-06 | | | | | |
| 44-1 | SJRPP Accrual | 1-2 | All | Grant | Sensitive competitive business information |
| 44-1/1 | Debt Service | 1-3 | All | Grant | Sensitive competitive business information |
| 44-1/1-1 | Debt Service Check Request | 1 | All | Grant | Sensitive competitive business information |
| 44-1/1-1/1 | Debt Service Deposit | 1 | All | Grant | Sensitive competitive business information |
| 44-1/1-2 | SJRPP Revenue Req. | 1 | All | Grant | Sensitive competitive business information |
| 44-1/2 | SJRPP Transmission | 1-3 | All | Grant | Sensitive competitive business information |
| 44-1/2-1 | Invoice | 2 | All | Grant | Sensitive competitive business information |
| 44-1/2-2 | SJRPP Transmission Payments | 1 | All | Grant | Sensitive competitive business information |
| 44-1/2-3 | SJRPP Debt Service | 1 | All | Grant | Sensitive competitive business information |
| 44-1/2-4 | JEA Billing Statement | 2 | All | Grant | Sensitive competitive business information |
| 44-1/2-6 | SJRPP Debt Service | 1 | All | Grant | Sensitive competitive business information |
| 44-1/3 | CCRA Payment Schedule | 1-4 | All | Grant | Sensitive competitive business information |
| 44-1/3-1 | Check Request | 1-9 | All | Grant | Sensitive competitive business information |
| 44-1/4 | Property Taxes | 1 | All | Grant | Sensitive competitive business information |
| 44-1/4-1 | Property Taxes | 1-3 | All | Grant | Sensitive competitive business information |
| 44-1/5 | JEA Revenue Req. | 1-2 | All | Grant | Sensitive competitive business information |
| 44-1/6 | Deferred Interest | 1-5 | All | Grant | Sensitive competitive business information |
| 44-1/7 | Dismantlement | 1 | All | Grant | Sensitive competitive business information |
| 44-2 | SJRPP Estimates | 1 | All | Grant | Sensitive competitive business information |
| 44-3 | Check Request | 1-2 | All | Grant | Sensitive competitive business information |
| 44-4 | Fixed and Variable Cost Schedule | 1 | All | Grant | Sensitive competitive business information |
| 45-1 | GL of Acct. [5]55.441 | 1 | Col A, 10-13 | Grant | Sensitive contractual and competitive business information |
| 47-1/1-1 | Invoice | 1 | 5; Cols A-B, 23,27 | Grant | Sensitive contractual and competitive business information |
| 47-1/1-1 | Invoice | 2 | 3; Cols A-D, 14-53 | Grant | Sensitive contractual and competitive business information |

| Staff Work Paper Number | Description | Page(s) | Line(s) | Recommend | Type of Information |
|---------------------------------|-------------------------|---------|---|-----------|--|
| Documents 03638-06 and 04040-06 | | | | | |
| 47-1/1-1 | Invoice | 3 | 3; Cols A-D, 5-54 | Grant | Sensitive contractual and competitive business information |
| 47-1/1-1 | Invoice | 4 | 3; Cols A-D, 5-45 | Grant | Sensitive contractual and competitive business information |
| 47-1/1-1 | Invoice | 5 | 3; Cols A-D, 5-48 | Grant | Sensitive contractual and competitive business information |
| 47-1/1-1 | Invoice | 6 | 3; Cols A-D, 6-47 | Grant | Sensitive contractual and competitive business information |
| 47-1/1-1 | Invoice | 7 | 3; Cols A-D, 5-48 | Grant | Sensitive contractual and competitive business information |
| 47-1/1-1 | Invoice | 8 | 3; Cols A-D, 6-47 | Grant | Sensitive contractual and competitive business information |
| 47-1/1-1 | Invoice | 9 | 3; Cols A-D, 5-10,14-16 | Grant | Sensitive contractual and competitive business information |
| 48-1/1 | Fins Report and Invoice | 1 | Col A, 14-31 | Grant | Sensitive contractual and competitive business information |
| 48-1/1 | Fins Report and Invoice | 2 | Cols A-B, 1-36 | Grant | Sensitive contractual and competitive business information |
| 48-1/1 | Fins Report and Invoice | 3 | 11,16-17 | Grant | Sensitive contractual and competitive business information |
| 48-1/1-1 | Purchase Statement | 1 | 26-28 | Grant | Sensitive contractual and competitive business information |
| 48-1/1-1 | Purchase Statement | 2 | 1,8-54,56 | Grant | Sensitive contractual and competitive business information |
| 48-1/1-2 | EMT Report | 1 | Col A, 4-10,18-21; Col B, 4-9; Col C, 11-12 | Grant | Sensitive contractual and competitive business information |
| 48-1/1-2/1 | Invoice | 1 | Cols A-C, 4-7,10-12, 16-18,20; Col D | Grant | Sensitive contractual and competitive business information |

| Staff Work Paper Number | Description | Page(s) | Line(s) | Recommend | Type of Information |
|---------------------------------|---------------------------------------|---------|---|-----------|--|
| Documents 03638-06 and 04040-06 | | | | | |
| 48-1/1-2/1-1 | Purchase Statement | 1 | Col C, 4,15-22; Col D, 4, 15-22, 36,38; Col E 4, 15-22; Col F 4, 15-22, 36,38; | Grant | Sensitive contractual and competitive business information |
| 48-1/1-2/1-1 | Purchase Statement | 2 | Col A, 1,5-41; 50,53 | Grant | Sensitive contractual and competitive business information |
| 48-1/1-3 | EMT Report | 1 | Col A, 4-8, 18-21; Col B, 4-7; Col C, 11-13 | Grant | Sensitive contractual and competitive business information |
| 49-1/1 | GL Account 555.429 | 1-2 | All | Grant | Sensitive competitive business information |
| 49-1/2 | SJRPP Suspension Accrual | 1 | All | Grant | Sensitive competitive business information |
| 52-3/4-1 | Security Cost Sample of Cash Vouchers | 1 | 25 | Grant | Sensitive security and contractual information |
| 52-3/4-1 | Security Cost Sample of Cash Vouchers | 5 | 19-21,25-29 | Grant | Sensitive security and contractual information |
| 52-3/4-1 | Security Cost Sample of Cash Vouchers | 6 | 14,18-19,24-30 | Grant | Sensitive security and contractual information |
| 52-3/4-1 | Security Cost Sample of Cash Vouchers | 7 | 19 | Grant | Sensitive security and contractual information |
| 52-3/4-1 | Security Cost Sample of Cash Vouchers | 8 | 15-17,23-24,26-27,29 | Grant | Sensitive security and contractual information |

A temporary copy of this recommendation will be held at I:04040-06 fpl fuel raf.doc for a short period.

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