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Public Service Commission

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

DATE: February 20, 2007  
TO: Katherine Fleming, Attorney, General Counsel's Office  
FROM: Division of Regulatory Compliance and Consumer Assistance (Freeman, Vandiver)  
RE: Docket 041291-EI, Recommendation concerning Florida Power & Light Company's (FPL's) 1<sup>st</sup> request for extension of confidential classification concerning a portion of the staff working papers prepared during "Florida Power & Light Storm Cost Recovery Audit for the Year Ended December 31, 2004", Audit Control No. 04-343-4-1, Documents Numbered 01560-05, 01561-05, 01563-05 and 02236-05

On February 10, 2005, when copies of certain portions of staff's working papers obtained or prepared during the "Florida Power & Light Storm Cost Recovery Audit for the Year Ended December 31, 2004", 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 February 15, 2004, staff filed documents 01560-05, 01561-05, and 01563-05 consisting of those specified portions of the staff's working papers.

On March 3, 2004, FPL 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 the staff during the audit receive confidential classification. The utility's request included redacted copies for public inspection (document 02237-05) and copies with the sensitive material highlighted (document 02236-05).

CMP \_\_\_\_\_ On June 30, 2005, the Commission granted FPL's request and issued Order No. PSC-05-0712-COM \_\_\_\_\_ CFO-EI which provided an 18 month confidential classification for the identified materials. That CTR \_\_\_\_\_ period has now tolled.

ECR \_\_\_\_\_ On December 18, 2006, FPL requested an extension of the classification period granted by GCL \_\_\_\_\_ Commission Order No. PSC-05-0712-CFO-EI. Documents 01560-05, 01561-05, 01563-05 and OPC \_\_\_\_\_ 02236-05 are currently held by the Commission as confidential pending resolution of FPL's request for extension of the classification period.

RCA \_\_\_\_\_ Pursuant to Section 119.07, F.S., documents submitted to this Commission are public records. SCR \_\_\_\_\_ The only exceptions to this law are specific statutory exemptions and exemptions granted by SGA \_\_\_\_\_ governmental agencies pursuant to the specific items of a statutory provision. Subsections SEC \_\_\_\_\_ 366.093(3)(d) and (e), F.S., provide the following exemptions.

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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:

....

(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:

Contractual data such as pricing and other terms

FPL asserts that the sensitive data on file is not stale or public and that disclosure of sensitive contractual data such as prices and other terms would impair the efforts of FPL and its affiliates to contract on favorable terms. In addition, FPL asserts release of this pricing and other contractual data would impair the business interests of involved vendors when bidding on future FPL and non FPL contracts. Lastly, FPL asserts that disclosure of this information would also be to the detriment of FPL’s customers.

FPL argues this information qualifies for a confidential classification on the basis of Section 366.093(3)(d) F.S., which allows the Commission to grant a confidential classification to sensitive contractual information of a public utility or its affiliates. FPL further argues that pursuant to the provisions of Section 366.093(e), F.S., that the Commission should grant a confidential classification on the basis that release of this sensitive competitive business information information would harm the vendors when they compete for FPL and non FPL contacts in the future.

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FPL witness D. Keith White, FPL Manager of Materials Management in the Power Systems Supply Chain Department, identifies sensitive contractual and competitive business information reported on working papers titled: "Sample of Cash Voucher", "Testing of Vouchers over \$400,000", "Summary of Journal Vouchers", "Answer to Request 14A", "Purchase Order", "Request 14A", "On Demand Query Report", "Substation Work Order", "Substation Eq", and "FINS Construction Report."

FPL witness Paul J. Seiler, FPL Manager of Contract Labor in the Integrated Supply Chain Department, identifies sensitive contractual and competitive information reported upon a working paper titled "Sample of Bartech."

FPL witness Robert H. Adams Jr., FPL Director of Power Systems Cost and Performance, identifies sensitive contractual and competitive information reported upon working papers titled "Testing of Cash vouchers Over \$400,000", "Estimated Storm Expenses", "December Accrual Information" and "List of Contractors."

FPL witness Pamela L. Sonnelitter, FPL General Manager of Business Services in the Power Generation Division, identifies sensitive contractual and competitive information reported upon working papers titled "Purchase Order" and "On Demand Query Report."

FPL Witness Frank Irizarry, FPL Senior Director in the Integrated Supply Chain Department, identifies sensitive contractual and competitive information reported upon a working paper titled "Reconciliation Form."

### **Staff Analysis**

After reading the information identified by witnesses White, Seiler, Adams, Sonnelitter and Irizarry, we recommend that this information be held as confidential because the information remains sensitive contractual information release of which would harm the ability of FPL and its affiliates to contract favorably for goods and services in the future. We agree with FPL that this contractual information also remains sensitive competitive business information release of which would harm the businesses of the contracting parties. Lastly, we agree with FPL that release of this information would be to the detriment of the FPL ratepayer.

### **Information Held as Confidential**

To qualify as proprietary confidential business information the material must also be held as private and not be released to the public. FPL asserts that this sensitive information has not been released to the public. FPL witnesses also assert FPL has maintained the confidentiality of those materials they have identified as sensitive.

**Duration of the Confidential Classification Period**

FPL requests that the material be returned to the utility 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 an additional 18 months.

A detailed recommendation, as found, follows:

**Detailed Recommendation, as Found**

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend 18 month Extension	Type of Information Classified Confidential
Documents 01560-05 and 02236-05					
43-2	Sample of Cash Voucher	1	Cols A,N, 38, 41;	Grant	Sensitive contractual and business information
		2	Col K, 20	Grant	Sensitive contractual and business information
43-2/1	Sample of Bartech	1	Col C, 13-16, 21-24,29-32; Col D, 13-17, 21-25;29-34; Col F, 13-16,21-24, 29-32,35-36; Col G, 13-17, 21-25,29-34,36-38; Col H, 13-17, 21-25,29-34; Col I, 13-17,21-25, 29-34	Grant	Sensitive contractual and business information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend 18 month Extension	Type of Information Classified Confidential
Documents 01560-05 and 02236-05					
43-3/1-1	Testing of Cash Vouchers over \$400,000	1	Col C, 6	Grant	Sensitive contractual and business information
		3	Col C, 62	Grant	Sensitive contractual and business information
Documents 01561-05 and 02236-05					
44-5/2-1	Purchase Order	2	Col B, 25	Grant	Sensitive contractual and business information
44-8	Summary of Journal Vouchers	1	15,41,43,47	Grant	Sensitive contractual and business information
44-8	Summary of Journal Vouchers	2	9,13,15,18,20	Grant	Sensitive contractual and business information
44-8/1-3	Answer to Request 14A	1	Col B, 18-20; Col C, 9	Grant	Sensitive contractual and business information
44-8/1-4	Purchase Order	1	Cols C-D, 11,23,35,47	Grant	Sensitive contractual and business information
44-8/1-5	Request No. 14A	1	Col A, 6,23,26,31	Grant	Sensitive contractual and business information
44-8/2	On Demand Query Report	2	Col E, 24-25	Grant	Sensitive contractual and business information
44-8/2-1	Substation Work Order	1	Col C, 11,12	Grant	Sensitive contractual and business information
		7	Col C, 13-16 Col F, 19	Grant	Sensitive contractual and business information
44-8/2-2	Purchase Order	1	Col C, 21,39 Col D, 7,13-14,21,23,27,39,43,46	Grant	Sensitive contractual and business information
		2	Cols C-D, 5,13,21;	Grant	Sensitive contractual and business information
		3	Col I, 2,4,7; Col K, 2,10	Grant	Sensitive contractual and business information
44-8/3-1	Substation Work Order	1	Col C, 14-19	Grant	Sensitive contractual and business information
		6	Col C, 13-16	Grant	Sensitive contractual and business information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend 18 month Extension	Type of Information Classified Confidential
Documents 01561-05 and 02236-05					
44-8/3-2	Substation Eq	1	Col I, 2,4,6,8; Col K, 2	Grant	Sensitive contractual and business information
		2	Col C, 14-16	Grant	Sensitive contractual and business information
		3	Col C, 5-8	Grant	Sensitive contractual and business information
44-8/3-3	FINS Construction Report	1	Col N-O, 17-18; Col P, 17-22	Grant	Sensitive contractual and business information
44-10/1	On Demand Query Report	7	Col H-J, 6-12, 15-21	Grant	Sensitive contractual and business information
Documents 01563-05 and 02236-05					
52-5/2 Estimated Storm Expenses		1	Col A, 10-12, 35-37; Col B, 10,12-13, 23-25,36-41; Col C, 12-13, 24-25,37-41; Col D, 30; Col F, 12-13, 24-25,37-41;	Grant	Sensitive contractual and business information
		2	Col A, 6-8; Col B, 7,9-14; Col C, 10-14; Col D, 4,16; Col F, 10-14	Grant	Sensitive contractual and business information
52-5/3	December Accrual Information	1	Col B-D, 4-8; Col E, 7; Col G-I, 4-8; Col K-L, 4-9; Col M, 7-9	Grant	Sensitive contractual and business information
52-7/1-1	Reconciliation Form	2	Col D, 11-16,25; Col F, 11-16, 25-26	Grant	Sensitive contractual and business information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend 18 month Extension	Type of Information Classified Confidential
Documents 01563-05 and 02236-05					
52-7/1-1 Reconciliation Form		3	Cols D-E, 14; Cols F-G, 25	Grant	Sensitive contractual and business information
		4	Col B, 20,22; Col C, 20,22,30; Col D, 20,22; Col E, 20,22,30; Col F, 20,22; Cols G-H, 10, 14-15,20,22-23; Col I, 8,13,20, 22-23; Col J, 8,13,17,20; Col K, 8,13,17, 20,24; Col L,8,13,17,20	Grant	Sensitive contractual and business information
		8	Cols C,E-F, 8-53; Cols G,I, 43	Grant	Sensitive contractual and business information
		9	Col C, 7-58; Cols E-F, 7-58,60; Col G, 60, Col I, 60-61	Grant	Sensitive contractual and business information
52-7/1-2	List of Contractors	5	Col F, 2	Grant	Sensitive contractual and business information

A temporary copy of this recommendation will be held at I:02236-05 fpl 1<sup>st</sup> ext 2004 storm damage raf.doc for a short period.

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