



Public Service Commission

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

RECEIVED-FPSC

MAR 14 AM 9:42

COMMISSION CLERK

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

DATE: March 12, 2007
TO: Martha Brown, Attorney, General Counsel's Office
FROM: Division of Regulatory Compliance and Consumer Assistance (Freeman, Vandiver)
RE: Docket 070007-EI, Recommendation concerning Florida Power & Light Company's (FPL) request for confidential classification concerning a portion of the staff working papers prepared during "FPL Environmental Cost Recovery Clause Audit for the Year Ended December 31, 2005", Audit Control No. 06-044-4-1, Documents Numbered 05836-06 and 02078-07

On June 20, 2006, when copies of certain portions of staff's working papers obtained or prepared during the "FPL Environmental Cost Recovery Clause Audit for the 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 the provisions of Rule 25-22.006(3)(a)2., Florida Administrative Code (FAC).

On June 29, 2006, staff filed document 05836-06 consisting of those specified portions of the staff working papers.

On July 10, 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 06063-06) and highlighted copies (document 06062-06).

~~On March 7, 2007, after discussions with the staff, the utility adjusted the scope of their request.~~

CMP This adjustment to the utility's filing was accompanied by redacted copies for public inspection
COM (document 02079-07) and copies with the sensitive information highlighted in support of the
CTR utility's amended request (document 02078-07).

ECR Confidential document 02078-07 supersedes and replaces confidential document 06062-06.
GCL Technical staff with the concurrence of legal staff have asked the Bureau of Records to return

OPC Document No. 06062-06 to the utility since this confidential document is no longer needed to
process the utility's request.

RCA Documents Numbered 05836-06 and 02078-07 are currently held by the Commission's Division
SCR of the Commission Clerk and Administrative Services as confidential pending resolution of
BGA FPL's request, as amended.

SEC
DTH *Marguerite*

DOCUMENT NUMBER-DATE

02297 MAR 14 6

FPSC-COMMISSION CLERK

March 12, 2007
Florida Power & Light Request

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.

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 the 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 and 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, as amended, reveals the sensitive material consists of:

1. Information related to internal auditing reports and associated documents.

Subsection 366.093(b), F.S., provides that the Commission may grant a confidential classification to internal auditing controls and to the reports of internal auditors.

Witness Robert Onsgard, FPL Manager, Internal Auditing, identifies materials associated with FPL's internal audits as reported within staff working papers titled: "List of Internal Audits" and "Internal Audit."

After reading the material identified by witness Onsgard, we agree that release of this material would reveal internal auditing controls and the reports of internal auditors.

2. Contractual data such as pricing and other terms, payment records, vendor and supplier rates.

Witness Paul Plotkin, FPL General Plant Manager of the Manatee Energy Center, identifies sensitive contractual and competitive business information within the staff working papers titled: "Plant Addition Samples." In addition, witness Roger F. Messer, FPL Manager Environmental Support, identifies sensitive contractual and competitive business information within staff working papers titled: "O&M Samples."

Witnesses Plotkin and Messer assert the identified information if released would impair the efforts of FPL to contract for goods and services on favorable terms and would impair the competitive businesses of FPL and its vendors.

Section 366.093(3)(d), F.S., provides that the Commission may grant a confidential classification to sensitive contractual information if the release of that information would impair the efforts of FPL or its affiliates to contract on favorable terms. Further, Section 366.093(3)(e), F.S., provides that sensitive information pertaining to competitive business interests may also be granted a confidential classification if release of that information would impair the business interests of the provider of that information.

Reading the information reveals it is of a sensitive contractual nature which reveals competitive business interests such that its release would harm FPL and its vendors.

3. Security information

Witness Roger F. Messer, FPL Manager Environmental Support, identifies sensitive security information within a working paper titled "O&M Samples". Witness Richard F. Engstrom, FPL Supervisor of Power Plant Accounting, also identifies sensitive security information reported within staff working papers titled "Emission Allowance."

Section 366.093(3)(c), F.S., provides that the Commission may grant a confidential classification to "Security measures, systems or procedures." Reading the sensitive information identified here reveals it pertains to sensitive security information release of which could harm the provider of that information.

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 information meets the rule and statutory definition of confidential propriety business information. FPL further asserts the information is intended to be, and has been, treated by FPL as confidential. FPL witnesses Onsgard, Plotkin, Messer and Engstrom assert FPL has maintained the confidentiality of those materials that they have identified as sensitive.

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. 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 amended 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

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 05836-06 and 02078-07					
9	List of Internal Audits	1-4	Col. B	Grant	Internal Auditing Controls and Reports
9-1	Internal Audit	1-4	All	Grant	Internal Auditing Controls and Reports
16-15/12-3/1	Plant Addition Samples	1	17,19,22,24,27,29,31,33	Grant	Sensitive Contractual and Competitive Business Information
43-4	O&M Samples	1	5-7,8-10,13a-14	Grant	Sensitive Contractual and Competitive Business Information
43-4	O&M Samples	2	2a-4	Grant	Sensitive Contractual and Competitive Business Information
43-4	O&M Samples	3	6a-12	Grant	Sensitive Contractual and Competitive Business Information
43-4	O&M Samples	4	11-12	Grant	Sensitive Contractual and Competitive Business Information
43-4	O&M Samples	5	6-7	Grant	Sensitive Contractual and Competitive Business Information
43-4/1	O&M Samples	1	5-6,11-20	Grant	Sensitive Contractual and Competitive Business Information
43-4/5	O&M Samples	2-5	All	Grant	Security Information
43-6	O&M Samples	4	5-6	Grant	Sensitive Contractual and Competitive Business Information
51-3/1-2/2	Emission Allowance	1	16	Grant	Security Information
51-3/1-2/2	Emission Allowance	2	4,15,19	Grant	Security Information

A temporary copy of this recommendation will be held at I:02078-07fpl environ raf.doc for a short period.

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