



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: June 25, 2007

TO: Lisa Bennett, Attorney, Office of General Counsel

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

RE: Docket 070001-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, 2006", Audit Control No. 07-022-4-3, Documents Numbered 04159-07, and 04415-07

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 COMMISSION CLERK

On May 9, 2007, when copies of certain portions of staff's audit report and 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 May 22, 2007, staff filed documents numbered 04159-07 and 04160-07 consisting of those specified portions of the staff's audit report and working papers.

On May 30, 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. 04416-07) and copies with the sensitive material highlighted (Document 04415-07).

- CMP _____
- COM _____ Our review of the utility's request indicates the utility did not request a confidential classification for any portions of staff's audit report. Identified portions of the staff audit report were filed in a
- CTR _____ temporary confidential classification in document 04160-07. By a separate memorandum, we
- ECR _____ will request that the Clerk declassify Document No. 04160-07.
- GCL _____ Documents numbered 04159-07, 04160-07 and 04415-07 are currently held by Office of the
- OPC _____ Commission Clerk as confidential pending resolution of FPL's request for confidential
- RCA _____ classification.
- SCR _____ Pursuant to Section 119.07, F.S., documents submitted to this Commission are public records.
- SGA _____ The only exceptions to this law are specific statutory exemptions and exemptions granted by
- SEC _____ governmental agencies pursuant to the specific items of a statutory provision. Subsections
- OTH _____ 366.093(3)(b)(c)(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:*

....

(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: “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, Manager of Cost Recovery Clauses in the Regulatory Affairs Department, identifies customer-specific account information including bank account numbers within staff working papers titled: "Revenues."

Witness Dubin also reports "...It is FPL's corporate policy not to disclose customer-specific 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 including information which pertains to St. Johns Power Park (SJRPP), a Jacksonville Electric Authority (JEA) and FPL venture

FPL witness, Osvaldo J. Lom, FPL Supervisor of Purchased Power Contracts, identifies competitively sensitive business information within staff working papers titled: "Qualifying Facilities", "St. John River Plant", "Suspension Accrual"

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.

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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: "S-T Capacity Purchases", "Transmission Services", and "Transmission of Electric."

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.

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: "Nuclear Sample", and "PO." Witness Gwinn indicates information within the following working papers pertains to security matters: "Nuclear Sample." Lastly Witness Gwinn indicates the following staff working papers report sensitive contractual information: "Nuclear Sample", "PO", and "Contract."

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/or 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, as found, follows:

Detailed Recommendation, As Found

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information
Documents 004159-07 and 04415-07					
9	Internal Audits	1-2	Col. B	Grant	Internal Auditing Information
41-3	Revenues	1-10	Col. A	Grant	Customer-Specific Information
41-3	Revenues	11-13	Col. 1	Grant	Customer-Specific Information
41-4	Revenues	1	1, Cols. A-E	Grant	Customer-Specific Information
41-4	Revenues	3-8	1, Cols. A-F	Grant	Customer-Specific Information
41-4	Revenues	10-11	1, Cols. A-F	Grant	Customer-Specific Information
43-1/1	Qualifying Facilities	3	All	Grant	Sensitive Competitive Business Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information
Documents 004159-07 and 04415-07					
43-1/2	Qualifying Facilities	3	All	Grant	Sensitive Competitive Business Information
43-1/3	Qualifying Facilities	3	All	Grant	Sensitive Competitive Business Information
43-1/4	Qualifying Facilities	3	All	Grant	Sensitive Competitive Business Information
43-1/5	Qualifying Facilities	3	All	Grant	Sensitive Competitive Business Information
44-1/1-1	St. Johns River Plant	1-2	All	Grant	Sensitive Competitive Business Information
44-1/4	St. Johns River Plant	1-4	All	Grant	Sensitive Competitive Business Information
44-1/2-1	St. Johns River Plant	1	All	Grant	Sensitive Competitive Business Information
44-1/2-1	St. Johns River Plant	2	13-15	Grant	Sensitive Competitive Business Information
44-1/2-1/2	St. Johns River Plant	1	All	Grant	Sensitive Competitive Business Information
44-1/2-1/3	St. Johns River Plant	1	All	Grant	Sensitive Competitive Business Information
44-1/2-2	St. Johns River Plant	1	All	Grant	Sensitive Competitive Business Information
44-1/3	St. Johns River Plant	1-2	All	Grant	Sensitive Competitive Business Information
44-1/3-1	St. Johns River Plant	1	All	Grant	Sensitive Competitive Business Information
44-1/3-2	St. Johns River Plant	1	All	Grant	Sensitive Competitive Business Information
44-1/4	St. Johns River Plant	1	All	Grant	Sensitive Competitive Business Information
44-1/5-1	St. Johns River Plant	1	All	Grant	Sensitive Competitive Business Information
44-1/5-2	St. Johns River Plant	1	9	Grant	Sensitive Competitive Business Information
44-1/6	St. Johns River Plant	1	11,14,18,20-21,25-26	Grant	Sensitive Competitive Business Information
45-2	S-T Capacity Purchases	1	1-6	Grant	Sensitive Contractual Information
45-2/1	S-T Capacity Purchases	1	14-16,21,28-30	Grant	Sensitive Contractual Information
45-2/1-1	S-T Capacity Purchases	1	1-15	Grant	Sensitive Contractual Information
45-2/1-2	S-T Capacity Purchases	1-2	Cols. A,C-D	Grant	Sensitive Contractual Information
45-2/2	S-T Capacity Purchases	1	1,3-5,8,10-14,17	Grant	Sensitive Contractual Information
45-2/2	S-T Capacity Purchases	2	1-28	Grant	Sensitive Contractual Information
45-2/2-1	S-T Capacity Purchases	1-2	Cols. A,C-D	Grant	Sensitive Contractual Information
45-2/3	S-T Capacity Purchases	1	Cols. A-B	Grant	Sensitive Contractual Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information
Documents 004159-07 and 04415-07					
45-2/3	S-T Capacity Purchases	2	1-20	Grant	Sensitive Contractual Information
45-2/3-1	S-T Capacity Purchases	1	Cols. A,C-D	Grant	Sensitive Contractual Information
45-2/4	S-T Capacity Purchases	1	Cols. A,C-D	Grant	Sensitive Contractual Information
45-2/4	S-T Capacity Purchases	2	Col. A	Grant	Sensitive Contractual Information
45-2/4	S-T Capacity Purchases	3	1-30	Grant	Sensitive Contractual Information
45-2/5	S-T Capacity Purchases	1	Cols. A,B	Grant	Sensitive Contractual Information
45-2/5	S-T Capacity Purchases	2	Cols. A,C-D	Grant	Sensitive Contractual Information
45-2/5	S-T Capacity Purchases	3	1-29	Grant	Sensitive Contractual Information
45-2/6	S-T Capacity Purchases	1	Cols. A-B	Grant	Sensitive Contractual Information
45-2/6	S-T Capacity Purchases	2	Cols. A,C-D	Grant	Sensitive Contractual Information
45-2/6	S-T Capacity Purchases	3	1-29	Grant	Sensitive Contractual Information
47-1/1	Suspension Accrual	1	All	Grant	Sensitive Competitive Business Information
48-1/1	Transmission Services	1	Col. A	Grant	Sensitive Contractual Information
48-1/1	Transmission Services	2	Cols. A-B	Grant	Sensitive Contractual Information
48-1/1-1	Transmission Services	1-2	Col. A	Grant	Sensitive Contractual Information
49-1/1	Transmission of Electric	1	Col. A	Grant	Sensitive Contractual Information
49-1/1-1	Transmission of Electric	1	Cols. A-B,F	Grant	Sensitive Contractual Information
49-1/1-1/1	Transmission of Electric	1	Cols A,C-D	Grant	Sensitive Contractual Information
49-1/1-1/2	Transmission of Electric	1	17	Grant	Sensitive Contractual Information
49-1/1-1/2	Transmission of Electric	2	Col. A	Grant	Sensitive Contractual Information
49-1/1-1/2	Transmission of Electric	3	1-29	Grant	Sensitive Contractual Information
49-1/1-2	Transmission of Electric	2-7	Cols. A-B	Grant	Sensitive Contractual Information
49-1/1-2	Transmission of Electric	8	1-26	Grant	Sensitive Contractual Information
49-1/1-3	Transmission of Electric	1	Cols. A-B,F	Grant	Sensitive Contractual Information
49-1/1-4	Transmission of Electric	2	Cols. A,C-D	Grant	Sensitive Contractual Information
49-1/1-4	Transmission of Electric	3	1-30	Grant	Sensitive Contractual Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information
Documents 004159-07 and 04415-07					
52-3	Nuclear Sample	1	Col. 9, Lines 1-4, 19-22,29-30,33-34	Grant	Sensitive Security Information
52-4	Nuclear Sample	1	Col. 7, Lines 13-14, 17-18,20,22	Grant	Sensitive Contractual and Security Information
52-4	Nuclear Sample	2	Col. 7, lines 49-54,56	Grant	Sensitive Contractual and Security Information
52-4/5	Nuclear Sample	7	9-11,23	Grant	Sensitive Contractual Information
52-4/5	Nuclear Sample	9	13-29	Grant	Sensitive Contractual Information
52-4/5	Nuclear Sample	11	3-5	Grant	Sensitive Contractual Information
52-6	Nuclear Sample	2	52-54,80	Grant	Security and Sensitive Contractual Information
52-6	Nuclear Sample	3	87,91,96-100,105, 109	Grant	Security and Sensitive Contractual Information
52-6	Nuclear Sample	4	114-115,120,132-135,145-146	Grant	Security and Sensitive Contractual Information
52-6/2	PO	4	23-30,32	Grant	Sensitive Contractual Information
52-6/2	PO	5	4-7	Grant	Sensitive Contractual Information
52-6/2	PO	6	33	Grant	Sensitive Contractual Information
52-6/3	PO	2	29	Grant	Security and Sensitive Contractual Information
52-6/3	PO	3	24,35,44,46,48	Grant	Security and Sensitive Contractual Information
52-6/3	PO	4	5,7,9,18,20,25,27,35, 44,47,50	Grant	Security and Sensitive Contractual Information
52-6/3	PO	5	12,18,26,32,35,41,43	Grant	Security and Sensitive Contractual Information
52-6/3	PO	6	5,8,9,15,20,23-24,30, 35-36,38	Grant	Security and Sensitive Contractual Information
52-7	Contract	2-8	All	Grant	Sensitive Contractual Information
52-7	Contract	9	18-34	Grant	Sensitive Contractual Information
52-7	Contract	10	1-10	Grant	Sensitive Contractual Information
52-7	Contract	11	4-7	Grant	Sensitive Contractual Information
52-7	Contract	12-13	All	Grant	Sensitive Contractual Information
52-7/1	PO	2	24-29,31	Grant	Sensitive Contractual Information

A temporary copy of this recommendation will be held at I:04415-07 FPL capacity raf.doc for a short period.

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