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

**DATE:** March 25, 2008

**TO:** Lisa Bennett, Attorney, General Counsel

**FROM:** Division of Regulatory Compliance and Consumer Assistance (Freeman, Vandiver) <sup>F</sup> <sup>W</sup>

**RE:** Docket 080001-EI, Recommendation concerning Florida Power & Light Company's (FPL) request for 2<sup>nd</sup> extension of confidential classification concerning a portion of the staff audit report and working papers prepared during "FPL Fuel Cost Recovery Clause Audit for the Year Ended December 31, 2003, Audit Control No. 04-023-4-1, Documents Numbered 04354-04, 04355-04, and 04646-04"

On March 30, 2004, when copies of certain portions of staff's audit report and working papers obtained or prepared during the "FPL Fuel Cost Recovery Clause Audit for the Year Ended December 31, 2003", 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 April 7, 2004, staff filed documents 04354-04 and 4355-04 consisting of those specified portions of the staff audit report and working papers.

On April 19, 2004, 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 (Exhibit B, document 04645-04) and highlighted copies (document 04646-04).

DMP \_\_\_\_\_  
 JCM \_\_\_\_\_  
 On August 9, 2004, after discussions with the staff, FPL reduced the amount of material requested for confidential treatment.

CTR \_\_\_\_\_  
 LCR \_\_\_\_\_  
 On August 19, 2004, the Commission issued Order No. PSC-04-0812-CFO-EI granting FPL's request, as modified, for a confidential classification.

CCL \_\_\_\_\_  
 OPC \_\_\_\_\_  
 On February 17, 2006, FPL requested that the classification period granted by Commission Order No. PSC-04-0812-CFO-EI be extended by an additional 18 months.

RCA \_\_\_\_\_  
 SCR \_\_\_\_\_  
 SGA \_\_\_\_\_  
 On June 30, 2006, the Commission issued Order No. PSC-06-0565-CFO-EI granting FPL's request for an 18 month extension of the confidential classification for the audit materials obtained or prepared by the staff in the examination of FPL's 2003 Fuel costs.

SEC \_\_\_\_\_  
 OTH *Marquette*

DOCUMENT NUMBER-DATE

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March 25, 2008  
Florida Power & Light Request

On December 17, 2007, FPL requested that the classification period for the sensitive portions of staff's audit working papers associated with FPL's 2003 Fuel Cost recovery program be extended a second time.

Currently, Documents 04354-04, 04355-04 and 04646-04 are held by the Office of the Commission Clerk as confidential pending resolution of FPL's request for a 2<sup>nd</sup> extension of 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)(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:

....

(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:

1. Sensitive Information Related to Fuel Deliveries to FPL's Nuclear-Fueled Generating Units;

March 25, 2008  
Florida Power & Light Request

Subsection 366.093(d), F.S., provides that sensitive contractual or bid information, release of which would harm the ability of a utility or its affiliates to contract for goods and services, may be granted a confidential classification.

Subsection 366.093(e), F.S., provides that sensitive competitive business information, release of which would harm the competitive business of the provider of that information, may be granted a confidential classification.

According to FPL witness Terry O. Jones, Vice President of Nuclear Plant Support, the sensitive information identified contains material concerning bids or other contractual data and information relating to competitive interests. Witness Jones indicates release of this information could still harm the competitive businesses of FPL.

Specifically, Mr. Jones identifies sensitive material contained within staff's working papers entitled: "Summary of Decontamination and Decommissioning Fund"; "Allocation of DOE's D&D Fund Payment"; "Payment Request", "Summary of Payment", "Invoice", and "Deliveries in Work Units."

After reading this material, we agree it is reasonable to expect that release of this information could still impair the competitive business of FPL, or otherwise impair the ability of FPL or its affiliates to contract favorably for goods and services in the future. Therefore, we recommend the material identified by Mr. Gwinn be granted a confidential classification on the basis that this information meets the exemption requirements set out by Subsection 366.093(d) and (e), Florida Statutes.

## 2. Vendor-specific information and detailed procurement information.

Mr. Gerard J. Yupp, Director of Wholesale Operations in the Energy Marketing and Trading Division, asserts disclosure of this identified information could impair FPL's competitive business and its ability to contract favorably for goods and services in the future.

Specifically, Mr. Yupp identifies the following staff audit working papers as disclosing sensitive information concerning bids or other contractual data and information concerning competitive interests: "Audit Report, Audit Disclosure No.1, Subject: Base Costs in Incremental Hedging and Audit disclosure No. 2, Subject: Gen Trader license Fees in Incremental Hedging"; "Gas Consumption"; "Natural Gas Consumption"; "Gas Purchases"; "Fuel Sample"; "Deal Journal"; "Inventory Sample"; "Audit Request 27"; "Receiving Report"; "Gas Sales"; "Natural Gas Consumption Report"; "Natural Gas Price Computations"; "Incremental Hedging Summary"; and "Support for Incremental Costs".

March 25, 2008  
Florida Power & Light Request

After reading the material identified by witness Yupp, we agree that release of this material would still reasonably be expected to impair the ability of FPL or its affiliates to contract favorably for goods and services and release of this material could impair FPL's competitive business. We therefore recommend that the material be granted an 18 month extension of confidential classification on the basis that the material meets the exemption provided by Subsection 366.093(3)(d) and (e). F.S.

**Information Held as Confidential**

FPL and FPL Witnesses Jones and Yupp assert this material has not been released to the Public.

**Duration of the Confidential Classification Period**

FPL requests that this material be held as confidential for an additional 18 months and 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 extension of confidential classification be set as 18 months.

In this case, the identified information has been held as confidential by the Office of the Commission Clerk since April 7, 2004, and the utility asserts this contractual and competitive business material has remained sensitive for an extended period and still remains confidential. Commission order PSC-94-1224-CFO-EI, issued October 6, 1994, in Docket No. 94001, held that 5 years is a reasonable time to hold sensitive commercial information as confidential; therefore, since less than 5 years has passed, and it is reasonable to expect public release of the this commercial information could still be detrimental, we recommend that the utility's request for a second extension of the classification period be approved.

**Staff Recommendation**

Based upon reading the filing as modified, and for the reasons presented above, we recommend the utility's request be granted and that the identified material be granted an extension of confidential classification for 18 months.

A detailed recommendation follows:

**Detailed Recommendation**

Staff Work Paper Number	Title	Page(s)	Line(s)	Recommend Extension for 18 months	Type of Information Classified Confidential
Documents 04354-04 and 04646-04					
1	Audit Report Disclosure No. 1 Subject: "Base Costs in incremental Hedging"	4	22-23	Grant	Sensitive contractual information
1	Audit Report Disclosure No. 2 Subject: "Gen Trader License Fees in Incremental Hedging"	6	5-6,12	Grant	Sensitive contractual information
Documents 04355-04 and 04646-04					
43-3/1-1/1	Gas Consumption	1	47,49-51	Grant	Sensitive contractual information
43-3/1-1/1-1	Natural Gas Consumption	1	Col B, 24, 26-31; Col C, 28-31; Col D, 5-20	Grant	Sensitive contractual information
43-3/1-1/1-1/1	Gas Purchases	1	8-39,42-52,56 58-61,64-65	Grant	Sensitive contractual information
43-3/1-1/1-1/1-1	Fuel Sample	1	Col C, 8-10, 12-14,16-17, 19-20,23-24, 27-28,30-31, 33-34,36-37	Grant	Sensitive contractual and competitive business information
43-3/1-1/1-1/1-2	Deal Journal	1	6; Col A,C, 7-39; Col F,G,H, 7-40; Col J,K, 7-39	Grant	Sensitive contractual information

Staff Work Paper Number	Title	Page(s)	Line(s)	Recommend Extension for 18 months	Type of Information Classified Confidential
Documents 04355-04 and 04646-04					
43-4/1	Inventory Sample	3	Cols B,C,D, 16	Grant	Sensitive contractual information
43-4/1	Inventory Sample	6	Cols, B,C,D, 36	Grant	Sensitive contractual information
43-4/1	Inventory Sample	8	Cols B,C,D, 48	Grant	Sensitive contractual information
43-4/1-1	Receiving Report	1	21-22	Grant	Sensitive contractual information
43-4/1-1/1	Natural Gas Consumption	1	51,53-55	Grant	Sensitive contractual information
43-4/1-1/1-2	Natural Gas Consumption	1	Col B, 23, 25-30; Col C, 27-30; Col D, 5-19	Grant	Sensitive contractual information
43-4/1-1/1-1/1-2/1	Gas Sales	1	Cols, A-E, 4-19; 21-26	Grant	Sensitive contractual and competitive business information
47-2/2-1	Natural Gas Consumption Report	1	58,60-62	Grant	Sensitive contractual information
47-2/2-1/1	Natural Gas Price Computations	1	Col B, 18, 20-25; Col C, 22-25; Col D, 2-16; Col E, 22-25	Grant	Sensitive contractual information
48	Summary of Decontamination and Decommissioning Fund	1	Col B, 12-14	Grant	Sensitive competitive business information
48-1	Allocation of DOE's D&D Fund Payment	1	Cols A-B, 26; Col C, 8-10, 12,17,19	Grant	Sensitive competitive business information

Staff Work Paper Number	Title	Page(s)	Line(s)	Recommend Extension for 18 months	Type of Information Classified Confidential
Documents 04355-04 and 04646-04					
48-1/1	Payment Request	1	Col A, 9-14	Grant	Sensitive competitive business information
48-1/2	Summary of Payment	1	Cols A-B, 4-7; Col C, 4-7, 9-12; Col D, 4-7; Col E, 4-5	Grant	Sensitive competitive business information
48-2	Invoice	1	Col A, 18-19, 22-23; Col B, 17, 20-21,24-26;	Grant	Sensitive contractual and competitive business information
48-2/1	Deliveries in Work Units	1	All	Grant	Sensitive contractual and competitive business information
52	Incremental Hedging Summary	3	23-24	Grant	Sensitive contractual and competitive business information
52	Incremental Hedging Summary	5	5-6,12	Grant	Sensitive contractual and competitive business information
52-1	Support for Incremental Costs	2	Col A, 4,9-11; Col B, 1-3	Grant	Sensitive contractual and competitive business information
52-1	Support for Incremental Costs	3	Col C, 12-14; Col D, 12,14,16	Grant	Sensitive contractual and competitive business information
52-1	Support for Incremental Costs	4	Cols A-B, 14-15; Col C, 10; Col D, 10,16	Grant	Sensitive contractual and competitive business information
52-1	Support for Incremental Costs	5	Cols D-G,J, 9-28	Grant	Sensitive contractual and competitive business information
52-1	Support for Incremental Costs	6	2-3,5-7	Grant	Sensitive contractual and competitive business information

Staff Work Paper Number	Title	Page(s)	Line(s)	Recommend Extension for 18 months	Type of Information Classified Confidential
Documents 04355-04 and 04646-04					
52-1	Support for Incremental Costs	7	11-12,18-19, 21-23,25-34	Grant	Sensitive contractual and competitive business information
52-1	Support for Incremental Costs	8	Col B, 19-20, 22-25	Grant	Sensitive contractual and competitive business information
52-1	Support for Incremental Costs	9	Col B, 12-16, 18-19,20-21	Grant	Sensitive contractual and competitive business information
52-2	Support for Incremental Costs	1	Col A, 2; Col B, 3-8;	Grant	Sensitive contractual and competitive business information
52-2	Support for Incremental Costs	2	Col N, 2-18	Grant	Sensitive contractual and competitive business information
52-2	Support for Incremental Costs	3-5	Col B, 10-11	Grant	Sensitive contractual and competitive business information
52-3	Support for Incremental Costs	1	2-4	Grant	Sensitive contractual and competitive business information
52-3	Support for Incremental Costs	2	Col F, 8	Grant	Sensitive contractual and competitive business information
52-3	Support for Incremental Costs	3	Col B, 10-11	Grant	Sensitive contractual and competitive business information
52-9	Support for Incremental Costs	1	Col B, 15-18, 31	Grant	Sensitive contractual and competitive business information

A temporary copy of this recommendation will be held at I:04646-04.2<sup>nd</sup> extension 2003 fuel fpl raf.doc for a short period.

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