

State of Florida



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Public Service Commission

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COMMISSION
CLERK

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

DATE: January 28, 2009

TO: Martha Brown, Attorney, General Counsel's Office

FROM: Division of Regulatory Compliance (Freeman, Vandiver)

RE: Docket 090007-EI, Recommendation concerning Florida Power & Light Company's (FPL) request for an extension of 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. This adjustment to the utility's filing was accompanied by redacted copies for public inspection (document 02079-07) and copies with the sensitive information highlighted in support of the utility's amended request (document 02078-07).

Confidential document 02078-07 supersedes and replaces confidential document 06062-06. Document 06062-06 has been returned to the utility.

On April 13, 2007 in Docket Numbered 070007-EI, the Commission issued Order No. PSC-07-0320-CFO-EI granting FPL's request that the identified portions of these sensitive working papers be provided a confidential classification. That classification period has now lapsed.

On October 10, 2008, FPL requested that the confidential classification for these audit working papers be extended for at least an additional 18 months.

COM _____
 ECR _____
 GCL _____
 OPC _____
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DOCUMENT NUMBER-DATE

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Documents numbered 05836-06 and 02078-07 are currently held by the Office of the Commission Clerk as confidential pending resolution of FPL's request for extension of the confidential classification granted by Commission Order PSC-07-0320-CFO-EI.

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 request for extension 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.

Staff Analysis of the Request (Continued)

By way of an affidavit filed along with the request, 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 Mr. Onsgard, we agree that release of this material would reveal sensitive internal auditing controls and sensitive reports of internal auditors.

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

By way of an affidavit filed along with the request, Paul Plotkin, FPL Plant General Manager of the Manatee Energy Center, identifies sensitive contractual and competitive business information within the staff working papers titled: "Plant Addition Samples." In addition by affidavit, Roger F. Messer, FPL Director Environmental Support, identifies sensitive contractual and competitive business information within staff working papers titled: "O&M Samples." Lastly by affidavit, Ken Huff, FPL Supervisor, Power Plant Accounting, identifies sensitive contractual information reported within staff working papers titled "Emission Allowance."

Mr. Plotkin, Mr. Messer and Mr. Huff assert the identified information if released would impair the efforts of FPL to contract for goods and services on favorable terms. Mr. Plotkin and Mr. Messer also assert release of the information they identify would also 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 material reveals it is sensitive contractual information or sensitive competitive business information and its release would cause the harm that FPL and FPL employees suggest.

3. Security information

Through his affidavit, Mr. Messer identifies sensitive security information within a working paper titled "O&M Samples".

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 employees Onsgard, Plotkin, Messer and Huff 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 extension be set as 18 months.

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 an extension of 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
16-15/12-3/1	Plant Addition Samples	2	3,5,7,9-10,12,14, 16,18-19,28-30 <i>Note: This page while requested as confidential by FPL was not listed in Commission Order PSC-07-0320. That omission is corrected here.</i>	Grant	Sensitive Contractual and Competitive Business Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 05836-06 and 02078-07					
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	Sensitive Contractual Information
51-3/1-2/2	Emission Allowance	2	4,15,19	Grant	Sensitive Contractual Information

A temporary copy of this recommendation will be held at I:02078-07 fpl 1st ext 2005 environ raf.doc for a short period.

CC: Division of Regulatory Compliance (Welch)
Office of Commission Clerk (Cole, McLean)