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COMMISSION CLERK

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

DATE: May 20, 2009
TO: Katherine Fleming, Attorney, General Counsel
FROM: Division of Regulatory Compliance (Freeman, Mailhot) ^F dm
RE: Docket 090002-EG, Recommendation concerning Florida Power & Light Company's (FPL's) 2nd request for extension of confidential classification concerning a portion of the staff working papers prepared during "FPL Energy Conservation Cost Recovery Clause Audit for the Year Ended December 31, 2003", Audit Control No. 04-070-4-1, Documents Numbered 08245-04 and 08396-04

On July 14, 2004, when copies of certain portions of staff's audit working papers obtained or prepared during the "FPL Energy Conservation 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 July 29, 2004, staff filed Document No. 08245-04 consisting of those specified portions of the staff working papers.

On August 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 a redacted copy for public inspection (Exhibit B, Document No. 08395-04) and a highlighted copy (Document No. 08396-04).

On March 9, 2006, the Commission issued Order No. PSC-06-0188-CFO-EG in Docket No. 060002-EG granting FPL's request for a confidential classification for an 18 month period. That classification period has now tolled.

On September 7, 2007, FPL filed a request pursuant to Rule 25-22.006, FAC, and Section 366.093, Florida Statutes (F.S.), that the confidential classification period granted by Commission Order No. PSC-06-0188-CFO-EG be extended for an additional 18 months.

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On October 15, 2007, the Commission issued Order No. PSC-07-0827-CFO-EG in Docket No. 070002-EG granting FPL's request for an extension of confidential classification for an 18 month period. That classification period has now tolled.

On April 15, 2009, FPL filed a request to extend the confidential classification for these audit materials for a second 18 month term.

McLean

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

May 20, 2009
Florida Power & Light Request

Documents numbered 08245-04 and 08396-04 are currently held by the Office of the Commission Clerk as confidential pending resolution of FPL's 2nd request for 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. Subsection 366.093(3)(b) and (e), F.S., provide the following exemptions.

Subsection 366.093(3), 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.

....

(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. Internal auditing controls and reports of internal auditors

Subsection 366.093(3)(b), F.S., provides that the Commission may grant a confidential classification to internal auditing controls and to the reports of internal auditors. By way of an affidavit, Robert Onsgard, FPL Manager, Internal Auditing, identifies materials associated with FPL's internal audits that are reported within staff working papers entitled: "Internal Audit List", and "Internal Audit Notes."

Staff Analysis of Request (Continued)

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

2. Customer-Specific Account Information.

FPL asserts that customer-specific information should be granted a confidential classification on the basis that release of this customer-specific information would harm competitive business interests. Subsection 366.093(3)(e), F. S., provides that the Commission may grant a confidential classification to sensitive information concerning competitive business interests if release of that information will harm the provider of that information.

By way of an affidavit, Ms. Anita Sharma, FPL Manager, DSM Cost and Performance, identifies materials associated with customer-specific account information within staff working papers entitled: "Calculation of Standby and Supplemental Factor – July 2003", "Calculation of Standby and Supplemental Factor -- October 2003", "List of RTP Customers", "Calculation of RTP ECCR Factor July 2003", "Calculation of RTP ECCR Factor October 2003", "Audit Analyzer Sample of Source Code 50", "Sample Source Code 50's", "Sample of Source Code 11", "CILC Billing Report", "Calculation of CILC Credits", "Power Billing Detail Report", and "C/I Load Control Agreement."

Ms. Sharma reports that FPL treats customer-specific information as confidential to include: "customer names, addresses, telephone numbers, account numbers, rates, billing determinants (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 and persons other than the customer absent the customers consent." FPL states its policy "is premised upon customers' right to privacy and the potential that the disclosure of customer-specific account information may harm some customers' competitive interests."

After reading the information identified by Ms. Sharma, we recommend that this customer-specific account information be held as confidential because the information meets the definition of "proprietary confidential business information" set out in Section 366.093(3)(e), Florida Statutes, in that release of this privately-held information pertaining to competitive interests would cause the provider of that information harm.

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 statutory requirements to be considered "Proprietary Confidential Business Information." Further FPL employees Onsgard and Sharma assert FPL has maintained the confidentiality of the materials 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.

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 Classified Confidential
Documents 08245-04 and 08396-04					
9	Internal Audit List	1	Col B, 1-51	Grant	Internal Auditing Controls and Reports of Internal Auditors
9	Internal Audit List	2	Col B, 52-63	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-1	Internal Audit Notes	1-2	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-2	Internal Audit Notes	1-3	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
41-1/1-1	Calculation of Standby & Supplemental Factor July 2003	1	Cols A-B, 1,3,6,7; Col G, 1b,3b, 6b,7b;	Grant	Customer-Specific Account Information
41-1/1-1	Calculation of Standby & Supplemental Factor July 2003	2	Cols A-B, 10-11, 14-15; Col G, 10b,11b, 14b,15b	Grant	Customer-Specific Account Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 08245-04 and 08396-04					
41-1/2-1	Calculation of Standby & Supplemental Factor October 2003	1	Cols A-B, 1,3,6-7,9; Col G, 1b,3b, 6b,7b;	Grant	Customer-Specific Account Information
41-1/2-1	Calculation of Standby & Supplemental Factor October 2003	2	Cols, A-B, 12-15; Col G, 12b, 13b, 14b, 15b;	Grant	Customer-Specific Account Information
41-3	List of RTP Customers	1	Cols A-C, 1-8, 11-12, 14-19, 27-31, 35-38;	Grant	Customer-Specific Account Information
41-3/1	Calculation of RTP ECCR Factor July 2003	1	Cols A-B, 1,3; Col G, 1b,3b	Grant	Customer-Specific Account Information
41-3/2	Calculation of RTP ECCR Factor October 2003	1	Cols A-B, 1,3; Col G, 1b,3b	Grant	Customer-Specific Account Information
43-4	Audit Analyzer Sample of Source code 50	1	Col B, 5b,6b,8b, 11b,14b,15b,16b, 17b,18b,19b,20b, 21b; Col E, 5-6,11, 14-21	Grant	Customer-Specific Account Information
43-4	Audit Analyzer Sample of Source code 50	2	Col B, 22b,23b, 24b,25b,26b,27b, 28b,29b,30b,31b, 32b,33b,34b,35b, 36b,37b,38b; Col E, 22-38	Grant	Customer-Specific Account Information
43-4	Audit Analyzer Sample of Source Code 50	3	Col B; 39b Col E, 39	Grant	Customer-Specific Account Information
43-4/1	Sample of Source Code 50's	1	Cols A,D, 1; Col E, 3-4,11-13, 16	Grant	Customer-Specific Account Information
43-4/1	Sample of Source Code 50's	2	Cols A, 1,21; Col D, 1-2,21-22; Col E, 1,21	Grant	Customer-Specific Account Information
43-4/1	Sample of Source Code 50's	3	Col A, 9,14; Col D, 14; Col E, 11	Grant	Customer-Specific Account Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 08245-04 and 08396-04					
43-4/1	Sample of Source Code 50's	4	Cols A,D, 1,4,7,10, 13,16-17,19,21, 23-24; Col E, 17-22,24	Grant	Customer-Specific Account Information
43-4/1	Sample of Source Code 50's	5	Cols A,D, 1,4,7,10, 13,16,19	Grant	Customer-Specific Account Information
43-4/1	Sample of Source Code 50's	6	Cols A,D, 1,3,6,9, 12,15-18; Col E, 15-18	Grant	Customer-Specific Account Information
43-4/1	Sample of Source Code 50's	7	Cols A,D, 1,7,10, 13,16,19,22	Grant	Customer-Specific Account Information
43-5/1	Sample of Source Code 11	1	Col B, 2-7; Col E,F, 2-6	Grant	Customer-Specific Account Information
44-7/2-1	CILC Billing Report	1	Cols A-C,J-L,N, 3,5,8-9,11-12, 14-15,17,19-21, 23-27,29,33-34,36, 38,40,42-43,47-48, 50-51,54-55,60,62, 64	Grant	Customer-Specific Account Information
44-7/2-1	CILC Billing Report	2	Cols A-C,J-L,N, 73-74,77-82,87,89, 92-93,99-100,103, 105-106,108, 110-111,115,120, 122,124,129	Grant	Customer-Specific Account Information
44-7/2-1	CILC Billing Report	3	Cols A-C,J-L,N, 134-135,139-140, 144-147,149-154, 156-161,164-166, 168-171,173,177, 179-180,184-187, 189-194,198	Grant	Customer-Specific Account Information
44-7/2-1	CILC Billing Report	4	Cols A-C,J-L,N, 199,209,212,214, 216,219,222-223, 226-229,235,237, 239-240,243-244, 246,248-249, 253-254,256,259, 261-264	Grant	Customer-Specific Account Information
44-7/2-1	CILC Billing Report	5	Cols A-C,J-L,N, 265,269-270,272, 274-276,278,280, 282,284,286, 289-294,296,298, 300,302,306-308, 314,318,320, 326-330	Grant	Customer-Specific Account Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 08245-04 and 08396-04					
44-7/2-1	CILC Billing Report	6	Cols A-C,J-L,N, 331,333,338,344, 346,348,355,357, 359-361,363, 365-366,368-373, 375,383,389-391, 393,396	Grant	Customer-Specific Account Information
44-7/2-1	CILC Billing Report	7	Cols A-C,J-L,N, 398-399,401-404, 408,411,413,415, 417-418,420-421, 426,428-432,434, 437,439,442-443, 445,451-453, 456-457,459, 461-462	Grant	Customer-Specific Account Information
44-7/2-1	CILC Billing Report	8	Cols A-C,J-L,N, 463,465,468-470, 474-477,480,482, 486-487,490-493, 496,499-500	Grant	Customer-Specific Account Information
44-7/2-1/1	Calculation of CILC Credits	1	Cols B,C,E,H,I, 1-11	Grant	Customer-Specific Account Information
44-7/2-1/1-1	Power Billing Detail Report	2	Col A, 1-3 Col B, 1-3;10-12, 15-16; Col C, 7-8, 10-12,15-16, 22-29,33-44 Col E, 10-12, 15-20,31-32 Col F, 7-8,10-13, 15-30,33-44	Grant	Customer-Specific Account Information
44-7/2-1/1-1	Power Billing Detail Report	3	Col A, 1-3; Col B, 1-3,10-12, 15-16; Col C, 7-8,10-12, 15-16,22-29,33-44; Col E,10-12, 15-16,18-20, 31-32; Col F, 7-8,10-13, 15-30,33-44	Grant	Customer-Specific Account Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information Classified
Documents 08245-04 and 08396-04					
44-7/2-1/1-1	Power Billing Detail Report	5	Col A, 1-3 Col B, 1-3, 10-12, 14-15; Col C, 7-8, 10-12, 14-15, 20-27, 30-41; Col E, 10-12, 14-18, 28-29 Col F, 7-12, 14-28, 30-41	Grant	Customer-Specific Account Information
44-7/2-1/1-1	Power Billing Detail Report	8	Col A, 1-3; Col B, 1-3, 10-12, 14-15; Col C, 7-8, 10-12, 14-15, 20-27, 30-41; Col E, 10-12, 14-18, 28-29; Col F, 7-8, 10-12, 14-28, 30-41	Grant	Customer-Specific Account Information
44-7/2-1/1-1	Power Billing Detail Report	9	Col A, 1-3; Col B, 1-3, 10-12, 14-15; Col C, 7-8, 10-12, 14-15, 20-27, 31-42; Col E, 10-12, 14-18, 29-30 Col F, 7-8, 10-12, 14-28, 31-42	Grant	Customer-Specific Account Information
44-7/2-1/1-2	C/I Load Agreement	1	2-3	Grant	Customer-Specific Account Information

A temporary copy of this recommendation will be held at I: 08396-04.2nd ext 2003 conservation fpl raf.doc for a short period.

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