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

**DATE:** May 14, 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) request for a 2<sup>nd</sup> 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, 2004", Audit Control No. 05-042-4-1, Documents Numbered 06625-05 and 06604-05

On June 22, 2005, 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, 2004", 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 13, 2005, staff filed document 06625-05 consisting of those specified portions of the staff working papers.

On July 13, 2005, 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 06603-05) and a highlighted copy (document 06604-05).

On March 9, 2006, the Commission issued Order No. PSC-06-0189-CFO-EG in Docket No. 060002-EG granting FPL's request for a confidential classification for an 18 month period.

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-06-0189-CFO-EG be extended for an additional 18 months.

On October 15, 2007, the Commission issued Order No. PSC-07-0828-CFO-EG in Docket No. 070002-EG granting FPL's request for an 18 month extension of the confidential classification period. That classification period has now tolled.

COM \_\_\_\_\_  
 ECR \_\_\_\_\_  
 GCL \_\_\_\_\_  
 OPC \_\_\_\_\_  
 RCP \_\_\_\_\_  
 SSC \_\_\_\_\_  
 SGA \_\_\_\_\_  
 ADM \_\_\_\_\_  
 CLK *Peña*

On April 15, 2009, 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-07-0828-CFO-EG be extended again for an additional 18 months.

DOCUMENT NUMBER-DATE

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Documents 06625-05 and 06604-05 are currently held by the Commission's Division of the Commission Clerk and Administrative Services as confidential pending resolution of FPL's request for a second extension of the 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)(e), F.S., provides the following exemption:

*"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:*

....

*(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 sensitive competitive business information as well as sensitive 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 sensitive competitive business interests to include customer-specific account information within staff working papers entitled: "Bill Test", "Proposal", "Cell Phone Bill", "Case Studies", "CILC (Commercial/Industrial Load Control) Incentives", "Sample Bill", and "CDR (Commercial/Industrial Demand Reduction) Incentives."

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.”

After reading the information identified by Ms. Sharma, we recommend that this sensitive competitive business information to include 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 definition of proprietary confidential business information. Further, employee Sharma asserts FPL has maintained the confidentiality of those materials she 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 filing, and for the reasons presented above, we recommend the utility’s request be granted and that the identified material be granted a second extension of confidential classification for a period of 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 06625-05 and 06604-05					
41-1/1-1	Bill Test	1	1	Grant	Sensitive Competitive Business Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 06625-05 and 06604-05					
43-5/1	Proposal	1	17	Grant	Sensitive Competitive Business Information
43-5/1	Proposal	2	9	Grant	Sensitive Competitive Business Information
43-5/2	Cell Phone Bill	5	1,12,31	Grant	Customer-Specific Account Information
43-5/2	Cell Phone Bill	7	3,6,34,36,42	Grant	Customer-Specific Account Information
43-5/2	Cell Phone Bill	8	2,5	Grant	Customer-Specific Account Information
43-5/2	Cell Phone Bill	9	Cols A-B, 2,5	Grant	Customer-Specific Account Information
43-5/2	Cell Phone Bill	10	Col A, 2,5; Col B, 3,5	Grant	Customer-Specific Account Information
43-5/2	Cell Phone Bill	11-23	Cols A-B, 2,5	Grant	Customer-Specific Account Information
43-5/2	Cell Phone Bill	24	2-5	Grant	Customer-Specific Account Information
43-5/3	Case Studies	2	8,14,18,20,22, 28-31	Grant	Sensitive Competitive Business Information
43-5/3	Case Studies	3	1-5,9-10,12-15	Grant	Sensitive Competitive Business Information
43-5/3	Case Studies	4	1-2,6,13-14,21-22, 28-29	Grant	Sensitive Competitive Business Information
43-5/3	Case Studies	5	1,9-11	Grant	Sensitive Competitive Business Information
44-1/1	CILC Incentives	1	Cols A-C,J-N, 4,6-10,12-13, 16-19,24-27,29, 32,35,37-38,44, 48-52,57,61,63	Grant	Customer-Specific Account Information
44-1/1	CILC Incentives	2	Cols A-C,J-N, 64-69,73-78,80-81, 83-86,88,90-91, 93-94,98-100, 103-104,106-108, 114-115,118,121, 123,127-128, 130-131	Grant	Customer-Specific Account Information
44-1/1	CILC Incentives	3	Cols A-C,J-N, 132-133,136-138, 140,142,145,147, 150,153-154, 157,161-162, 164-165,167-168, 171,173,175, 177,179-181,188, 190-191,194,196	Grant	Customer-Specific Account Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 06625-05 and 06604-05					
44-1/1	CILC Incentives	4	Cols A-C,J-N, 198-200,203-205, 207,209,211-214, 217-218,220-221, 225,228,232-234, 240-245,253-254, 257	Grant	Customer-Specific Account Information
44-1/1	CILC Incentives	5	Cols A-C,J-N, 259,261-265,269, 278,282,285-287, 289,291-292,296, 298, 300,302, 305-307,310-312, 314-317,319-322, 324	Grant	Customer-Specific Account Information
44-1/1	CILC Incentives	6	Cols A-C,J-N, 325,329-332,334, 338-339,341,343, 346,349-350,352, 362,369,372, 374-375,378, 381-382,385,389, 391	Grant	Customer-Specific Account Information
44-1/1	CILC Incentives	7	Cols A-C,J-N, 395-404,408-409, 412,414,416,423, 426,429-430,435, 438,440,442-443, 445,449-451	Grant	Customer-Specific Account Information
44-1/1	CILC Incentives	8	Cols A-C,J-N, 452,454,461, 465-466,470,472, 475,477-478, 481-483,491	Grant	Customer-Specific Account Information
44-1/1-1	Sample Bill	1	Col A, 1-2;  Col B, 1-2,2a, 10-12,14-15;  Col C, 7-8,10-12, 14-15,21-28,32-44;  Col E, 10-12, 14-18,30-31;  Col F, 7-8,10-12, 12a, ,14-29,32-44	Grant	Customer-Specific Account Information
44-1/2	CDR Incentives	1	Cols A-C, J-M, 1-3,6-8,10,14-16, 18,20	Grant	Customer-Specific Account Information

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A temporary copy of this recommendation will be held at I: 06604-05.ext 2 2004 conservation fpl raf.doc for a short period.

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