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DATE: March 29, 2010

TO: Lisa Bennett, Attorney, Office of General Counsel

FROM: Division of Auditing and Performance Analysis (Freeman, Prestwood) F CP

RE: Docket 100001-EI, Recommendation concerning Florida Power & Light Company's (FPL's) request for confidential classification concerning a portion of the staff audit working papers prepared during "Florida Power & Light Capacity Cost Recovery Clause Audit for the Year Ended December 31, 2008", Audit Control No. 09-041-4-3, Documents Numbered 04938-09 and 05482-09

On May 12, 2009, when copies of certain portions of staff's audit working papers obtained or prepared during the "Florida Power & Light Capacity Cost Recovery Clause Audit for the Year Ended December 31, 2008", 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 19, 2009, staff filed document numbered 04938-09 consisting of those specified portions of the staff's audit report and working papers.

On June 2, 2009, 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 a confidential classification. The utility's request included redacted copies for public inspection (Document No. 05483-09) and copies with the sensitive material highlighted (Document No. 05482-09).

Documents numbered 04938-09 and 05482-09, are currently held by the Office of the Commission Clerk as confidential pending resolution of FPL's request for 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)(b)(d) and (e), F.S., provide the following exemptions.

- COM _____
- APA _____
- ECR _____
- GCL _____
- RAD _____
- SSC _____
- ADM _____
- OPC _____
- CLK Kim Peña

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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 reports of the internal auditors.

....

(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 Utility Request

Reading the filing reveals the sensitive material consists of:

- 1) Material reporting internal auditing controls, reports of internal auditors or related information

By way of an affidavit, Robert Onsgard, FPL Manager, Internal Auditing, identifies sensitive material reporting internal auditing controls, reports of internal auditors and related information. Mr. Onsgard identifies materials reporting sensitive internal auditing information which is disclosed in the working paper titled: “Internal Audits.”

Section 366.093(3)(b), F.S., provides that the Commission may grant a confidential classification to information reporting internal auditing controls and reports of internal auditors. Reading the filing indicates the material identified by Mr. Onsgard pertains to FPL’s internal auditing efforts; therefore, we recommend that this material be granted a confidential classification.

Staff Analysis of the Utility Request (Continued)

2) Customer-specific account information

By way of an affidavit Ms. Damaris Rodriguez, FPL Manager of Cost Recovery Claims in the Regulatory Affairs Department, identifies working papers titled: "Revenue" as reporting sensitive information concerning customer-specific account information. Ms. Rodriguez reports that 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 determinants (kW and kWh usage), conservation savings in kWh and bills. FPL treats such information as confidential and does not disclose it, except as provided by law, to entities or persons other than the customer absent the customer's consent...."

The Commission policy is to grant customer-specific account information a confidential classification on the basis that the information is sensitive competitive business information the release of which would harm the provider of that information. (See Commission Order No. 22851, issued April 23, 1990, in docket No. 890974-EI.)

After reading the material identified by Ms. Rodriguez, we find the information is customer-specific account information, and therefore, we recommend that the material be granted a confidential classification.

3) Competitively Sensitive Business Information

By way of an affidavit, Osvaldo J. Lom, FPL Supervisor of Purchased Power Contracts, identifies competitively sensitive business information contained within staff working papers titled: "UPS" and "SJRPP", and adds "...its disclosure could make data available to the marketplace that would otherwise not be available at this level of detail." Also, Mr. Lom indicates release of the information would place FPL at a competitive disadvantage.

Section 366.093(3)(e), F.S., provides that material may be granted a confidential classification if the material is competitively sensitive such that its release would harm the competitive business of the provider of the information. We have read the identified information and agree with FPL that release of this information would reasonably cause the harm FPL suggests; therefore, we recommend that this information be granted a confidential classification.

Staff Analysis of the Utility Request (Continued)

- 4) Contractual data such as pricing and other terms, payment records, and vendor and supplier rates

By way of an affidavit, Gerard J. Yupp, FPL Director of Wholesale Operations in the Energy Marketing and Trading Division, points out materials which are identified as contractually sensitive in staff's working papers titled: "L-T Capacity Purchase", "Transmission of Electric by Others."

As justification for why the material is sensitive information, Mr. Yupp asserts that the documents "contain or constitute contractual data..., the disclosure of which would impair FPL's ability to contract for oil and gas procurement on favorable terms for the benefit of its customers in the future and would impair the competitive efforts of FPL and its vendors. Certain information in the documents and materials would also place FPL at a disadvantage when coupled with other information which is publicly available...."

Staff has read the materials identified by Mr. Yupp and agrees their release would reasonably cause the harm the FPL expects.

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, the FPL employees identified above also report FPL has maintained the confidentiality of these materials.

Duration of the Confidential Classification Period

FPL and the FPL employees request 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 Numbered 04938-09 and 05482-09					
9	Internal Audits	1-4	Col. A	Grant	Internal Auditing Controls and Reports of Internal Auditors
41-2/2	Revenue	1	Col. 1	Grant	Sensitive Competitive Business Information
41-2/3	Revenue	1	Col. 1	Grant	Sensitive Competitive Business Information
41-2/4	Revenue	1	Col. 1	Grant	Sensitive Competitive Business Information
41-2/4-1	Revenue	1	2-5	Grant	Sensitive Competitive Business Information
41-2/4-1	Revenue	2	2-4	Grant	Sensitive Competitive Business Information
41-2/5	Revenue	1	Col. 1	Grant	Sensitive Competitive Business Information
41-2/5-1	Revenue	1	2-5	Grant	Sensitive Competitive Business Information
41-2/6	Revenue	1	Col. 1	Grant	Sensitive Competitive Business Information
41-2/7	Revenue	1	Col. 1	Grant	Sensitive Competitive Business Information
41-2/8	Revenue	1	Col. 1	Grant	Sensitive Competitive Business Information
41-2/9	Revenue	1	Col. 1	Grant	Sensitive Competitive Business Information
41-2/10	Revenue	1	Col. 1	Grant	Sensitive Competitive Business Information
41-2/11	Revenue	1	Col. 1	Grant	Sensitive Competitive Business Information
41-2/12	Revenue	1	Col. 1	Grant	Sensitive Competitive Business Information
41-2/13	Revenue	1	Col. 1	Grant	Sensitive Competitive Business Information
41-2/13-1	Revenue	1	2-5	Grant	Sensitive Competitive Business Information
41-2/14	Revenue	1	Col. 1	Grant	Sensitive Competitive Business Information
41-2/14-1	Revenue	1	1,3-6	Grant	Sensitive Competitive Business Information
41-2/14-1	Revenue	2	2-5	Grant	Sensitive Competitive Business Information
41-2/15	Revenue	1	Col. 1	Grant	Sensitive Competitive Business Information
41-2/16	Revenue	1	Col. 1	Grant	Sensitive Competitive Business Information
41-2/17	Revenue	1	Col. 1	Grant	Sensitive Competitive Business Information
41-2/18	Revenue	1	Col. 1	Grant	Sensitive Competitive Business Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information
Documents Numbered 04938-09 and 05482-09					
41-2/19	Revenue	1	Col. 1	Grant	Sensitive Competitive Business Information
41-2/20	Revenue	1	Col. 1	Grant	Sensitive Competitive Business Information
41-2/21	Revenue	1	Col. 1	Grant	Sensitive Competitive Business Information
41-2/22	Revenue	1-2	Col. 1	Grant	Sensitive Competitive Business Information
41-2/23	Revenue	1-2	Col. 1	Grant	Sensitive Competitive Business Information
41-2/24	Revenue	1	Col. 1	Grant	Sensitive Competitive Business Information
41-2/25	Revenue	1	Col. 1	Grant	Sensitive Competitive Business Information
41-2/26	Revenue	1	Col. 1	Grant	Sensitive Competitive Business Information
41-2/27	Revenue	1	1	Grant	Sensitive Competitive Business Information
41-2/27	Revenue	3-4	1	Grant	Sensitive Competitive Business Information
41-2/27	Revenue	8	1	Grant	Sensitive Competitive Business Information
41-2/27	Revenue	11-16	1	Grant	Sensitive Competitive Business Information
41-2/28	Revenue	1	1	Grant	Sensitive Competitive Business Information
44-1/1-1/2	UPS	1	All	Grant	Sensitive Competitive Business Information
45-1/1-1/1	SJRPP	1-6	All	Grant	Sensitive Competitive Business Information
45-1/1-2	SJRPP	1-2	All	Grant	Sensitive Competitive Business Information
45-1/3-1	SJRPP	1	All	Grant	Sensitive Competitive Business Information
45-1/7-1	SJRPP	1	All	Grant	Sensitive Competitive Business Information
45-2/3-1	SJRPP	1	All	Grant	Sensitive Competitive Business Information
47-1	L-T Capacity Purchase	1	Cols. D-E	Grant	Sensitive Competitive Business Information
47-1/1	L-T Capacity Purchase	1	15,18-19,32	Grant	Sensitive Contractual Information
47-1/1	L-T Capacity Purchase	2	4,14-23	Grant	Sensitive Contractual Information
47-1/2	L-T Capacity Purchase	1	8,11; Cols. A,C-F	Grant	Sensitive Contractual Information
47-1/2	L-T Capacity Purchase	2	Cols. A-C	Grant	Sensitive Contractual Information
47-1/3	L-T Capacity Purchase	1	Cols. B,D-E	Grant	Sensitive Contractual Information
47-1/3	L-T Capacity Purchase	2	Cols. A,C-D	Grant	Sensitive Contractual Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information
Documents Numbered 04938-09 and 05482-09					
47-1/4	L-T Capacity Purchase	1	Cols. A-C	Grant	Sensitive Contractual Information
47-1/4	L-T Capacity Purchase	2-3	Cols. A-D	Grant	Sensitive Contractual Information
48-1	Transmission of Electric by Others	1	Cols. A-E	Grant	Sensitive Contractual Information
48-1/1	Transmission of Electric by Others	1-2	Cols. A-D	Grant	Sensitive Contractual Information
48-1/1	Transmission of Electric by Others	3	3	Grant	Sensitive Contractual Information

A temporary copy of this recommendation will be held at I:05482-09 fpl 2008 capacity cost raf.doc for a short period.

CC: Division of Auditing and Performance Analysis (Welch)
Office of the Commission Clerk (Melean, Cole)
Office of General Counsel (Harris)