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

DATE: June 29, 2010

TO: Richard Bellak, Attorney, Office of General Counsel

FROM: Office of Auditing and Performance Analysis (Freeman^F, Prestwood)^{CP}

RE: Docket 060224-EI, Recommendation concerning Florida Power & Light Company's (FPL) request for a 2nd extension of confidential classification concerning a portion of the staff audit report and working papers prepared during "Florida Power & Light Service Connect Process Audit for the Year Ended December 31, 2004", Audit Control No. 05-285-4-1, Documents Numbered 01604-06, 01605-06, 02151-06 and 04185-06

On February 20, 2006, when copies of sensitive portions of staff's audit report and working papers obtained or prepared during the "Florida Power & Light Service Connect Process 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 February 24, 2006, staff filed Documents Numbered 01604-06 and 01605-06 consisting of those specified portions of staff's audit report and working papers.

On March 13, 2006, FPL filed a request pursuant to Rule 25-22.006, FAC, and Section 366.093, Florida Statutes (F.S.), that selected portions of the staff materials prepared during the audit receive confidential classification. With their request, the utility filed Document No. 02151-06 consisting of a copy of the materials in question with the confidential portions highlighted.

After discussions with the staff, the utility reduced its request on May 12, 2006, and again on November 2, 2006. In support of these amendments, FPL filed a public copy with the sensitive information redacted (Document No. 04186-06) and a copy with the sensitive information highlighted (Document No. 04185-06).

On November 27, 2006, the Commission granted the utility's request, as amended, and issued Order No. PSC-06-0978-CFO-EI.

- COM _____
- APA _____ On May 16, 2008, FPL requested that the confidential classification period granted by
- ECR _____ Commission Order No. PSC-06-0978-CFO-EI be extended for an additional 18 months.
- GCL _____
- RAD _____ On August 12, 2008, the Commission granted the utility's request for an 18 month extension of
- SSC _____ confidential classification and issued Order No. PSC-08-0515-CFO-EI. That extension has now
- ADM _____ tolled.

OPC _____
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June 29, 2010
Florida Power & Light Request

On March 15, 2010, FPL requested that the confidential classification period granted by Commission Order No. PSC-08-0515-CFO-EI be extended for a second 18 month period for a lesser amount of material.

After discussions with the staff, on May 28, 2010, FPL filed a revised request which provided cause why FPL's request for extended confidentiality was filed over 1 month late.

Documents 01604-06, 01605-06, 02151-06 and 04185-06 are currently held by the Office of the Commission Clerk as confidential pending resolution of FPL's request for a second 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)(a) and (e), F.S., provide the following exemptions.

Section 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:*

(a) Trade secrets....

(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

Commission Order No. PSC-08-0515-CFO-EI granted an 18 month extension to this material on August 12, 2008. This 18-month period ended on February 12, 2010. FPL's request to hold the materials as confidential for an additional time period was not filed until March 15, 2010. Thus, the request for another extension of the classification was over a month late.

Concerning the duration of a confidential classification period, Rule 25.006(9)(a), FAC, provides: "*Orders of the Commission granting confidential classification shall limit the duration of such classification to a period not exceeding 18 months. The Commission may approve a longer period if it finds, for good cause, that such a longer period is necessary to protect the ratepayers or the business operations of the utility or affected person.*"

On May 28, 2010, after discussions with the staff, FPL filed a revised request which recognizes that the request was late and explains that the reason for the late filing was due to an inadvertent clerical error. FPL further asserts the Commission may grant the late request under the "principle of excusable neglect" and points out:

- 1) The sensitive material has not been publicly released by the Commission.
- 2) There are no parties or affected persons who will be harmed by granting FPL's request for a continued confidential classification.
- 3) FPL monitors a large volume of orders in determining the confidentiality of FPL documents in dozens of docketed and undocketed matters, and in the beginning of 2010, was in the process of consolidating and restructuring its responsibility for such monitoring efforts. In this environment, a clerical error occurred in timely processing of this matter.
- 4) FPL further asserts that the sensitive material is information concerning the marketing of and revenues from particular FPLES Products and other items as FPL describes in its page-by-page listing of confidential documents. FPL asserts the identified material is not stale or outdated and remains sensitive.
- 5) Lastly, FPL reports a number of precedents provide that "Florida Law favors allowing a party to have a controversy decided on the merits."

- A) PSC Order No. PSC-96-0407-CFO-WS, issued March 21, 1996
- B) PSC Order No. PSC-04-0857-CFO-EI, issued September 1, 2004
- C) *Jayanandarajan V. Freedman*, 863 So. 2d 432, 433 (Fla. 4th DCA 2002)
- D) *Lloyd's Underwriter's at London v. Ruby Inc.*, 801 So. 2d 138 (Fla. 4th DCA 2001)
- E) *Elliott v. Aurora Loan Servs., LLC*, 31 So. 3d 304 (Fla. 4th DCA 2010)
- F) *Somero v. Hendry Gen. Hosp.*, 467 So. 2d 1103, 1106 (Fla. 4th DCA 1985)

Staff Recommendation

The Commission Clerk has not yet placed this sensitive material in the public records. While technical staff has no objection to continuing the confidential status of this information, the responsibility for recommending if a request is timely or not is the responsibility of the Office of the General Counsel.

Staff Analysis Regarding the Content of the Sensitive Materials

Reading the materials reveals FPL's request for confidentiality concerns:

1) Materials Which Disclose Sensitive Competitive Business Information, in particular, Information Concerning the Marketing of Products and the Associated Revenues of an Affiliate, FPL Energy Services (FPLES)

By way of an affidavit, Maria Besada identifies the following working papers as containing sensitive competitive business information:

“Audit Finding No. 5 – FPLES Revenues”,
“Annotated Copy – Audit Finding No. 5 – FPLES Revenues”,
“Meeting on Clarification of Cost Allocation, Worksheets Provided”,
“Notes on Observation of FPLES Representative”,
“Script Used by FPLES to Offer Services”,
“Summary of Cost Allocation and Audit Findings”,
“Cost Allocation”,
“Bill Insert”,
“Bill Insert Information”,
“Bill Stuffers Information”,
“FPL Revenues”,
“Total Revenues Received by FPLES Related to Service Connection Calls”,
“Gas Service Revenues”,
“Cash Receipts Received on Behalf of FPLES”,
“Transfer Cash Collected at FPL for VAPS to Inter-Company Payable Account to FPLES”,
“Journal Entry to True-up Bad Debt Provision for the Inventory Portion of Natural Gas”, and
“General Ledger Monthly Transaction 12/2004.”

Section 366.093(3)(e), F.S., provides that the Commission may grant a confidential classification to sensitive information relating to competitive business interests if disclosure of the information would impair the competitive business of the provider of the information. In this filing, FPL seeks to protect business information concerning the utility and its affiliate Florida Power & Light Energy Services (FPLES). Because release of this information is likely to harm the competitive business of FPL and/or its affiliate, staff recommends the material be granted a confidential classification.

Staff Analysis Regarding the Content of the Sensitive Materials (continued)

2) Materials Which Disclose Trade Secrets and Sensitive Competitive Business Information, in particular, Information Concerning the Marketing of Products and the Associated Revenues of an Affiliate, FPL Energy Services (FPLES)

Ms. Besada also identifies the following working papers as containing trade secrets and sensitive competitive business information:

“Audit Finding No. 1 – Script Given to FPLES Representatives”,
“Audit Finding No. 4 – New Service Calls”,
“Annotated Copy -- Audit Finding No. 1 – Script Given to FPLES Representatives”,
“Annotated Copy -- Audit Finding No. 4 – New Service Calls”,
“Meeting on Clarification of the Cost Allocation Worksheets Provided”,
“Print Screen of Vapors”,
“Summary of FPL Representative Training”,
“Audit Finding #1”,
“FPLES Connect Service Providers”,
“Explanation of FPLES Connect Services”,
“Types of Calls Transferred”,
“Customer Information Transferred”,
“Summary of Cost Allocation and Audit Findings”,
“Cost Allocation”,
“Bill Insert Cost”,
“Cash Receipts Received on Behalf of FPLES”, and
“Transfer Cash Collected at FPL for VAPS to Inter-Company Payable Account to FPLES”.

For this category of information, FPL asserts it is sensitive competitive business information pursuant to Section 366.093(3)(e), F.S., and trade secret information according to Section 688.002(4) F.S.

Section 366.093(3)(e), F.S., provides that the Commission may grant a confidential classification to information relating to competitive business interests if its disclosure would impair the competitive business of the provider of the information. In this filing, FPL seeks to protect business information concerning the utility and its affiliate Florida Power & Light Energy Services (FPLES). Since release of this information would likely harm the competitive business of FPL and/or its affiliate, staff recommends granting a confidential classification.

Also FPL requests that the above items be considered to be trade secrets. In its May 12, 2006 pleading, FPL cites Section 688.002(4), F.S., as defining a trade secret, but the utility does not explain and justify why certain information in this filing should be considered a trade secret. Our recommendation is that the material qualifies for a confidential classification on the basis that it is sensitive confidential business information, thus the utility’s request should be granted. Since we recommend that the confidentiality request be granted on the basis that the material is sensitive competitive business information, staff did not pursue the issue of whether the information also reports trade secrets.

Information Must be 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 sensitive information meets the statutory restrictions necessary for the material to be provided a confidential classification. In addition, FPLES employee Maria Besada asserts the confidentiality of these materials has been maintained.

Duration of the Confidential Classification Period

FPL requests that this material be held as confidential for an 2nd additional 18 month period and requests that this material should be returned to FPL once the information is no longer needed for the Commission to conduct its business.

Past Commission policy has allowed companies to treat sensitive commercial business materials as confidential for 5 years when the material is sensitive for an extended period. See Commission Order PSC-94-1224-CFO-EI, issued October 6, 1994, in Docket 940001-EI. In the instant case, the sensitive material pertains to an audit of 2004 information reported in 2005; therefore, we recommend that the Commission grant the 2nd extension of the confidential classification period, because the material meets the 5 year threshold of reasonableness which has been used as a guideline since 1994.

Commission retention policies require the Commission to retain audit working papers for 25 years. As deemed necessary, the utility may request a further extension of the confidential status of this material before the extended classification period tolls.

Close the Docket

The proposed order resolving this matter concludes the work to be done in this case. Thus the final order should provide that once the confidentiality decision becomes final, the docket should be closed.

Staff Recommendation

Based upon reading the filings, and for the reasons presented above, and pending a timeliness recommendation to be made by the Commission's Office of General Counsel, we recommend the utility's request for a 2nd extension of confidential classification be granted and that the identified material be granted a 2nd extension of 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 18 Months Extension	Type of Information Classified Confidential
Documents 01605-06, 02151-06 and 04185-06					
Audit Report	Audit Finding No. 1	4	26	Grant	Sensitive Competitive Business information
Audit Report	Audit Finding No. 5	11	3	Grant	Sensitive Competitive Business information
Documents 01604-06, 02151-06 and 04185-06					
Annotated Audit Report	Audit Finding No. 1	4	26	Grant	Sensitive Competitive Business information
Annotated Audit Report	Audit Finding No. 5	11	3	Grant	Sensitive Competitive Business information
25	Notes on Observation of FPLES Representative	3	5,7-11,14	Grant	Sensitive Competitive Business information
25	Notes on Observation of FPLES Representative	4	3-5,7,9-10, 16,18	Grant	Sensitive Competitive Business information
25	Notes on Observation of FPLES Representative	5	4,10,12-14, 19-21,24,28	Grant	Sensitive Competitive Business information
25	Notes on Observation of FPLES Representative	6	2-3	Grant	Sensitive Competitive Business information
25A	Print Screen of Vapors	1	2-20, except Connect Service Business Partners Named on Lines 12-18	Grant	Sensitive Competitive Business information
29	Script Used by FPLES to offer Services	1	10-11	Grant	Sensitive Competitive Business information
29-1	Audit Finding #1	1	15,27-28	Grant	Sensitive Competitive Business information
42-3	Explanation of FPLES Connect Services	1	20-21	Grant	Sensitive Competitive Business information
42-7	Types of Calls Transferred	1	13	Grant	Sensitive Competitive Business information
42-8	Customer Information Transferred	1	13-17	Grant	Sensitive Competitive Business information
43	Summary of Cost Allocation and Audit Findings	1	8-22,24-25, 27-28	Grant	Sensitive Competitive Business information
43	Summary of Cost Allocation and Audit Findings	2	25	Grant	Sensitive Competitive Business information
43	Summary of Cost Allocation and Audit Findings	5	3	Grant	Sensitive Competitive Business information
43	Summary of Cost Allocation and Audit Findings	6	6	Grant	Sensitive Competitive Business information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend 18 Months Extension	Type of Information Classified Confidential
Documents 01604-06, 02151-06 and 04185-06					
43-1	Cost Allocation	1	18-19,21,24,27, 32	Grant	Sensitive Competitive Business information
43-1	Cost Allocation	2	Col. H, 33-35	Grant	Sensitive Competitive Business information
43-1	Cost Allocation	4	2-10,12-19,22-31, 34-35	Grant	Sensitive Competitive Business information
43-1	Cost Allocation	5	5,18,31,44,57	Grant	Sensitive Competitive Business information
43-1	Cost Allocation	6	12,25	Grant	Sensitive Competitive Business information
43-1	Cost Allocation	9	33-35	Grant	Sensitive Competitive Business information
43-1	Cost Allocation	11	32-34	Grant	Sensitive Competitive Business information
44, p. 2	Bill Insert	1	20	Grant	Sensitive Competitive Business information
44-17	Bill Insert Cost	1	1-33,35-37	Grant	Sensitive Competitive Business information
44-19	Bill Insert Information	1	18,20	Grant	Sensitive Competitive Business information
44-19	Bill Insert Information	2	8-9	Grant	Sensitive Competitive Business information
44-21	Bill Stuffers Information	1	18-23	Grant	Sensitive Competitive Business information
44-24	FPL Revenue	1	7,11,16-21	Grant	Sensitive Competitive Business information
44-24	FPL Revenue	2	Col. N, 13-15; Cols. S-T, 17-23	Grant	Sensitive Competitive Business information
44-24	FPL Revenue	4	Col. N, 17,27	Grant	Sensitive Competitive Business information
44-24	FPL Revenue	5	Col. N, 17	Grant	Sensitive Competitive Business information
46	Total Revenues Received by FPLES Related to Service Connect Calls	1	19,21	Grant	Sensitive Competitive Business information
46-1	Gas Service Revenues	1	Col C. 15-22	Grant	Sensitive Competitive Business information
46-1	Gas Service Revenues	2-3	All	Grant	Sensitive Competitive Business information
46-1	Gas Service Revenues	5	Col. C, 15-21	Grant	Sensitive Competitive Business information
46-1	Gas Service Revenues	6-7	All	Grant	Sensitive Competitive Business information
46-2	Cash Receipts Received on Behalf of FPLES	1	Col. C, 15-19; 21-22	Grant	Sensitive Competitive Business information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend 18 Months Extension	Type of Information Classified Confidential
Documents 01604-06, 02151-06 and 04185-06					
46-2	Cash Receipts Received on Behalf of FPLES	4	Col. B, 5,11,17, 22,28; Cols. D-F, 5-33	Grant	Sensitive Competitive Business information
46-2	Cash Receipts Received on Behalf of FPLES	5	Col. B, 5,11,16, 24,29; Cols. D-F, 5-34	Grant	Sensitive Competitive Business information
46-2	Cash Receipts Received on Behalf of FPLES	6	Col. B, 5,10,16; Cols. D-F 5-22	Grant	Sensitive Competitive Business information
46-2	Cash Receipts Received on Behalf of FPLES	7	Col. B, 5,10,16, 21,26,34; Cols. D-F, 5-34	Grant	Sensitive Competitive Business information
46-2	Cash Receipts Received on Behalf of FPLES	8	Col. B, 9-14,19, 25,31; Cols. D-F, 5-32	Grant	Sensitive Competitive Business information
46-2	Cash Receipts Received on Behalf of FPLES	9	Col. B, 8,13,18, 23,28,33; Cols. D-F, 5-33	Grant	Sensitive Competitive Business information
46-2	Cash Receipts Received on Behalf of FPLES	10	Col. B, 9,17,22, 28,34; Cols. D-F, 5-34	Grant	Sensitive Competitive Business information
46-2	Cash Receipts Received on Behalf of FPLES	11	Col. B, 10,15,20, 25,30; Cols. D-F 5-33	Grant	Sensitive Competitive Business information
46-2	Cash Receipts Received on Behalf of FPLES	12	Col. B, 7,14,20, 25,34; Cols. D-F 5-34	Grant	Sensitive Competitive Business information
46-2	Cash Receipts Received on Behalf of FPLES	13	Col. B, 9,14,19, 27,33; Cols. D-F 5-33	Grant	Sensitive Competitive Business information
46-2	Cash Receipts Received on Behalf of FPLES	14	Col. B, 9,17,22,30; Cols. D-F, 5-35	Grant	Sensitive Competitive Business information
46-2	Cash Receipts Received on Behalf of FPLES	15	Col. B, 5,11,17, 22,27; Cols. D-G, 5-34	Grant	Sensitive Competitive Business information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend 18 Months Extension	Type of Information Classified Confidential
Documents 01604-06, 02151-06 and 04185-06					
46-2	Cash Receipts Received on Behalf of FPLES	16	Col. B, 6,11,17, 23,29; Cols. D-F, 5-32	Grant	Sensitive Competitive Business information
46-2	Cash Receipts Received on Behalf of FPLES	17	Col. B 6,11,18, 23,28,33; Cols. D-F, 5-33	Grant	Sensitive Competitive Business information
46-2	Cash Receipts Received on Behalf of FPLES	18	Col. B, 9,14,19, 24,29; Cols. D-F, 5-34	Grant	Sensitive Competitive Business information
46-2	Cash Receipts Received on Behalf of FPLES	19	Col. B, 31,36; Cols. D-F, 5-43	Grant	Sensitive Competitive Business information
46-3	Transfer Cash Collected at FPL for VAPS to Inter-Company Payable Account to FPLES	1	Col. C, 16-25	Grant	Sensitive Competitive Business information
46-3	Transfer Cash Collected at FPL for VAPS to Inter-Company Payable Account to FPLES	2	Col. B; Cols. D-E 5-7,12	Grant	Sensitive Competitive Business information
46-3	Transfer Cash Collected at FPL for VAPS to Inter-Company Payable Account to FPLES	3	Cols.C-D, 5-8	Grant	Sensitive Competitive Business information
46-3	Transfer Cash Collected at FPL for VAPS to Inter-Company Payable Account to FPLES	4	Cols. B-E, 4-11	Grant	Sensitive Competitive Business information
46-3	Transfer Cash Collected at FPL for VAPS to Inter-Company Payable Account to FPLES	5	Cols. B-F , 4-7; Col. F, 9-12; Col. D, 14	Grant	Sensitive Competitive Business information
46-3	Transfer Cash Collected at FPL for VAPS to Inter-Company Payable Account to FPLES	6	Cols. B-H, 4-9; Col. H, 11-16	Grant	Sensitive Competitive Business information
46-3	Transfer Cash Collected at FPL for VAPS to Inter-Company Payable Account to FPLES	7	Col. C, 15-18,	Grant	Sensitive Competitive Business information
46-3	Transfer Cash Collected at FPL for VAPS to Inter-Company Payable Account to FPLES	8	Col. B, 6-8; 19-21; Col. A, 23; Col. C, 25-26,	Grant	Sensitive Competitive Business information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend 18 Months Extension	Type of Information Classified Confidential
Documents 01604-06, 02151-06 and 04185-06					
46-3	Transfer Cash Collected at FPL for VAPS to Inter-Company Payable Account to FPLES	9	Cols. A-E,G,H, 9-12.5,	Grant	Sensitive Competitive Business information
46-4	Journal Entry to True-Up Bad Debt Provision for the Inventory Portion of Natural Gas	1	Col. C, 15-17,	Grant	Sensitive Competitive Business information
46-4	Journal Entry to True-Up Bad Debt Provision for the Inventory Portion of Natural Gas	2-4	All	Grant	Sensitive Competitive Business information
46-4	Journal Entry to True-Up Bad Debt Provision for the Inventory Portion of Natural Gas	5	Col. B, 29,	Grant	Sensitive Competitive Business information
46-4	Journal Entry to True-Up Bad Debt Provision for the Inventory Portion of Natural Gas	6	11-12; Col. B, 16-18	Grant	Sensitive Competitive Business information
46-4	Journal Entry to True-Up Bad Debt Provision for the Inventory Portion of Natural Gas	8	Col. B, 6; Col. D, 8; Col. F, 10; 19-22,24,31-32; Col. I, 33	Grant	Sensitive Competitive Business information
46-4	Journal Entry to True-Up Bad Debt Provision for the Inventory Portion of Natural Gas	9	Col. G, 8-9; Cols. L,N, 18; 19-20	Grant	Sensitive Competitive Business information
47-1	General Ledger Monthly Transaction 12/04	5	Col. B, 14-18	Grant	Sensitive Competitive Business information
47-2	General Ledger Monthly Transaction 12/04	1	Cols. D-E, 7-9	Grant	Sensitive Competitive Business information
47-2	General Ledger Monthly Transaction 12/04	2	Col. B, 14-19	Grant	Sensitive Competitive Business information
47-2	General Ledger Monthly Transaction 12/04	3	Cols. D-E, 7-11	Grant	Sensitive Competitive Business information
47-2	General Ledger Monthly Transaction 12/04	5	Col. B, 14-21,	Grant	Sensitive Competitive Business information

A temporary copy of this recommendation will be held at I:02151-06fpl 2nd extension service connects raf.doc for a short period.

CC: Office of Auditing and Performance Analysis (Welch)
Office of the Commission Clerk (McLean, Cole)