

COMMISSIONERS:
MATTHEW M. CARTER II, CHAIRMAN
LISA POLAK EDGAR
KATRINA J. MCMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

STATE OF FLORIDA



OFFICE OF THE GENERAL COUNSEL
MICHAEL G. COOKE
GENERAL COUNSEL
(850) 413-6199

RECEIVED-FPSCC
OCT-9 PM 1:28
COMMISSION
CLERK

Public Service Commission

October 9, 2008

Jessica A. Cano, Attorney
Florida Power & Light Company
700 Universe Boulevard
Juno Beach Florida, 33408-0420

Re: 070626-EI, Florida Power & Light Company's (FPL's) Request for Confidential Classification concerning a portion of the staff audit report and working papers prepared during "Florida Power & Light Sunshine Energy Program Audit for the Year Ended December 31, 2007", Audit Control No. 08-086-4-1, Document Nos. 04610-08, 04611-08, 04612-08, 04613-08, 05263-08, 05621-08 and 05633-08.

Dear Ms. Cano:

Staff has reviewed FPL's request for confidential classification for certain portions of the staff audit report and working papers in response to staff's "Florida Power & Light Sunshine Energy Program Audit for the Year Ended December 31, 2007," filed on June 19, 2008, and amended on June 27, 2008, and June 30, 2008, and find the following perceived issues:

Issue 1: WP 43-1/1-1/3-1, page 8 (part); WP 43-3/1-1, pages 1 and 2; and WP 43-3/1-1/2.

Section 366.093(3)(f), Florida Statutes (F.S.), provides a public records exemption for employee personnel information unrelated to compensation, duties, qualifications and responsibilities. Within the above mentioned working papers, FPL has asked that employee names and responsibilities be granted confidential classification in instances where FPL employees were providing utility services according to the utility's tariff.

Commission policy in this area is to consider the names and duties of employees performing utility services to be public information. Please see: Order No. 25238, issued October 22, 1991 in Docket No. 900960-TL; Order No. PSC-97-0022-FOF-WS, issued January 6, 1997, in Docket No. 960451-WS; and Order No. PSC-07-0579-CFO-WS, issued July 13, 2007, in Docket No. 060368-WS.

DOCUMENT NUMBER 09550 OCT-9
FPSC-COMMISSION CLERK

Issue 2:

Rule 25-22.006(4), Florida Administrative Code (F.A.C.), in part, provides that when a utility requests confidential classification, the request shall include a copy of the materials with the sensitive information highlighted and two or more copies of the material for public use with the sensitive information redacted. The following materials were requested to be confidential; however, the highlighted or redacted copies were not provided:

WP44-2/1, pages 1 to 14, highlighted and redacted copies were not provided, and WP49-2/2, page 1, a redacted copy was not provided.

Issue 3:

Rule 25-22.006(4), F.A.C., in part, provides that when a utility requests confidential classification the utility shall identify which material is sensitive by page and line. Staff has reviewed Exhibit C provided with the highlighted and redacted copies of the sensitive materials and find that the listing does not match the highlighted and redacted copies. After its review, staff found the following errors in reconciling Exhibit C, as modified, to the highlighted and redacted copies of the material:

WP 47-1 series, pages 14-33; WP 49-2; and WP 52-8.

Issue 4:

Section 366.093(3)(d), F.S., provides that the Commission may grant confidential classification to contractual information if its release would harm the contracting ability of a public utility or its affiliates.

In some instances, Witness Markovich, Senior Vice President of the Green Mountain Energy Company (GMEC), is justifying the contracting ability of FPL. While Mr. Markovich's affidavit concerning GMEC's competitive business is pertinent and GMEC would experience difficulties if its internal operating information is disclosed, Mr. Markovich's affidavit is not conclusive regarding FPL's contracting operations or the contracting operations of FPL's affiliates.

Issue 5:

Rule 25-22.006(4), F.A.C., in part, provides that when a utility requests confidential classification the utility shall identify which material is sensitive by page and line. The utility has made a number of modifications to its filing to include reductions in the amount of material requested for confidential treatment.

Staff has made a preliminary, detailed finding concerning what material is contained in the utility's request (Attachment 1); however, staff is not fully certain that this listing is correct. Please review Attachment 1 to ensure staff and FPL are recognizing the same information as sensitive.


Jessica A. Cano, Attorney
October 9, 2008
Page 3

Response to the Perceived Deficiency

Within 14 days from the date of this letter, as deemed necessary, the utility may modify its pleading, justification, redacted or highlighted copies within its request; otherwise, a recommendation will be presented to the Prehearing Officer based upon the existing record.

If you have any questions concerning this matter, please contact me at (850) 413-6218.

Sincerely,

A handwritten signature in black ink, appearing to read 'Katherine E. Fleming', written over the word 'Sincerely,'.

Katherine E. Fleming
Senior Attorney
Office of General Counsel

KEF/tfw

cc: Office of Commission Clerk
Natalie Smith, Florida Power & Light Company

Attachment 1 - Detailed Staff Analysis

Document nos. 04610-08 through 04613-08 present the sensitive original pages of staff's audit report and working papers. Document no. 05263-08 presents copies of materials filed by FPL in support of its original confidentiality request. Document nos. 05621-08 and 05633-08 present revised copies of material filed by FPL.

A detailed staff analysis follows:

Staff Work Paper Number	Description	Page(s)	Line(s)	Specific Issue Pending	Type of Information
04613-08 and 05263-08					
Report	Report	8	28, 30, 32, 37-38	Issue 4	Sensitive Contractual and Competitive Business Information
Report	Report	9	1-2, 13-18	Issue 4	Sensitive Contractual and Competitive Business Information
04610-08 and 05263-08					
1	Annotated Report	8	28, 30, 32, 37-38	Issue 4	Sensitive Contractual and Competitive Business Information
1	Annotated Report	9	1-2, 13-18	Issue 4	Sensitive Contractual and Competitive Business Information
5-7	Interrogatories	1	3, 5, 11-19	Issue 4	Sensitive Contractual and Competitive Business Information
5-7	Interrogatories	2	7, chart	Issue 4	Sensitive Contractual and Competitive Business Information
04610-08, 05263-08, 05621-08 and 05633-08					
5-7	Interrogatories	10	10	Issue 4	Sensitive Contractual and Competitive Business Information
04610-08 and 05263-08					
5-7	Interrogatories	16-26	All	Issue 4	Sensitive Contractual and Competitive Business Information
43-1	Support for Payments	2	Cols. A-D		Sensitive Contractual Information
04610-08, 05623-08 and 05621-08					
43-1/1-1	GMEC Program Costs	1	21, 34, 38	Issue 4	Sensitive Competitive Business Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Specific Issue Pending	Type of Information
04610-08 and 05263-08					
43-1/1-1/1	Science Museum	1	5-9		Sensitive Contractual Information
43-1/1-1/2	Science Museum	1-2	Cols. A-C		Sensitive Contractual Information
43-1/1-1/2	Science Museum	3-5	All		Sensitive Contractual Information
43-1/1-1/3	Rothenbach Park Agreement	1-42	All	Issue 4	Sensitive Competitive Business Information
43-1/1-1/3-1	Assignment of Contract	1-8	All	Page 8 (part) Issue 1 Issue 4	Sensitive Competitive Business Information
04610-08, 05263-08 and 05621-08					
43-1/1-2	Green Tag Costs	2	12-13	Issue 4	Sensitive Competitive Business Information
04610-08 and 05263-08					
43-1/1-2	Green Tag Costs	3-4	All	Issue 4	Sensitive Competitive Business Information
43-3/1-1	Employees	1-2	Col. A	Issue 1	Qualifying Personnel Information
43-3/1-1/2	Job Descriptions	1	Col. A	Issue 1	Qualifying Personnel Information
04611-08, 05263-08 and 05621-08					
44, Page 2	Summary of Contract	1	1, 11-12, 14-15, 19, 23, 25-26, 29-35, 37-38, 40-41	Issue 4	Sensitive Contractual and Competitive Business Information
44-1	GMEC Contract	11	36		Sensitive Contractual and Competitive Business Information
44-1	GMEC Contract	16	21		Sensitive Contractual and Competitive Business Information
44-1	GMEC Contract	21	25-27		Sensitive Contractual and Competitive Business Information
44-1	GMEC Contract	22	7-10, 39-42		Sensitive Contractual and Competitive Business Information
44-1	GMEC Contract	23	1		Sensitive Contractual and Competitive Business Information
04611-08 and 05621-08					
44-2	Sterling Planet Contract	1-14	All		Sensitive Contractual and Competitive Business Information
44-2/1	RFP Commercial	1	1-4	Issue 2	Sensitive Competitive Business Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Specific Issue Pending	Type of Information
04611-08 and 05621-08					
44-2/1	RFP Commercial	2-13	All	Issue 2	Sensitive Business Information Competitive Business Information
44-2/1	RFP Commercial	14	1-11	Issue 2	Sensitive Business Information Competitive Business Information
04611-08 and 05263-08					
45	Summary Attestation	2-3	Cols. A, C-D, F		Sensitive Contractual and Competitive Business Information
45-1	Attestation Statement	2-205			Sensitive Business Information Competitive Business Information
47-1	GMEC Annual Review 2007	1-3	All	Issue 4	Sensitive Business Information Competitive Business Information
47-1	GMEC Annual Review 2007	4	3-5	Issue 4	Sensitive Business Information Competitive Business Information
47-1	GMEC Annual Review 2007	5	Chart	Issue 4	Sensitive Business Information Competitive Business Information
47-1	GMEC Annual Review 2007	6	4-5, 7-10, 12-14	Issue 4	Sensitive Business Information Competitive Business Information
47-1	GMEC Annual Review 2007	7	4-12	Issue 4	Sensitive Business Information Competitive Business Information
47-1	GMEC Annual Review 2007	8	4-13	Issue 4	Sensitive Business Information Competitive Business Information
47-1	GMEC Annual Review 2007	9	2-5, 7-13	Issue 4	Sensitive Business Information Competitive Business Information
47-1	GMEC Annual Review 2007	10	3-16	Issue 4	Sensitive Business Information Competitive Business Information
47-1	GMEC Annual Review 2007	11	2-4, Chart	Issue 4	Sensitive Business Information Competitive Business Information
47-1	GMEC Annual Review 2007	14	5-11	Issue 3 Issue 4	Sensitive Business Information Competitive Business Information
47-1	GMEC Annual Review 2007	16	Chart	Issues 3 and 4	Sensitive Business Information Competitive Business Information
47-1	GMEC Annual Review 2007	17	Chart	Issues 3 and 4	Sensitive Business Information Competitive Business Information
47-1	GMEC Annual Review 2007	20	3-11	Issues 3 and 4	Sensitive Business Information Competitive Business Information
47-1	GMEC Annual Review 2007	23	4-5, 7-12	Issues 3 and 4	Sensitive Business Information Competitive Business Information
47-1	GMEC Annual Review 2007	24	3, 5-11	Issues 3 and 4	Sensitive Business Information Competitive Business Information
47-1	GMEC Annual Review 2007	25	3, 5-9	Issues 3 and 4	Sensitive Business Information Competitive Business Information
47-1	GMEC Annual Review 2007	26	3, 5-11	Issues 3 and 4	Sensitive Business Information Competitive Business Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Specific Issue Pending	Type of Information
04611-08 and 05263-08					
47-1	GMEC Annual Review 2007	27	3-5	Issues 3 and 4	Sensitive Competitive Business Information
47-1	GMEC Annual Review 2007	30	2-7	Issues 3 and 4	Sensitive Competitive Business Information
47-1	GMEC Annual Review 2007	31	2, 7-8, 11-12	Issues 3 and 4	Sensitive Competitive Business Information
47-1	GMEC Annual Review 2007	33	All	Issues 3 and 4	Sensitive Competitive Business Information
47-2	Nov. Campaign Results	1	4	Issue 4	Sensitive Competitive Business Information
47-2	Nov. Campaign Results	2-14	All	Issue 4	Sensitive Competitive Business Information
47-3	Direct Wave 9	1	3-4	Issue 4	Sensitive Competitive Business Information
47-3	Direct Wave 9	2-13	All	Issue 4	Sensitive Competitive Business Information
47-4	Direct Wave 10	1-2	3-5	Issue 4	Sensitive Competitive Business Information
47-4	Direct Wave 10	3-13	All	Issue 4	Sensitive Competitive Business Information
47-5	Wave 11	1-2	All	Issue 4	Sensitive Competitive Business Information
47-6	Wave 13	1-2	All	Issue 4	Sensitive Competitive Business Information
47-7	Impact Data	2	Cols. A-H	Issue 4	Sensitive Competitive Business Information
47-8	Tail Tally	1	A-J	Issue 4	Sensitive Competitive Business Information
47-9	Changes SP Contract	1-2	All		Sensitive Contractual and Competitive Business Information
47-10	Purchases 2004-2008	1	Cols. A-C	Issue 4	Sensitive Contractual and Competitive Business Information
47-10	Purchases 2004-2008	2	Cols. A-B, D-H	Issue 4	Sensitive Contractual and Competitive Business Information
47-10	Purchases 2004-2008	3	Cols. A-G	Issue 4	Sensitive Contractual and Competitive Business Information
04612-08 and 05263-08					
48A	Summary Sample	1	9		Sensitive Contractual Information
48	Sample	1-2	Cols A, E		Sensitive Contractual Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Specific Issue Pending	Type of Information
04612-08 and 05263-08					
49-1/1	Business SP	4	All		Sensitive Contractual Information
04612-08, 05263-08, and 05621-08					
49-2	Bids GM	1	6	Issue 3	Sensitive Contractual Information
49-2/2	GMEC Bid	1	6	Issue 2	Sensitive Competitive Business Information
04612-08 and 05263-08					
49-2/3	Sterling Planet Bid	1-5	All		Sensitive Contractual and Competitive Business Information
49-2/4	Sterling Planet Commercial Bid	1-96	All		Sensitive Contractual and Competitive Business Information
52	Summary Contracts	1	All		Sensitive Contractual Information
52-1	Contract List	1	All		Sensitive Contractual Information
52-2	Attribute Contract	1-25	All	Issue 4	Sensitive Competitive Business Information
52-3	Attribute Contract	1-24	All	Issue 4	Sensitive Competitive Business Information
52-4	Attribute Contract	1-18	All	Issue 4	Sensitive Competitive Business Information
52-5	Attribute Contract	1-21	All	Issue 4	Sensitive Competitive Business Information
52-6	Attribute Contract	1-5	All	Issue 4	Sensitive Competitive Business Information
52-7	Attribute Contract	1-11	All	Issue 4	Sensitive Competitive Business Information
52-8	Attribute Contract	1-10	All	Issue 3 Issue 4	Sensitive Competitive Business Information
52-9	Attribute Contract	1-17	All	Issue 4	Sensitive Competitive Business Information
52-10	Attribute Contract	1-24	All	Issue 4	Sensitive Competitive Business Information