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

DATE: November 5, 2008

TO: Katherine Fleming, Attorney, General Counsel

FROM: Division of Regulatory Compliance (Freeman, Vandiver)

RE: Docket 080002-EG, Recommendation concerning Florida Power & Light Company's (FPL) 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, 2005", Audit Control No. 06-040-4-1, Documents Numbered 05832-06 and 06113-06

On June 22, 2006, 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, 2005", 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 June 29, 2006, staff filed document 05832-06 consisting of those specified portions of the staff working papers.

On July 12, 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 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 06114-06) and a highlighted copy (document 06113-06).

On October 26, 2006, after discussions with the staff, FPL amended its request for a confidential classification making minor technical corrections.

On February 23, 2007, the Commission issued Order No. PSC-07-0169-CFO-EG granting FPL's request. That confidential classification period has now tolled.

On August 26, 2008, FPL requested that the Commission extend the classification period granted by Commission Order No. PSC-07-0169-CFO-EG.

COM _____

ECR _____ Documents 05832-06 and 06113-06 are currently held by the Commission Clerk's Office as

GCL _____ confidential pending resolution of FPL's request for an extension of the confidential

OPC _____ classification.

RCP _____

SSC _____

SGA _____

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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)(e) and (f), 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 reports of 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.

(f) Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities."

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 the following types of information:

1. Notes from Director's Minutes

By way of an affidavit, Mr. Ed S. Bowman, FPL Support Services Manager in the General Counsel Business Unit, reports the sensitive business information is reported within staff working papers titled "Board Director Minutes."

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. Reading the notes taken by the auditor from the Director's minutes reveals that the information within the working papers discusses the undisclosed future plans of the utility such that release of this information at the present time could impair the business interests of FPL. Therefore, we recommend that this information be granted a confidential classification.

2. Internal Auditing Controls and Reports of Internal Auditors.

By way of an affidavit, Mr. Robert Onsgard, FPL Manager, Internal Auditing, reports sensitive audit information is reported within the staff working papers titled: "List of Internal Audits" and "Internal Audits."

Subsection 366.093(3)(b), F.S., provides that the Commission may grant a confidential classification to materials prepared by FPL's internal auditors. Reading the material reveals that it is the work of FPL's internal auditors and its release at this time would reasonably be expected to cause harm to the utility or ultimately its ratepayers, and therefore, we recommend that this material be granted a confidential classification.

3. Customer-Specific Account Information

By way of an affidavit, Mr. Terry J. Keith, FPL Director of Cost Recovery Clauses in the Regulatory Affairs Department, identifies materials associated with sensitive customer-specific account information within staff working papers titled: "Revenue Sample Testing."

By way of an affidavit, Mr. C. Dennis Brandt, FPL Director, Product Management and Operations, identifies sensitive customer account information within the staff working papers titled: "Revenue Sample Testing" and "O&M Sample Testing."

According to FPL and its employees, FPL considers the following information sensitive customer-specific account information: customer names, addresses, telephone numbers, account numbers, rates, billing determinates (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 or persons other than the customer absent the customer's consent.

Staff Analysis of the Request (continued)

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. In the past, the Commission has recognized that release of customer information would harm the business interests of either utility or its customers (See Commission Order No. PSC-06-0189-CFO-EG issued March 9, 2006, in docket 060002-EG). Reading this material reveals it discloses customer-specific account information the release of which at this time could still harm the provider of that information; therefore, we recommend that this information be granted a confidential classification.

4. FPL Budgeting and Compensation Planning

By way of an affidavit, Mr. C. Dennis Brandt, FPL Director, Product Management and Operations, identifies sensitive budgeting and compensation planning information within staff's working papers titled: "O&M Sample Testing." Reading this material by FPL reveals it concerns sensitive contractual and competitive business information release of which would harm FPL.

Here, Mr. Brandt identifies material concerning compensation planning. Had this material referred to actual salaries paid by FPL or its affiliates and charged to utility accounts, the material would not be eligible for a confidential classification because Subsection 366.093(3)(f), F.S., specifically does not allow an exclusion for employee personnel information concerning compensation. Here the information refers to FPL's budgeting process and is not associated with employee compensation.

Subsection 366.093(3)(d), F. S., provides that the Commission may grant a confidential classification to sensitive information concerning bids and contractual information if release of that information would harm the ability of FPL or its affiliates to contract on favorable terms. Subsection 366.093(3)(e), F.S., provides that information concerning competitive business interests may be granted a confidential classification if release of that information will harm the provider of that information.

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 has not been released to the public. FPL employees Bowman, Onsgard, Keith, and Brandt individually assert FPL has maintained the confidentiality of the identified material.

Duration of the Confidential Classification Period

FPL requests that this material be held as confidential for at least 18 months and requests that the 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 extension for the 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 request for extension as amended, 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 an additional 18 months.

A detailed recommendation, as amended and as found, follows:

Detailed Recommendation, As Found

Staff Working Paper Number	Description	Page(s)	Lines as Amended	Recommend 18 Month Extension	Type of Information Classified Confidential
Documents 05832-06 and 06113-06					
8	Board Director Minutes	1-5	All	Grant	Sensitive competitive business information
9	List of Internal Audits	1-4	Col B	Grant	Internal auditing information
9-1	Internal Audits	1-2	All	Grant	Internal auditing information
9-2	Internal Audits	1-2	All	Grant	Internal auditing information
9-3	Internal Audits	1-2	All	Grant	Internal auditing information
41-3	Revenue Sample Testing	1-3	Pages 1-3, Col 1	Grant	Sensitive competitive business information
43-1/4	Revenue Sample Testing	1	2-5,8-13,16-19, 21-24,26-27,33,35	Grant	Sensitive competitive business information
43-1/4-1	Revenue Sample Testing	1	2-4, Cols A-D	Grant	Sensitive competitive business information
43-1/5	Revenue Sample Testing	1	4-5,7,12,14,18, 22-23,25,27-28, 30-32,34-36,38, 42-43,46-49,51,53, 55,59	Grant	Sensitive competitive business information

Staff Working Paper Number	Description	Page(s)	Lines as Amended	Recommend 18 Month Extension	Type of Information Classified Confidential
Documents 05832-06 and 06113-06					
43-1/5	Revenue Sample Testing	2	61,68-71,73,76,78,81-82,85,88,90,92-93,98,103-105,108,100,110-111,113-116	Grant	Sensitive competitive business information
43-1/5	Revenue Sample Testing	3	119-122,124-126,131-136,138-139,142,149-151,157-158,160,165-166,168,172,174-175	Grant	Sensitive competitive business information
43-1/5	Revenue Sample Testing	4	177-180,183,186,188-190,194-198,202,207,209-211,213-214,217,223,225,227-228,231	Grant	Sensitive competitive business information
43-1/5	Revenue Sample Testing	5	233,237,243,246,249-253,255-257,259-261,269-271,274-275,277-278,280-281,285,287	Grant	Sensitive competitive business information
43-1/5	Revenue Sample Testing	6	289-290,292-295,297-298,300-304,307-308,310,312,314-316,320-323,326-328,330-333,336,338	Grant	Sensitive competitive business information
43-1/5	Revenue Sample Testing	7	340-341,343,345,348-350,355-356,363,367,372-373,375-379,383,385-386,389-393	Grant	Sensitive competitive business information
43-1/5	Revenue Sample Testing	8	401,403,405-406,408-409,412,414-415,423-425,429-430,436-437,439,442,444,452-453	Grant	Sensitive competitive business information
43-1/5	Revenue Sample Testing	9	458,460,465,468,471-474,478-480,484,490,493-503,505	Grant	Sensitive competitive business information
43-1/5-1	Revenue Sample Testing	2	2-3, Cols A-D	Grant	Sensitive competitive business information
43-1/6	Revenue Sample Testing	1	2,5,13,16	Grant	Sensitive competitive business information
43-1/6	Revenue Sample Testing	2	2,4,6,11,13,15	Grant	Sensitive competitive business information
43-1/6-1	Revenue Sample Testing	2	All	Grant	Sensitive competitive business information
43-1/6-1	Revenue Sample Testing	3-10	3-6	Grant	Sensitive competitive business information

Staff Working Paper Number	Description	Page(s)	Lines as Amended	Recommend 18 Month Extension	Type of Information Classified Confidential
Documents 05832-06 and 06113-06					
43-1/7	Revenue Sample Testing	1	2,5,11-12,15	Grant	Sensitive competitive business information
43-1/7	Revenue Sample Testing	2	2,5,11,14	Grant	Sensitive competitive business information
43-1/7-1	Revenue Sample Testing	1-2	3-6	Grant	Sensitive competitive business information
43-6/4-1	Revenue Sample Testing	1	2,4-7,10-11,13-15, 17-23	Grant	Sensitive competitive business information
44-3/1-1	O&M Sample Testing	3	26-27,32	Grant	Sensitive contractual and competitive business information
44-1/1	O&M Sample Testing	1	3,15,21-25,30	Grant	Sensitive competitive business information
44-1/1	O&M Sample Testing	8	10	Grant	Sensitive competitive business information
44-1/1	O&M Sample Testing	9	3	Grant	Sensitive competitive business information
44-1/1	O&M Sample Testing	10	3,17	Grant	Sensitive competitive business information
44-1/1	O&M Sample Testing	13	17-20	Grant	Sensitive competitive business information
44-1/1	O&M Sample Testing	14	3-5	Grant	Sensitive competitive business information
44-5/1	O&M Sample Testing	1	21,29	Grant	Sensitive competitive business information
44-5/1	O&M Sample Testing	3	19	Grant	Sensitive competitive business information
44-5/1	O&M Sample Testing	11	19	Grant	Sensitive competitive business information
44-6/1	O&M Sample Testing	1	3,14,21,26	Grant	Sensitive competitive business information
44-6/1	O&M Sample Testing	2	4	Grant	Sensitive competitive business information

A temporary electronic copy of this recommendation will be held at I:06113-06 fpl 2005 cons 1st ext raf.doc for a short period.

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