



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

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

**DATE:** July 13, 2009

**TO:** Office of General Counsel (Bennett, Coverman)

**FROM:** Division of Regulatory Compliance (Freeman<sup>F</sup>, Mailhot) *sm*

**RE:** Docket 090001-EI, Recommendation concerning Florida Power & Light Company's (FPL) request for extension of confidential classification concerning a portion of the staff working papers prepared during "Florida Power & Light Capacity Cost Recovery Clause Audit for the Historical Year Ended December 31, 2005", Audit Control No. 06-045-4-1, Documents Numbered 03638-06, and 04040-06

On April 18, 2006, when copies of certain portions of staff's working papers obtained or prepared during the "Florida Power & Light Capacity Cost Recovery Clause Audit for the Historical 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 provisions of Rule 25-22.006(3)(a)2., Florida Administrative Code (FAC).

On April 24, 2006, staff filed document numbered 03638-06 consisting of those specified portions of the staff's working papers.

On May 8, 2006, 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 confidential classification. The utility's request included redacted copies for public inspection (document No. 04041-06) and copies with the sensitive material highlighted (document 04040-06).

On November 28, 2007, the Commission issued Order No. PSC-07-0947-CFO-EI granting FPL's request for confidential classification. That classification period has tolled. On May 28, 2009, FPL requested that some of the sensitive information previously identified be granted an 18 month extension of confidential classification.

Documents numbered 03638-06 and 04040-06 are held by the Commission's Division of the Commission Clerk and Administrative Services as confidential pending resolution of FPL's request for an extension of confidential classification.

COM \_\_\_\_\_  
 ECR \_\_\_\_\_  
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 CLK *Pena*

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)(c)(d) and (e), F.S., provide the following exemptions.

DOCUMENT NUMBER-DATE

07098 JUL 14 08

FPSC-COMMISSION CLERK

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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 internal auditors.*

*(c) Security measures, systems or procedures.*

*(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 Request**

Reading the filing reveals the sensitive material consists of:

1) Information concerning internal auditing controls and reports of internal auditors

By way of a affidavit, Mr. Robert Onsgard, FPL Manager of Internal Auditing, identifies sensitive information concerning internal audit information in the working paper titled: “List of Internal Audits.”

Section 366.093(3)(b), F.S. provides that the Commission may grant a confidential classification to internal auditing controls and reports of internal auditors. Reading the material identified by Mr. Onsgard reveals it pertains to internal audit reports and may be granted a confidential classification.

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2) Customer-specific account information including bank account numbers

By way of an affidavit, Ms. Damaris C. Rodriguez, FPL Manager, Cost Recovery, identifies customer-specific account information including bank account numbers within staff working papers titled: "Company Schedule of Demand Accounts", "Customer Bills" and "Billing Rates."

Ms. Rodriguez reports: "It is FPL's corporate policy not to disclose customer information. This policy includes, but is not limited to: 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."

The Commission policy concerning customer-specific account information has been to grant confidentiality pursuant the provisions contained within Section 366.093(3)(e), F.S., on the basis that release of this information would harm the competitive business of the provider of the information. Reading the material identified by Ms. Rodriguez, we agree that its release would cause harm to the provider of the information. Further, bank account information is held as confidential pursuant to the provisions set out in Section 119.071(5)(b), F.S.

3) Competitively sensitive business information

By way of an affidavit, Mr. Osvaldo J. Lom, FPL Supervisor of Purchased Power Contracts, identifies competitively sensitive business information within staff working papers titled: "GL of QF Account", "Journal Detail Sheet", "QF Estimate Billing", "Estimate by Month", "True Up QF", "GL of 555.410", "UPS Check Request", "Invoice", "GL 555.430", "JEA Billing Schedules", "SJRPP Accrual", "Debt Service", "Debt Service Check Request", "Debt Service Deposit", "SJRPP Revenue Req.", "SJRPP Transmission", "SJRPP Transmission Payments", "SJRPP Debt Service", "JEA Billing Statement", "CCRA Payment Schedule", "Check Request", "Property Taxes", "JEA Revenue Req.", "Deferred Interest", "Dismantlement", and "SJRPP Estimates."

Mr. Lom also points out some of this proprietary information concerns St. Johns River Power Park, a Jacksonville Electric Authority (JEA) and FPL venture. Ordinarily because of JEA's participation in the venture, St. Johns River Power Park would be considered a Florida government entity, and the Power Park's records would be considered public. However as Mr. Lom points out, JEA may maintain certain Power Park information as confidential pursuant to Section 163.01(15)(m), Florida Statutes. This law allows the Power Park to protect sensitive competitive business information. Because JEA and FPL assert that these records consist of sensitive competitive business information, the Commission may grant this information a confidential classification. We have read the sensitive information identified by Mr. Lom and we agree its release would be reasonably expected to harm the competitive business of the provider of that information.

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4) Contractual and competitively sensitive business data such as pricing and other terms, payment records, and vendor and supplier rates.

By way of an affidavit, Gerard J. Yupp, FPL Senior Director of Wholesale Operations, identifies the sensitive contractual and competitive business information contained within the following staff working papers: "GL of Acct. [5]55.441", "Invoice", "Purchase Statement", "GL Account 555.429", and SJRPP Suspension Accrual." Also Mr. Yupp points out, release of some of this information would place FPL at a competitive disadvantage when coupled with other information that is publicly available.

Section 366.093(3)(d), F.S., provides that the Commission may grant a confidential classification to sensitive contractual information if release of that information would harm the ability of a utility or its affiliates to contract favorably. Section 366.093(3)(e), F.S., provides that the Commission may grant a confidential classification to sensitive competitive business information if release of that information would harm the competitive business of the provider of that information.

We have read the contractual and sensitive business information presented here and agree this information if released could harm the ability of FPL and its affiliates to contract on favorable terms, and in addition, release of this information could harm the competitive business of the provider of the information.

5) Security measures and negotiated agreements for the protection of FPL facilities

By way of an affidavit, Mr. Mark Warner, FPL V.P. Nuclear Plant Support, identifies the following staff working papers as reporting information about security measures and related Security Agreements: "Security Cost – Sample of Cash Vouchers."

Section 366.093(3)(c), F.S. provides that the Commission may grant a confidential classification to "Security measures, systems or procedures." Section 366.093(3)(d), F.S., provides that the Commission may grant a confidential classification to contractual information if release of that information would impair the ability of the utility or its affiliates to contract favorably.

We have read the information as identified by witness Gwinn and agree it is sensitive security and contractual information and recommend that this information be granted a confidential classification.

**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, FPL employees report FPL has maintained the confidentiality of these materials.

**Duration of the Confidential Classification Period**

FPL requests that this extension of the confidential classification last 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 extension 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, we agree with FPL that this material remains sensitive and for the reasons presented above, we recommend the utility’s request for an 18 month extension of confidential classification be granted.

A detailed recommendation follows:

**Detailed Recommendation, As Found**

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information
Documents 03638-06 and 04040-06					
9	List of Internal audits	1-4	Col B	Grant	Internal auditing controls and reports of internal auditors
41-2/3	Company Schedule of Demand Accounts	1-12	Col 1	Grant	Customer-specific account information
41-2/3-1	Customer Bills	2, 5-6, 8, 10-13	3-6,9-20,24-25	Grant	Customer-specific account information
41-2/3-1	Customer Bills	14	3-5A,18-19,23-24	Grant	Customer-specific account information
41-2/3-1	Customer Bills	15-23	3-6,9-20,24-25	Grant	Customer-specific account information
41-2/3-1	Customer Bills	25-27	3-6,9-20,24-25	Grant	Customer-specific account information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information
Documents 03638-06 and 04040-06					
41-2/3-2	Customer Bills	1-2	3-6,9-20,24-25	Grant	Customer-specific account information
41-2/3-2	Customer Bills	3	3-6,9-20	Grant	Customer-specific account information
41-2/3-3	Customer Bills	1-2	3-6,9-20,24-31	Grant	Customer-specific account information
41-2/3-3	Customer Bills	3	3-6,9-20,24-25	Grant	Customer-specific account information
41-2/3-3	Customer Bills	4-6	3-6,9-20,24,26	Grant	Customer-specific account information
41-2/3-4	Company Schedule of Demand Accounts	1-3	Col. 1	Grant	Customer-specific account information
41-2/3-4/1	Customer Bills	1-3	3-6,9-20,24	Grant	Customer-specific account information
41-2/3-4/3	Customer Bills	1	3-6,9-20,24	Grant	Customer-specific account information
41-2/3-4/5	Customer Bills	1	3,5-13,15-17,19-37	Grant	Customer-specific account information
41-2/3-4/5	Customer Bills	2	3,5-17,19-30,32-33	Grant	Customer-specific account information
41-2/3-4/5	Customer Bills	3	3,5-17,19-37,39-40	Grant	Customer-specific account information
41-2/3-4/5	Customer Bills	5	3,5-13,15-17,19-37	Grant	Customer-specific account information
41-2/3-4/5	Customer Bills	6	3,5-17,19-37,39-40	Grant	Customer-specific account information
41-2/3-4/5	Customer Bills	9	3,5-13,15-17,19-34, 36-37	Grant	Customer-specific account information
41-2/3-4/5	Customer Bills	10	3,5-13,15-17,19-33, 35-36	Grant	Customer-specific account information
41-2/3-4/5	Customer Bills	12	3,5-13,15-17,19-34, 36-37	Grant	Customer-specific account information
42, p2	GL of QF Account	1	All	Grant	Sensitive competitive business information
42-1	Journal Detail Sheet	1-2	All	Grant	Sensitive competitive business information
42-2	QF Estimate Billing	1	All	Grant	Sensitive competitive business information
42-2/1	Estimate by Month	1	All	Grant	Sensitive competitive business information
42-3	True Up QF	1	All	Grant	Sensitive competitive business information
43, p2	GL of 555.410	1	All	Grant	Sensitive competitive business information
43-1	UPS Check Request	1	All	Grant	Sensitive competitive business information
43-1/1	Invoice	1	All	Grant	Sensitive competitive business information
44A	GL 555.430	1	All	Grant	Sensitive competitive business information
44, p3-10	JEA Billing Schedules	1-8	All	Grant	Sensitive competitive business information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information
Documents 03638-06 and 04040-06					
44-1	SJRPP Accrual	1-2	All	Grant	Sensitive competitive business information
44-1/1	Debt Service	1-3	All	Grant	Sensitive competitive business information
44-1/1-1	Debt Service Check Request	1	All	Grant	Sensitive competitive business information
44-1/1-1/1	Debt Service Deposit	1	All	Grant	Sensitive competitive business information
44-1/1-2	SJRPP Revenue Req.	1	All	Grant	Sensitive competitive business information
44-1/2	SJRPP Transmission	1-3	All	Grant	Sensitive competitive business information
44-1/2-1	Invoice	2	All	Grant	Sensitive competitive business information
44-1/2-2	SJRPP Transmission Payments	1	All	Grant	Sensitive competitive business information
44-1/2-3	SJRPP Debt Service	1	All	Grant	Sensitive competitive business information
44-1/2-4	JEA Billing Statement	2	All	Grant	Sensitive competitive business information
44-1/2-6	SJRPP Debt Service	1	All	Grant	Sensitive competitive business information
44-1/3	CCRA Payment Schedule	1-4	All	Grant	Sensitive competitive business information
44-1/3-1	Check Request	1-9	All	Grant	Sensitive competitive business information
44-1/4	Property Taxes	1	All	Grant	Sensitive competitive business information
44-1/4-1	Property Taxes	1-3	All	Grant	Sensitive competitive business information
44-1/5	JEA Revenue Req.	1-2	All	Grant	Sensitive competitive business information
44-1/6	Deferred Interest	1-5	All	Grant	Sensitive competitive business information
44-1/7	Dismantlement	1	All	Grant	Sensitive competitive business information
44-2	SJRPP Estimates	1	All	Grant	Sensitive competitive business information
44-3	Check Request	1-2	All	Grant	Sensitive competitive business information
44-4	Fixed and Variable Cost Schedule	1	All	Grant	Sensitive competitive business information
45-1	GL of Acct. [5]55.441	1	Col A, 10-13	Grant	Sensitive contractual and competitive business information
47-1/1-1	Invoice	1	5; Cols A-B, 23,27	Grant	Sensitive contractual and competitive business information
47-1/1-1	Invoice	2	3; Cols A-D, 14-53	Grant	Sensitive contractual and competitive business information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information
Documents 03638-06 and 04040-06					
47-1/1-1	Invoice	3	3; Cols A-D, 5-54	Grant	Sensitive contractual and competitive business information
47-1/1-1	Invoice	4	3; Cols A-D, 5-45	Grant	Sensitive contractual and competitive business information
47-1/1-1	Invoice	5	3; Cols A-D, 5-48	Grant	Sensitive contractual and competitive business information
47-1/1-1	Invoice	6	3; Cols A-D, 6-47	Grant	Sensitive contractual and competitive business information
47-1/1-1	Invoice	7	3; Cols A-D, 5-48	Grant	Sensitive contractual and competitive business information
47-1/1-1	Invoice	8	3; Cols A-D, 6-47	Grant	Sensitive contractual and competitive business information
47-1/1-1	Invoice	9	3; Cols A-D, 5-10,14-16	Grant	Sensitive contractual and competitive business information
48-1/1-1	Purchase Statement	1	26-28	Grant	Sensitive contractual and competitive business information
48-1/1-1	Purchase Statement	2	1,8-54,56	Grant	Sensitive contractual and competitive business information
48-1/1-2	EMT Report	1	Col A, 4-10,18-21; Col B, 4-9; Col C, 11-12	Grant	Sensitive contractual and competitive business information
48-1/1-2/1	Invoice	1	Cols A-C, 4-7,10-12, 16-18,20; Col D	Grant	Sensitive contractual and competitive business information
48-1/1-2/1-1	Purchase Statement	1	Col C, 4,15-22; Col D, 4, 15-22, 36,38; Col E 4, 15-22; Col F 4, 15-22, 36,38;	Grant	Sensitive contractual and competitive business information
48-1/1-2/1-1	Purchase Statement	2	Col A, 1,5-41; 50,53	Grant	Sensitive contractual and competitive business information
48-1/1-3	EMT Report	1	Col A, 4-8, 18-21; Col B, 4-7; Col C, 11-13	Grant	Sensitive contractual and competitive business information



Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information
Documents 03638-06 and 04040-06					
49-1/1	GL Account 555.429	1-2	All	Grant	Sensitive competitive business information
49-1/2	SJRPP Suspension Accrual	1	All	Grant	Sensitive competitive business information
52-3/4-1	Security Cost Sample of Cash Vouchers	1	25	Grant	Sensitive security and contractual information

A temporary copy of this recommendation will be held at I:04040-06 ext fpl 2005 fuel raf.doc for a short period.

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