

State of Florida



RECEIVED-FPSC

09 MAY - 1 PM 1:30

Public Service Commission

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

COMMISSION
CLERK

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

090001-EI

DATE: April 29, 2009

TO: Lisa Bennett, Attorney, Office of General Counsel

FROM: Division of Regulatory Compliance (Freeman, Vandiver) *F w*

RE: Docket 080001-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 Affiliate Audit for the period July 2007 through June 2008", Audit Control No. 08-221-4-1, Documents Numbered 11377-08, 11378-08 and 11414-08

On November 19, 2008, when copies of certain portions of staff's audit report and working papers obtained or prepared during the "Florida Power & Light Affiliate Audit for the period July 2007 through June 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 December 9, 2008, staff filed documents numbered 11377-08 and 11378-08 consisting of those specified portions of the staff's audit working papers.

On December 10, 2008, FPL filed a request pursuant to Section 366.093, Florida Statutes (F.S) and Rule 25-22.006, FAC, that selected portions of the audit report and working papers prepared by the staff receive a confidential classification. The utility's request included redacted copies for public inspection (Document No. 11415-08) and copies with the sensitive material highlighted (Document No. 11414-08).

Documents numbered 11377-08, 11378-08 and 11414-08, are currently held by the Office of the Commission Clerk as confidential pending resolution of FPL's request for confidential classification.

- COM _____
- ECR _____
- GCL _____
- OPC _____
- RCP _____
- SSC _____
- SGA _____
- ADM _____
- CLK McLean

DOCUMENT NUMBER-DATE

04102 MAY-18

FPSC-COMMISSION CLERK

Wednesday, April 29, 2009
Florida Power and Light Request

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)(d) and (e), 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:*

....

(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 information consists of:

1. Contractual information, such as pricing and other terms which disclose sensitive contractual and competitive business information.

Through an affidavit, Mr. Gerald J. Yupp, FPL Director of Wholesale Operations in the Energy Marketing and Trading Division, identifies sensitive contractual information which is also sensitive competitive business information. Mr. Yupp asserts release of this information would impair the efforts of FPL to favorably contract, and also Mr. Yupp asserts release of the information would impair the competitive business interests of the provider of the information. Specifically, this sensitive contractual and competitive business information can be found of the staff working papers titles: "Summary", "Gas Closing Report", "Invoice", and "Purchase Statement."

Through an affidavit, Ms. Maria V. Besada, FPL Director, Organization Development & Management for FPL Energy Services, Inc., also identifies sensitive contractual and competitive business information found within staff audit working papers titled: "Contract", "Explanations, Price Schedule", and "Explanations."

Section 366.093(3)(d), F.S., provides that the Commission may provide a confidential classification to sensitive contractual or bid information if its release would impair the ability of the utility or its affiliates ability to contract favorably for goods and services. Section 366.093(3)(e), F.S., provides that the Commission may grant a confidential classification to competitive business information if release of that information would impair the competitive business of the provider of that information. We have read the information identified by Mr. Yupp and Ms. Besada and agree the material qualifies for a confidential classification on the basis that the material discloses sensitive contractual and sensitive competitive business information and its release would cause the harm that FPL predicts.

2. Contractual information, such as pricing and other terms which discloses sensitive competitive business information.

Mr. Yupp identifies sensitive competitive business information within the staff audit working papers titled: "Transactions" and "Explanations." Ms. Besada identifies sensitive competitive business information within the staff audit working paper titled: "Products/Services."

366.093(3)(e), F.S., provides that the Commission may grant a confidential classification to competitive business information if release of that information would impair the competitive business of the provider of that information. We have read the information identified by Mr. Yupp and Ms. Besada and agree the material qualifies for a confidential classification on the basis that the material discloses sensitive competitive business information and its release would be expected to harm the competitive business of the provider of that information.

Wednesday, April 29, 2009
Florida Power and Light Request

Staff Analysis of the Utility Request (continued)

3. Sensitive contractual information, such as pricing and other terms

Lastly, Mr. Yupp identifies sensitive contractual information within the staff audit working papers titled: "Detail of Transactions", "Invoice", "Deal Form", "Purchase Statement", "Confirmations", "Prices", "Confirmation", "Contract", "Deal Forms", "Settlement Statement", and "Settle Statement."

We have read the information identified by Mr. Yupp and agree the material qualifies for a confidential classification on the basis that the material discloses sensitive contractual information and its release would be expected to impair the ability of FPL or its affiliates to contract favorably for goods and services.

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: "The information is intended to be, and has been, treated by FPL as confidential." FPL employees Besada and Yupp, confirm FPL has maintained confidentiality of these documents and materials..

Duration of the Confidential Classification Period

FPL and the FPL employees, Besada and Yupp, 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 follows:

Detailed Recommendation

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information
Documents 11377-08 and 11414-08					
44, pl	Summary	1	13-14	Grant	Sensitive Contractual and Competitive Business Information
44-1	Transactions	1	Cols. A-C	Grant	Sensitive Competitive Business Information
44-1/1	Detail of Transactions	1	Cols. A-D	Grant	Sensitive Contractual Information
44-2	Transactions	1	Cols. A-C	Grant	Sensitive Competitive Business Information
44-2/1	Detail of Transactions	1-2	Cols. A-G	Grant	Sensitive Contractual Information
44-3	Transactions	1	1-10,12-17	Grant	Sensitive Competitive Business Information
44-3	Transactions	2	1-8	Grant	Sensitive Competitive Business Information
44-3/1	Invoice	1	1-2; Cols. A-B	Grant	Sensitive Contractual Information
44-3/1	Invoice	2	1a,3-8	Grant	Sensitive Contractual Information
44-3/2	Invoice	1	1-2; Cols. A-B	Grant	Sensitive Contractual Information
44-3/2	Invoice	3	1a,3-7	Grant	Sensitive Contractual Information
44-3/3	Invoice	1	1-2; Cols. A-B	Grant	Sensitive Contractual Information
44-3/3	Invoice	2	1a,1g-5	Grant	Sensitive Contractual Information
44-3/4	Invoice	1	1-2; Cols. A-B	Grant	Sensitive Contractual Information
44-3/5	Invoice	1	1-2; Cols. A-B	Grant	Sensitive Contractual Information
44-3/5	Invoice	2	1a,1g-5	Grant	Sensitive Contractual Information
44-3/6	Invoice	1	1-2; Cols. A-B	Grant	Sensitive Contractual Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information
44-3/6	Invoice	2	1a,1h-5	Grant	Sensitive Contractual Information
44-3/7	Invoice	1	1-2; Cols. A-B	Grant	Sensitive Contractual Information
44-3/7	Invoice	2	1a,1h-5	Grant	Sensitive Contractual Information
44-3/8	Invoice	1	1-2; Cols. A-B	Grant	Sensitive Contractual Information
44-3/8	Invoice	2	1a,1h-5	Grant	Sensitive Contractual Information
44-3/9	Contract	1-2	All	Grant	Sensitive Contractual and Competitive Business Information
44-3/10	Explanations, Price Schedule	1	11-16	Grant	Sensitive Contractual and Competitive Business Information
44-3/10	Explanations, Price Schedule	2	1-3; Cols A-J	Grant	Sensitive Contractual and Competitive Business Information
44-3/10-1	Explanations	1	7,9-11,13,16-17,19, 21	Grant	Sensitive Contractual and Competitive Business Information
44-3/10-1	Explanations	2	1-6	Grant	Sensitive Contractual and Competitive Business Information
46-1	Products/Services	1	26	Grant	Sensitive Competitive Business Information
48-1/1	Deal Form	1	1-6	Grant	Sensitive Contractual Information
48-1/1	Deal Form	2	1-10	Grant	Sensitive Contractual Information
48-1/1-1	Invoice	1	Cols. A-D	Grant	Sensitive Contractual Information
48-1/1-1	Invoice	2	Cols. A-J	Grant	Sensitive Contractual Information
48-1/2	Deal Form	1	1-7	Grant	Sensitive Contractual Information
48-1/2-1	Invoice	1	Cols. A-D	Grant	Sensitive Contractual Information
48-1/2-2	Purchase Statement	1	Cols. A-D	Grant	Sensitive Contractual Information
48-1/2-2	Purchase Statement	2	Cols. A-E	Grant	Sensitive Contractual Information
48-1/3	Deal Form	1	1-10	Grant	Sensitive Contractual Information
48-1/3-1	Invoice	2	Cols. A-D	Grant	Sensitive Contractual Information
48-1/3-2	Purchase Statement	1-2	Cols. A-D	Grant	Sensitive Contractual Information
48-1/3-2	Purchase Statement	3	Cols. A-G	Grant	Sensitive Contractual Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information
48-1/4	Deal Form	1	1-10	Grant	Sensitive Contractual Information
48-1/4-1	Invoice	1	Cols. A-D	Grant	Sensitive Contractual Information
48-1/4-1	Invoice	2	Cols. A-H	Grant	Sensitive Contractual Information
48-1/5	Deal form	1	1-10	Grant	Sensitive Contractual Information
48-1/5-1	Invoice	2	Cols. A-D	Grant	Sensitive Contractual Information
48-1/5-2	Purchase Statement	1	Cols. A-D	Grant	Sensitive Contractual Information
48-1/5-2	Purchase Statement	2	Cols. A-G	Grant	Sensitive Contractual Information
48-1/6	Deal Form	1	1-10	Grant	Sensitive Contractual Information
48-1/6-1	Invoice	1	Cols. A-D	Grant	Sensitive Contractual Information
48-1/6-1	Invoice	2	Cols A-G	Grant	Sensitive Contractual Information
48-1/7	Deal Form	1	1-10	Grant	Sensitive Contractual Information
48-1/7-1	Invoice	2	Cols. A-D	Grant	Sensitive Contractual Information
48-1/7-2	Purchase Statement	1-2	Cols. A-D	Grant	Sensitive Contractual Information
48-1/7-2	Purchase Statement	3	Cols. A-G	Grant	Sensitive Contractual Information
48-1/8	Deal Form	1	1-8	Grant	Sensitive Contractual Information
48-1/8-1	Invoice	1	Cols. A-D	Grant	Sensitive Contractual Information
48-1/8-1	Invoice	2	Cols. A-F	Grant	Sensitive Contractual Information
48-1/9	Deal Form	1	1-8	Grant	Sensitive Contractual Information
48-1/9-1	Invoice	2	Cols. A-D	Grant	Sensitive Contractual Information
48-1/9-2	Purchase Statement	1-2	Cols. A-D	Grant	Sensitive Contractual Information
48-1/9-2	Purchase Statement	3	Cols. A-F	Grant	Sensitive Contractual Information
48-2	Confirmations	1	8-9,12-16	Grant	Sensitive Contractual Information
48-2	Confirmations	3	8-9,12-27	Grant	Sensitive Contractual Information
48-2	Confirmations	5	8-9,12-31	Grant	Sensitive Contractual Information
48-2	Confirmations	7	8-9,12-31	Grant	Sensitive Contractual Information
48-2	Confirmations	9	8-9,12-25	Grant	Sensitive Contractual Information
48-2/1	Prices	2	1-2	Grant	Sensitive Contractual Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information
48-3	Confirmations	1	8-9,12-16	Grant	Sensitive Contractual Information
48-3	Confirmations	2	8-9,12-27	Grant	Sensitive Contractual Information
48-3	Confirmations	3	8-9,12-31	Grant	Sensitive Contractual Information
48-3	Confirmations	5	8-9,12-31	Grant	Sensitive Contractual Information
48-3	Confirmations	7	8-9,12-25	Grant	Sensitive Contractual Information
48-4	Contract	1-9	All	Grant	Sensitive Contractual Information
48-5	Contract	1-9	All	Grant	Sensitive Contractual Information
48-6	Contract	1-19	All	Grant	Sensitive Contractual Information
48-7, p1	Gas Closing Report	1	3-4,5-9,10-12	Grant	Sensitive Contractual and Competitive Business Information
48-7, p2	Explanations	1	All	Grant	Sensitive Competitive Business Information
48-7/1	Purchase Statement	1	Cols. A-D	Grant	Sensitive Contractual Information
48-7/1-1	Invoice	1	Cols. A-I	Grant	Sensitive Contractual Information
48-7/1-2	Confirmation	1	8-9,12	Grant	Sensitive Contractual Information
48-7/2	Purchase Statement	1-2	Cols. A-D	Grant	Sensitive Contractual Information
48-7/2-1	Invoice	1	Cols A-G	Grant	Sensitive Contractual Information
48-7/2-2	Confirmation	1	6-12,14-18	Grant	Sensitive Contractual Information
48-7/2-3	Publication	1	15,18-24,28-29	Grant	Sensitive Contractual Information
48-7/3	Purchase Statement	1	Cols. A-D	Grant	Sensitive Contractual Information
48-7/3-1	Invoice	1	7-11	Grant	Sensitive Contractual Information
48-7/3-1	Invoice	2	7-9	Grant	Sensitive Contractual Information
48-7/3-2	Confirmation	1-2	15,18-23,28-29	Grant	Sensitive Contractual Information
48-7/4	Purchase Statement	1	Cols. A-D	Grant	Sensitive Contractual Information
48-7/4-1	Invoice	1	Cols. A-F	Grant	Sensitive Contractual Information
48-7/4-2	Confirmation	1	15,18-23,28-29	Grant	Sensitive Contractual Information
48-7/4-2	Confirmation	2	14,17-22,27-28	Grant	Sensitive Contractual Information
48-7/5	Purchase Statement	1	Cols. A-D	Grant	Sensitive Contractual Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information
48-7/5-1	Invoice	1	12-13	Grant	Sensitive Contractual Information
48-7/5-1	Invoice	2	13-16	Grant	Sensitive Contractual Information
48-7/5-1	Invoice	3	Cols. A-G	Grant	Sensitive Contractual Information
48-7/5-2	Confirmation	1-3	8-9,12	Grant	Sensitive Contractual Information
48-8	Gas Closing Report	1	4-5,7-10,17,19-20	Grant	Sensitive Contractual and Competitive Business Information
48-9	Gas Closing Report	1	3-4,6-8,18-20	Grant	Sensitive Contractual and Competitive Business Information
48-10	Gas Closing Report	1	3-4,6-7,15-17	Grant	Sensitive Contractual and Competitive Business Information
49-1/1	Deal Forms	1-5	Cols. A-H	Grant	Sensitive Contractual Information
49-1/1	Deal Forms	6	Cols. A-I	Grant	Sensitive Contractual Information
49-1/1-1	Invoice	1	4,19,21	Grant	Sensitive Contractual and Competitive Business Information
49-1/1-1	Invoice	2	Cols. A-D	Grant	Sensitive Contractual and Competitive Business Information
49-1/2	Deal Form	1-6	Cols. A-G	Grant	Sensitive Contractual Information
49-1/2-1	Purchase Statement	1-3	Cols. A-D	Grant	Sensitive Contractual Information
49-1/2-1	Purchase Statement	4-5	Cols. A-E	Grant	Sensitive Contractual Information
49-1/2-2	Purchase Statement	1	Cols. A-D	Grant	Sensitive Contractual Information
49-1/2-2	Purchase Statement	3	Cols A-I	Grant	Sensitive Contractual Information
49-1/2-3	Settlement Statement	1-2	All	Grant	Sensitive Contractual Information
49-1/3	Deal Forms	1-5	Cols. A-G	Grant	Sensitive Contractual Information
49-1/3-1	Invoice	1	4,17,20	Grant	Sensitive Contractual and Competitive Business Information
49-1/3-1	Invoice	2	Cols. A-D	Grant	Sensitive Contractual and Competitive Business Information
49-1/4	Deal Forms	1-5	Cols. A-G	Grant	Sensitive Contractual Information
49-1/4-1	Purchase Statement	1	Cols. A-D	Grant	Sensitive Contractual Information
49-1/4-1	Purchase Statement	2	1-2; Cols. A-H	Grant	Sensitive Contractual Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information
49-1/4-2	Purchase Statement	1	Cols. A-D	Grant	Sensitive Contractual Information
49-1/4-2	Purchase Statement	2	1-2; Cols. A-E	Grant	Sensitive Contractual Information
49-1/4-3	Purchase Statement	1	Cols. A-D	Grant	Sensitive Contractual Information
49-1/4-3	Purchase Statement	2	Cols. A-I	Grant	Sensitive Contractual Information
49-1/4-3	Purchase Statement	3	1-2; Cols A-J	Grant	Sensitive Contractual Information
49-1/4-4	Settle Statement	1-2	All	Grant	Sensitive Contractual Information
49-1/5	Deal Forms	1-4	Cols. A-G	Grant	Sensitive Contractual Information
49-1/5-1	Purchase Statement	1	Cols. A-D	Grant	Sensitive Contractual Information
49-1/5-1	Purchase Statement	2	4,14-15	Grant	Sensitive Contractual Information
49-1/6	Deal Forms	1-4	Cols A-G	Grant	Sensitive Contractual and Competitive Business Information
49-1/6-1	Invoice	1	Cols. A-D	Grant	Sensitive Contractual and Competitive Business Information
49-1/6-1	Invoice	2	Col. A	Grant	Sensitive Contractual and Competitive Business Information
49-1/6-1	Invoice	3	Cols. A-B	Grant	Sensitive Contractual and Competitive Business Information
49-1/6-1	Invoice	4	1-3; Cols A-E	Grant	Sensitive Contractual and Competitive Business Information
49-1/6-2	Invoice	1	Cols. A-D	Grant	Sensitive Contractual and Competitive Business Information
49-1/6-2	Invoice	2	1-2; Col. A	Grant	Sensitive Contractual and Competitive Business Information
49-1/6-2	Invoice	3	Cols. A-B	Grant	Sensitive Contractual and Competitive Business Information
49-1/6-2	Invoice	4	1-2; Cols. A-H	Grant	Sensitive Contractual and Competitive Business Information
49-1/6-3	Settlement Statement	1-2	All	Grant	Sensitive Contractual Information
49-1/7	Deal Form	1	Cols. A-G	Grant	Sensitive Contractual Information
49-1/7-1	Purchase Statement	1	3,12-17	Grant	Sensitive Contractual and Competitive Business Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information
49-1/7-1	Purchase Statement	2	4,15-16	Grant	Sensitive Contractual and Competitive Business Information
49-1/8	Deal Form	1	Cols. A-G	Grant	Sensitive Contractual Information
49-1/8-1	Invoice	1	Cols. A-D	Grant	Sensitive Contractual and Competitive Business Information
49-1/8-1	Invoice	2	1-2; Col. A	Grant	Sensitive Contractual and Competitive Business Information
49-1/8-1	Invoice	3	Cols. A-B	Grant	Sensitive Contractual and Competitive Business Information
49-1/8-1	Invoice	4	1-2; Cols. A-H	Grant	Sensitive Contractual and Competitive Business Information
49-1/8-2	Settlement Statement	1-2	All	Grant	Sensitive Contractual Information
49-2/1	Confirmations	1	12,14,16-18a,24-29	Grant	Sensitive Contractual Information
49-2/1	Confirmations	3	Cols. A-C	Grant	Sensitive Contractual Information
49-2/2	Confirmations	1	12,14,16-19,25-31	Grant	Sensitive Contractual Information
49-2/2	Confirmations	3	Cols. A-C	Grant	Sensitive Contractual Information
49-2/3	Confirmations	1	12,14,15-18,24-29	Grant	Sensitive Contractual Information
49-2/3	Confirmations	3	Cols. A-C	Grant	Sensitive Contractual Information
49-2/4	Confirmations	1	11,13-17,23-28	Grant	Sensitive Contractual Information
49-2/4	Confirmations	3	Cols. A-C	Grant	Sensitive Contractual Information
49-2/5	Confirmations	1	12,14-18,24-29	Grant	Sensitive Contractual Information
49-2/5	Confirmations	3	Cols. A-C	Grant	Sensitive Contractual Information
49-2/6	Confirmations	1	12,14-17a,23-28	Grant	Sensitive Contractual Information
49-2/6	Confirmations	3	Cols. A-C	Grant	Sensitive Contractual Information
49-4/1	Confirmations	2	2-3,6-9,16-22; Cols. A-C	Grant	Sensitive Contractual Information
49-4/2	Confirmations	1	30	Grant	Sensitive Contractual Information
49-4/2	Confirmations	2	2-3,5,7-10,13, 17-23	Grant	Sensitive Contractual Information
49-4/3	Confirmations	1	30	Grant	Sensitive Contractual Information
49-4/3	Confirmations	2	1-2,5,7-10,13, 17-23	Grant	Sensitive Contractual Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information
49-4/4	Confirmations	1	29	Grant	Sensitive Contractual Information
49-4/4	Confirmations	2	1-2,4,6-9,12,15-21	Grant	Sensitive Contractual Information
49-4/5	Confirmations	2	1,3-4,6,8-11,14,18-24	Grant	Sensitive Contractual Information
49-4/6	Confirmations	1	23,25,28-29	Grant	Sensitive Contractual Information
49-4/6	Confirmations	2	4-5; Cols. A-D	Grant	Sensitive Contractual Information
49-5/1	Confirmations	1	16,18-24	Grant	Sensitive Contractual Information
49-5/2	Confirmations	1	16,18-24	Grant	Sensitive Contractual Information
49-6	Confirmations	1	24,26,29-30,40	Grant	Sensitive Contractual Information
49-6	Confirmations	2	3-4,6	Grant	Sensitive Contractual Information
49-7	Confirmations	1	19,22-27	Grant	Sensitive Contractual Information

A temporary copy of this recommendation will be held at I:11414-08 fpl jul 2007 to jun 2008 fuel affiliate raf.doc for a short period.

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