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

DATE: May 12, 2009

TO: Katherine Fleming, Attorney, General Counsel's Office

FROM: Division of Regulatory Compliance (Freeman, Mailhot)

RE: Docket 041291-EI, Recommendation concerning Florida Power & Light Company's (FPL's) 2nd request for extension of confidential classification concerning a portion of the staff working papers prepared during "Florida Power & Light Storm Cost Recovery Audit for the Year Ended December 31, 2004", Audit Control No. 04-343-4-1, Documents Numbered 01560-05, 01561-05, 01563-05 and 02236-05

On February 10, 2005, when copies of certain portions of staff's working papers obtained or prepared during the "Florida Power & Light Storm Cost Recovery 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 15, 2005, staff filed Documents numbered 01560-05, 01561-05, and 01563-05 consisting of those specified portions of the staff's working papers.

On March 3, 2005, 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 redacted copies for public inspection (Document No. 02237-05) and copies with the sensitive material highlighted (Document No. 02236-05).

On June 30, 2005, the Commission granted FPL's request and issued Order No. PSC-05-0712-CFO-EI which provided an 18 month confidential classification for the identified materials.

On December 18, 2006, FPL requested an extension of the classification period granted by Commission Order No. PSC-05-0712-CFO-EI.

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

On September 27, 2007, the Commission granted FPL's request for an 18 month extension of classification and issued Order No. PSC-07-0790-CFO-EI which provided the extension requested. That period has now tolled.

DOCUMENT NUMBER-DATE

04650 MAY 14 8

May 12, 2009
Florida Power & Light Request

On March 27, 2009, FPL requested a second 18-month extension of confidential classification for a portion of the materials and information contained in staff's audit of the utility's 2004 storm cost recovery reports.

Documents numbered 01560-05, 01561-05, 01563-05 and 02236-05 are currently held by the Commission as confidential pending resolution of FPL's 2nd request for extension of the classification period.

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 Request

Reading the FPL filing reveals the sensitive material consists of:

Contractual data such as pricing and other terms

FPL asserts that the sensitive data on file is not stale or public and that disclosure of sensitive contractual data such as prices and other terms would impair the efforts of FPL and its affiliates to contract on favorable terms. In addition, FPL asserts release of this pricing and other contractual data would impair the business interests of provider of the information.

FPL argues this information qualifies for a confidential classification on the basis of Section 366.093(3)(d) F.S., which allows the Commission to grant a confidential classification to sensitive contractual information of a public utility or its affiliates. FPL further argues that pursuant to the provisions of Section 366.093(3)(e), F.S., that the Commission should grant a confidential classification on the basis that release of this sensitive competitive business information would harm the provider of the information.

By way of an affidavit, Mr. D. K. White, FPL General Manager of Power Systems Material Operations, identifies sensitive contractual and competitive business information reported on working papers titled: "Sample of Cash Voucher", "Sample of Bartech", "Testing of Vouchers over \$400,000", "Summary of Journal Vouchers", "Answer to Request 14A", "Purchase Order", "Request 14A", "On Demand Query Report", "Substation Work Order", "Substation Eq", "FINS Construction Report", and "Reconciliation Form."

By way of an affidavit, Mr. Michael G. Spoor, FPL Director of Business Services, Distribution, identifies sensitive contractual and competitive information reported upon working papers titled: "Testing of Cash Vouchers over \$400,000", "Estimated Storm Expenses", "December Accrual Information", and "List of Contractors."

Staff Recommendation

After reading the information identified by FPL employees White and Spoor, we recommend that this information be held as confidential for an additional second 18 month period because the release of the information would continue to harm the ability of FPL and its affiliates to contract favorably for goods and services. We agree with FPL that this contractual information also remains sensitive competitive business information release of which would harm the businesses of the provider of the 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 material meets the statutory definition to be considered "proprietary confidential business information." FPL employees White and Spoor also assert FPL has maintained the confidentiality of those materials they have identified as sensitive.

Duration of the Confidential Classification Period

FPL 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 the extension for the confidential classification be limited to 18 months.

Staff Recommendation

For the reasons presented above, we recommend the utility's request be granted and that the identified material be granted a second 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 Second 18 Month Extension | Type of Information Classified Confidential |
|---------------------------------|------------------------|---------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|------------------------------------------------|
| Documents 01560-05 and 02236-05 | | | | | |
| 43-2 | Sample of Cash Voucher | 1 | Cols A,N, 38, 41; | Grant | Sensitive contractual and business information |
| | | 2 | Col K, 20 | Grant | Sensitive contractual and business information |
| 43-2/1 | Sample of Bartech | 1 | Col C, 13-16, 21-24,29-32; Col D, 13-17, 21-25;29-34; Col F, 13-16,21-24, 29-32,35-36; Col G, 13-17, 21-25,29-34,36-38; Col H, 13-17, 21-25,29-34; Col I, 13-17,21-25, 29-34 | Grant | Sensitive contractual and business information |

| Staff Work Paper Number | Description | Page(s) | Line(s) | Recommend Second 18 Month Extension | Type of Information Classified Confidential |
|---------------------------------|-----------------------------------------|---------|---------------------------------------------------|-------------------------------------|------------------------------------------------|
| Documents 01560-05 and 02236-05 | | | | | |
| 43-3/1-1 | Testing of Cash Vouchers over \$400,000 | 1 | Col C, 6 | Grant | Sensitive contractual and business information |
| | | 3 | Col C, 62 | Grant | Sensitive contractual and business information |
| Documents 01561-05 and 02236-05 | | | | | |
| 44-8 | Summary of Journal Vouchers | 1 | 15,41,43,47 | Grant | Sensitive contractual and business information |
| 44-8 | Summary of Journal Vouchers | 2 | 9,13,15,18,20 | Grant | Sensitive contractual and business information |
| 44-8/1-3 | Answer to Request 14A | 1 | Col B, 18-20; Col C, 9 | Grant | Sensitive contractual and business information |
| 44-8/1-4 | Purchase Order | 1 | Cols C-D, 11,23, 35,47 | Grant | Sensitive contractual and business information |
| 44-8/1-5 | Request No. 14A | 1 | Col A, 6,23,26,31 | Grant | Sensitive contractual and business information |
| 44-8/2 | On Demand Query Report | 2 | Col E, 24-25 | Grant | Sensitive contractual and business information |
| 44-8/2-1 | Substation Work Order | 1 | Col C, 11,12 | Grant | Sensitive contractual and business information |
| | | 7 | Col C, 13-17 Col F, 19 | Grant | Sensitive contractual and business information |
| 44-8/2-2 | Purchase Order | 1 | Col C, 21,39 Col D, 7,13-14, 21,23,27,39,43,46 | Grant | Sensitive contractual and business information |
| | | 2 | Cols C-D, 5,13,21; | Grant | Sensitive contractual and business information |
| | | 3 | Col I, 2,4,7; Col K, 2 | Grant | Sensitive contractual and business information |
| 44-8/3-1 | Substation Work Order | 1 | Col C, 14-19 | Grant | Sensitive contractual and business information |
| | | 6 | Col C, 13-16 | Grant | Sensitive contractual and business information |

| Staff Work Paper Number | Description | Page(s) | Line(s) | Recommend Second 18 Month Extension | Type of Information Classified Confidential |
|---------------------------------|------------------------------|---------|---------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|------------------------------------------------|
| Documents 01561-05 and 02236-05 | | | | | |
| 44-8/3-2 | Substation Eq | 1 | Col I, 2,4,6,8; Col K, 2 | Grant | Sensitive contractual and business information |
| | | 2 | Col C, 14-16 | Grant | Sensitive contractual and business information |
| | | 3 | Col C, 5-8 | Grant | Sensitive contractual and business information |
| 44-8/3-3 | FINS Construction Report | 1 | Col N-O, 17-18; Col P, 17-22 | Grant | Sensitive contractual and business information |
| Documents 01563-05 and 02236-05 | | | | | |
| 52-5/2 | Estimated Storm Expenses | 1 | Col A, 10-12, 35-37; Col B, 10,12-13, 23-25,36-41; Col C, 12-13, 24-25,37-41; Col D, 30; Col F, 12-13, 24-25,37-41; | Grant | Sensitive contractual and business information |
| | | 2 | Col A, 6-8; Col B, 7,9-14; Col C, 10-14; Col D, 4,16; Col F, 10-14 | Grant | Sensitive contractual and business information |
| 52-5/3 | December Accrual Information | 1 | Col B-D, 4-8; Col E, 7; Col G-I, 4-8; Col K-L, 4-9; Col M, 7-9 | Grant | Sensitive contractual and business information |
| 52-7/1-1 | Reconciliation Form | 2 | Col D, 11-16,25; Col F, 11-16, 25-26 | Grant | Sensitive contractual and business information |

| Staff Work Paper Number | Description | Page(s) | Line(s) | Recommend Second 18 Month Extension | Type of Information Classified Confidential |
|---------------------------------|---------------------|---------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|------------------------------------------------|
| Documents 01563-05 and 02236-05 | | | | | |
| 52-7/1-1 | Reconciliation Form | 3 | Cols D-E, 14; Cols F-G, 25 | Grant | Sensitive contractual and business information |
| | | 4 | Col B, 20,22; Col C, 20,22,30; Col D, 20,22; Col E, 20,22,30; Col F, 20,22; Cols G-H, 10, 14-15,20,22-23; Col I, 8,13,20, 22-23; Col J, 8,13,17,20,24; Col K, 8,13,17, 20,24; Col L, 8,13,17,20,24 | Grant | Sensitive contractual and business information |
| | | 8 | Cols C,E-F, 8-53; Cols G,I, 43 | Grant | Sensitive contractual and business information |
| | | 9 | Col C, 7-58; Cols E-F, 7-58,60; Col G, 60, Col I, 60-61 | Grant | Sensitive contractual and business information |
| | | 5 | Col F, 2 | Grant | Sensitive contractual and business information |
| 52-7/1-2 | List of Contractors | 5 | Col F, 2 | Grant | Sensitive contractual and business information |

A temporary copy of this recommendation will be held at I:02236-05 fpl 2st ext 2004 storm damage raf.doc for a short period.

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