

State of Florida



ORIGINAL

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHEPARD PARK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: September 13, 2004

TO: Jennifer Rodan, Attorney, General Counsel

FROM: Division of Regulatory Compliance and Consumer Assistance (Freeman, Vandiver) *on staff*

RE: Docket 040001-EI, Recommendation concerning Florida Power & Light Company's (FPL) request for confidential classification concerning a portion of the staff working papers prepared during "FPL Fuel Cost Recovery Clause Audit - Medium Priority Items for the Year Ended December 31, 2003", Audit Control No. 04-096-4-1, Documents Numbered 06511-04 and 06981-04

On June 3, 2004, when copies of certain portions of staff's audit report and working papers obtained or prepared during the "FPL Fuel Cost Recovery Clause Audit – Medium Priority Items for the Year Ended December 31, 2003", 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 10, 2004, staff filed documents 06511-04 consisting of those specified portions of the staff working papers.

On June 24, 2004, 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 06982-04) and highlighted copies (document 06981-04).

Documents 06511-04 and 06981-04 are currently held by the Commission's Division of the Commission Clerk and Administrative Services as confidential pending resolution of FPL's request for confidential classification.

CMP _____

COM _____ Pursuant to Section 119.07, F.S., documents submitted to this Commission are public records.

CTR _____ 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

ECR _____ 366.093(3)(b)(d) and (e), F.S., provide the following exemptions.

GCL _____

OPC _____

MMS _____

RCA _____

SCR _____

SEC 1

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DOCUMENT NUMBER-DATE

09977 SEP 14 04

FPSC-COMMISSION CLERK

Subsection 366.093, 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 the 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....”

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:

1. Information related to internal auditing reports and associated documents.

Subsection 366.093(b), F.S., provides that the Commission may grant a confidential classification to internal auditing controls and to the reports of internal auditors.

Witness Robert Onsgard, FPL Manager, internal auditing, identifies materials associated with FPL’s internal audits as reported within staff working papers entitled: “Notes from Internal Auditor’s Workpapers”, “List of All Internal Audits Performed in 2003”, and “Portions of Document Request 13A.”

After reading the material identified by witness Onsgard, we agree that release of this material would reveal internal auditing controls and the reports of internal auditors.

2. FPL's fuel and purchased power transactions and the practices and procedures for such transactions.

Subsection 366.093(d), F. S., provides that the Commission may grant a confidential classification to sensitive information concerning contractual information to include bidding information if release of that information will impair the ability of the utility or its affiliates to contract on favorable terms.

Subsection 366.093(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.

Witness Osvaldo J. Lom, FPL supervisor, Purchase Power contracts, Wholesale Services identifies sensitive materials associated with FPL's Fuel and Power Purchases as reported within staff working papers entitled: "Daily Energy Payment Summary."

Witness Gerald J. Yupp, Manager of Regulated Wholesale Power Trading for FPL's Division of Energy Marketing and Trading, identifies sensitive materials associated with FPL's Fuel and Power Purchases as reported within staff working papers entitled: "Power Deal Lamda Report", "Payment Coupon", "Invoice", "OTS Received Schedule Report", "Purchase Statement", "Monthly Report of Cost and Quality of Fuel Oil for Electric Plants", "Summary of Hedging Transactions", "Hedging Filing", "Calculation of Gain Summary", "EMT Allocation of Oil Financial Instruments", "Swap Deal Entry", "Calculation of Gain/Loss Summary", "Example of Fuel Transaction Process", and "Energy Marketing and Trading."

After reading the material identified by witnesses Lom and Yupp, we agree that release of this material would reasonably be expected to impair the ability of FPL or its affiliates to contract favorably for goods and services and release of this material could impair FPL's competitive business. We therefore recommend that the material be granted a confidential classification on the basis that the material meets the exemption provided by Subsection 366.093(3)(d) and (e), Florida Statutes.

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 is proprietary confidential information. FPL witness Yupp asserts that information he identified is proprietary confidential information. FPL witnesses Onsgard and Lom assert FPL has maintained the confidentiality of those materials they have identified as sensitive.

Duration of the Confidential Classification Period

FPL requests that this material be returned to the utility once the information is no longer needed for the Commission to conduct its business. However, we note the Commission staff's working papers for this type of audit are retained on file by the Commission for 25 years.

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 Classified Confidential
Documents 06511-04 and 06981-04					
9	Notes from internal auditor's workpapers	1-11	All	Grant	Internal auditing controls and reports of internal auditors
9-1	List of all internal audits performed in 2003	1-2	All	Grant	Internal auditing controls and reports of internal auditors
10	Document record requests	3	12-20	Grant	Internal auditing controls and reports of internal auditors
44-1/1-1	Daily energy payment summary	1	Cols A,B,C; 1-37	Grant	Sensitive contractual and competitive business information
44-1/1-3	Daily energy payment summary	1	Cols A,B,C; 1-39	Grant	Sensitive contractual and competitive business information
45-1/1-1	Power deal lambda report	1	Cols C,H-N, 1-36	Grant	Sensitive contractual and competitive business information
45-1/2	Payment coupon	1	1; Col A, 4,16,23	Grant	Sensitive contractual and competitive business information
45-1/2-1	Invoice	1	Cols C-F, 15-50	Grant	Sensitive contractual and competitive business information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
45-1/2-1	Invoice	2-3	Cols C-F, 7-47	Grant	Sensitive contractual and competitive business information
46-1/1-1	ITS received schedule report	1	All	Grant	Sensitive contractual and competitive business information
47-1/1-1/1	Power deal lambda report	1	Cols C,H-I,K-N, 2-47	Grant	Sensitive contractual and competitive business information
47-1/1-1/1	Power deal lambda report	2	Cols C,H-N, 2-46	Grant	Sensitive contractual and competitive business information
47-1/1-1/1	Power deal lambda report	3	Cols C,H-I,K-N, 6-48	Grant	Sensitive contractual and competitive business information
47-1/1-1/1	Power deal lambda report	4	Cols C,H-I,K-N, 7-48; Col J, 8	Grant	Sensitive contractual and competitive business information
47-1/1-1/1	Power deal lambda report	5-7	Cols C,H-I,K-N, 2-47	Grant	Sensitive contractual and competitive business information
47-1/1-1/1	Power deal lambda report	8	Cols C,H-I,K-N, 2-48	Grant	Sensitive contractual and competitive business information
47-1/1-1/1	Power deal lambda report	9	Cols C,H-I,K-N, 2-41; Col J, 12	Grant	Sensitive contractual and competitive business information
47-1/1-2/1	Purchase statement	1	Cols C-F, 15-50	Grant	Sensitive contractual and competitive business information
47-1/1-2/1	Purchase statement	2	Cols C-F, 7-48	Grant	Sensitive contractual and competitive business information
47-1/1-2/1	Purchase statement	3	Cols C-F, 6-49	Grant	Sensitive contractual and competitive business information
47-1/1-2/1	Purchase statement	4	Cols C-F, 7-27	Grant	Sensitive contractual and competitive business information
47-1/1-2/2	Invoice	1	Cols C-F, 15-20	Grant	Sensitive contractual and competitive business information
49-1/1	Monthly report of cost and quality of fuel oil for electric plants	1	Cols H-N,P-Q, 1-22	Grant	Sensitive contractual and competitive business information
49-1/1-1/2	Monthly report of cost and quality of fuel oil for electric plants	1	Cols H-NP-Q, 1-13	Grant	Sensitive contractual and competitive business information
52	Summary of hedging transactions	1	31	Grant	Sensitive contractual and competitive business information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
52	Summary of hedging transactions	2	Col B, 8-10	Grant	Sensitive contractual and competitive business information
52-2	Hedging filing	1	Cols C-D, 1a-10a, 11-12; Cols E-F, 1a-10a	Grant	Sensitive contractual and competitive business information
52-2	Hedging filing	2	Cols C-D, 1a-10a, 12; Cols E-F, 1a-10a	Grant	Sensitive contractual and competitive business information
52-2	Hedging filing	3	Cols C-D, 1a-10a, 11; Cols E-F, 1a-10a	Grant	Sensitive contractual and competitive business information
52-1/1	Hedging filing	1	Col B, 12-24; Cols C-F, 2-10a	Grant	Sensitive contractual and competitive business information
52-1/1	Hedging filing	2-12	Cols C-F, 2-11	Grant	Sensitive contractual and competitive business information
52-2/1-1	Hedging filing	1	Cols, C-F, 2-11	Grant	Sensitive contractual and competitive business information
52-2/1-1/1	Calculation of gain summary	1	Col C, 11-28; Col D, 5-10,28; Col E, 28; 34	Grant	Sensitive contractual and competitive business information
52-2/1-1/1-1	EMT allocation of oil financial instruments	1	Col F, 21-26,59; Col G, 21-26,57; Col H, 9-18,21-26, 28-36,40-47,49-56, 58	Grant	Sensitive contractual and competitive business information
52-2/1-1/1-1/1	EMT allocation of oil financial instruments		Col F, 20-26; Col G, 20-26,54; Col H, 10-18, 20-26,28-36, 40-42,44,46-47, 49-53	Grant	Sensitive contractual and competitive business information
52-2/2	Hedging filing	1	Col B, 14-26; Cols C-F, 2-11	Grant	Sensitive contractual and competitive business information
52-2/2	Hedging filing	2-12	Cols C-F, 2-11	Grant	Sensitive contractual and competitive business information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
52-2/2-1	Hedging filing	1	Cols C-F, 2-11	Grant	Sensitive contractual and competitive business information
52-2/2-1/1	Swap deal entry	1	1,3; Col A, 11; Col B, 11,22; C-E, 7-18	Grant	Sensitive contractual and competitive business information
52-2/2-1/2	Calculation of gain/loss summary	1	Col D, 1c,1-25; Col C, 1-25	Grant	Sensitive contractual and competitive business information
52-2/3	Hedging filing	1	Col B, 14-26; Cols C-F, 2-11;	Grant	Sensitive contractual and competitive business information
52-2/3	Hedging filing	2-12	Cols C-F, 2-12	Grant	Sensitive contractual and competitive business information
52-2/3-1	Hedging filing	1	Cols C-F, 2-11	Grant	Sensitive contractual and competitive business information
52-2/3-1	Hedging filing	2	Col B, 10,26; Col D, 10,26; Col E, 10,12,14, 16,18,20,26,28; Col H, 26; Col L, 10,12,14, 16,18,20,26,28; Col M, 10,12,14, 16,18,20,26,28; Col N, 4	Grant	Sensitive contractual and competitive business information
52-2/3-1	Hedging filing	3	3-5,8-9,11-17, 22-23	Grant	Sensitive contractual and competitive business information
52-2/3-1	Hedging filing	4-5	All	Grant	Sensitive contractual and competitive business information
52-2/3-1	Hedging filing	6	1,5,18,26; Col A, 29; Col B, 35; Col C-D, 28	Grant	Sensitive contractual and competitive business information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
52-2/3-1	Hedging filing	7	Col A, 14; Col B, 15-17; Col C, 15-19; Col D, 15-17; Col E, 15-19	Grant	Sensitive contractual and competitive business information
52-2/3-1	Hedging filing	8	4-5,7,10-11,13-20, 25-26	Grant	Sensitive contractual and competitive business information
52-2/3-1	Hedging filing	9	Col B, 12-38	Grant	Sensitive contractual and competitive business information
52-2/3-1	Hedging filing	10	Col B, 6-30	Grant	Sensitive contractual and competitive business information
52-2/3-1	Hedging filing	11-19	All	Grant	Sensitive contractual and competitive business information
52-2/3-1	Hedging filing	20	Col A, 16,18,20; Col B, 16,18,20; Col C, 16,18,20, 25-27,43	Grant	Sensitive contractual and competitive business information
52-2/3-1	Hedging filing	21	Col A, 15-20; Col B, 15-18, 21-22; Col C, 15-18; Col D, 15-22	Grant	Sensitive contractual and competitive business information
52-2/3-1	Hedging filing	22	Col B, 13-39	Grant	Sensitive contractual and competitive business information
52-2/3-1	Hedging filing	23	Col B, 6-30	Grant	Sensitive contractual and competitive business information
52-3/1	Example of fuel transaction process	1	1,3,7-18,22	Grant	Sensitive contractual and competitive business information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
52-3/1	Example of fuel transaction process	2	Col B, 11,21,31; Col D, 11,21,31; Col E, 11,13,15, 17,21,23,25,27,31; Col G, 11,21,31; Col K, 11,21,31; Col M, 11,13,15, 17,21,23,25,27,31	Grant	Sensitive contractual and competitive business information
52-3/1	Example of fuel transaction process	3	Col B, 19; Col D, 19; Col E, 5,7,9,11,13, 19,21,23,25,27,29; Cols G-H, 19; Col K, 19; Col L, 19,21,23,25, 27,29; Col M, 5,7,9,11,13, 17,19,21,23,25,27, 29	Grant	Sensitive contractual and competitive business information
52-3/1	Example of fuel transaction process	4	Col B, 5; Col D, 5; Col E, 5,7,9,11,13, 15,17,19,21-24; Col G, 5; Col K, 5; Col L, 17,19,21-24; Col M, 5,7,9,11,13, 15,17,19,21-24	Grant	Sensitive contractual and competitive business information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
52-3/1	Example of fuel transaction process	5	1; Col A, 4; Col B, 8,18; Col C, 26,29; Col D, 26,29,32; Col E, 25-26,28	Grant	Sensitive contractual and competitive business information
52-3/1	Example of fuel transaction process	6	4; Col C, 15-29; Col D, 15-29, 31-32; Col E, 15-29, 38-39; Col F, 15-29,31-32	Grant	Sensitive contractual and competitive business information
52-3/1	Example of fuel transaction process	7	Cols B-F, 14-21; Col G, 14-22	Grant	Sensitive contractual and competitive business information
52-3/1	Example of fuel transaction process	8	1; Col A, 4; Col B, 8,18,24; Cols C-D, 26,29	Grant	Sensitive contractual and competitive business information
52-3/1	Example of fuel transaction process	9	4; Col C, 15-18; Col D, 15-20; Col E, 15-18; Col F, 15-20	Grant	Sensitive contractual and competitive business information
52-3/1	Example of fuel transaction process	10	Cols B-F, 14-15; Col G, 14-16	Grant	Sensitive contractual and competitive business information
52-3/1	Example of fuel transaction process	11	Col C, 2-35; Col D, 1; Cols E,I, 2-35	Grant	Sensitive contractual and competitive business information
52-3/1	Example of fuel transaction process	12	Col D, 3-4,8-9, 11-14,16-17; Col F, 12	Grant	Sensitive contractual and competitive business information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
52-3/1	Example of fuel transaction process	13	Col A, 10-40, 46-53,64-66; Col B, 10-40,42, 46-53,55, 64-66; Col C, 10-40,42, 46-53,55,64-66; Col D, 10-40,42, 46-53,55,64-67, 71,72 Col E, 46-53,60, 64-66,68,71; Col F, 13,16,19,22, 27	Grant	Sensitive contractual and competitive business information
52-3/1	Example of fuel transaction process	14	Cols A, 5-15, 17-28; Col C, 5-15,17-29 Col D, 5-15,17-28 Col E, 5-15,17-29	Grant	Sensitive contractual and competitive business information
52-3/1	Example of fuel transaction process	15	Cols C-D, 7-12, 14-18	Grant	Sensitive contractual and competitive business information
52-3/1	Example of fuel transaction process	16	Col A, 15-17, 46-66; Col B, 4-9,15-17, 46-66; Col C, 10,12,18, 20-28,31-42,46-66	Grant	Sensitive contractual and competitive business information
52-3/1	Example of fuel transaction process	17	Col B, 24,26-31; Col D, 6-20	Grant	Sensitive contractual and competitive business information
52-3/1	Example of fuel transaction process	18	59,61-63	Grant	Sensitive contractual and competitive business information
52-3/1	Example of fuel transaction process	19	Col J, 6-22,25-26; Col K, 13	Grant	Sensitive contractual and competitive business information
52-3/1	Example of fuel transaction process	20	Col F, 10-24, 26-28;	Grant	Sensitive contractual and competitive business information
52-3/1	Example of fuel transaction process	22	Col M, 14-35	Grant	Sensitive contractual and competitive business information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
52-3/1	Example of fuel transaction process	23	Col M, 14-27	Grant	Sensitive contractual and competitive business information
52-3/1	Example of fuel transaction process	24	Col L, 14-23; Col M, 14-27	Grant	Sensitive contractual and competitive business information
52-3/1	Example of fuel transaction process	25	Col L, 14-24; Col M, 14-28	Grant	Sensitive contractual and competitive business information
52-3/1	Example of fuel transaction process	26	Col M 14-47	Grant	Sensitive contractual and competitive business information
52-3/1	Example of fuel transaction process	27	Col L, 5-13,16; Col M, 5-17	Grant	Sensitive contractual and competitive business information
52-3/1	Example of fuel transaction process	28	Col L, 14-47 Col M, 14-48	Grant	Sensitive contractual and competitive business information
52-3/1	Example of fuel transaction process	29-33	Cols L,M, 5-53	Grant	Sensitive contractual and competitive business information
52-3/1	Example of fuel transaction process	34	Col L, 5-31 Col M, 5-36	Grant	Sensitive contractual and competitive business information
52-3/1	Example of fuel transaction process	35	Col L, 14-17,22,24; Col N, 14-21	Grant	Sensitive contractual and competitive business information
52-3/1	Example of fuel transaction process	36	Col C, 4-6,10; Col D, 4-6,8-10	Grant	Sensitive contractual and competitive business information
52-3/1	Example of fuel transaction process	39	Col M, 24 Col O, 24-25,35-36	Grant	Sensitive contractual information
52-3/1	Example of fuel transaction process	40	Col O, 5	Grant	Sensitive contractual and competitive business information
52-4	Energy marketing and trading	1-61	All	Grant	Sensitive Contractual Information

A temporary copy of this recommendation will be held at I:06981-04.fplraf.doc for a short period.

CC: Division of Regulatory Compliance and Consumer Assistance (Welch)
Division of Commission Clerk and Administrative Services (Flynn)