



# 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-

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**DATE:** September 14, 2004  
**TO:** Marlene Stern, Attorney, General Counsel  
**FROM:** Division of Regulatory Compliance and Consumer Assistance (Freeman, Vandiver) <sup>F</sup> *AV*  
**RE:** Docket 040007-EI, Recommendation concerning Florida Power & Light Company's (FPL) request for confidential classification concerning a portion of the staff working papers prepared during "FPL Environmental Cost Recovery Clause Audit for the Year Ended December 31, 2003", Audit Control No. 04-044-4-1, Documents Numbered 08243-04 and 08288-04

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On July 11, 2004, when copies of certain portions of staff's working papers obtained or prepared during the "FPL Environmental Cost Recovery Clause Audit 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 July 29, 2004, staff filed documents 08243-04 consisting of those specified portions of the staff working papers.

On July 30, 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 (Exhibit B, document 08287-04) and highlighted copies (document 08288-04).

Documents 08243-04 and 08288-04 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.

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



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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: “List of Internal Audits.”

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. Customer-specific account information

FPL asserts that customer-specific information should be granted a confidential classification on the basis that customer-specific information would harm competitive business interests. 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.

FPL witness Korel M. Dubin, FPL Manager, Regulatory Issues, identifies materials associated with customer-specific account information as reported within staff working papers entitled: "Customer Billing." FPL and FPL witness Dubin state FPL treats customer-specific information as confidential to include: customer names, addresses, telephone numbers, account numbers, rates, billing determinants (kW and kWh usage), conservation savings in kW, kWh and bills.

After reading the information identified by witness Durbin we recommend that this information be held as confidential because the information meets the definition of "proprietary confidential business information" set out in Section 366.093, Florida Statutes, in that release of this privately-held sensitive information would cause the provider of that information harm.

## 3. Contractual data such as pricing and other terms.

Subsection 366.093(d), F. S., provides that the Commission may grant a confidential classification to sensitive 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 competitive business information if release of that information will harm the provider of that information.

Witness Roger F. Messer, FPL Manager, Environmental Support, identifies the information associated with sensitive contractual and competitive business interests as reported within staff working papers entitled: "Statistical Sample", and "Sample Testing." FPL pleads that release of contractual data would impair the ability of FPL to contract with vendors for goods and services on favorable terms. FPL also asserts release of this competitive information would harm the contractors and vendors by providing competitors an unfair advantage in future competitions for both FPL and non-FPL contracts.

After reading the material identified by witnesses Messer, 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 competitive business of the involved vendors and contractors. We therefore recommend that the material be granted a confidential classification on the basis that the material meets the exemptions provided by Subsections 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 has not been released to the public. FPL witnesses Onsgard and Dubin assert FPL has maintained the confidentiality of those materials they have identified as sensitive. FPL witness Messer asserts the information he identified is proprietary confidential business information.

**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
9	List of internal audits	1	Col C, 1-51	Grant	Internal auditing controls and reports of internal auditors
9	List of internal audits	2	Col C, 1-12	Grant	Internal auditing controls and reports of internal auditors
41-2/1-2	Customer billing	1	Col B, 1-36	Grant	Customer-specific account information
41-2/1-2	Customer billing	2	Col B, 1-33	Grant	Customer-specific account information
41-2/1-3	Customer billing	1	Col B, 1-36	Grant	Customer-specific account information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
11-2/1-3	Customer billing	2	Col B, 1-28	Grant	Customer-specific account information
11-2/1-4	Customer billing	5	Col A, 1	Grant	Customer-specific account information
13-3/2	Statistical sample	6	Col E, 1,4,7,10; 13-15	Grant	Sensitive contractual and competitive business information
13-3/2-1A	Sample testing	1	Col B, 17	Grant	Sensitive contractual and competitive business information
13-3/2-1A	Sample testing	3	Col B, 12,14,16-17	Grant	Sensitive contractual and competitive business information
13-3/2-1A	Sample testing	4	Cols, B,E, 17; Col F, 17-29; Col H, 20-21	Grant	Sensitive contractual and competitive business information
13-3/2-1/1	Sample testing	1-4	All	Grant	Sensitive contractual and competitive business information
13-3/3-1	Sample testing	2	Col B, 2; Col F, 3-4	Grant	Sensitive contractual and competitive business information
13-3/4	Statistical sample	1	Col M, 17	Grant	Sensitive contractual and competitive business information
13-3/4	Statistical sample	2	Col M, 21-22, 28-35	Grant	Sensitive contractual and competitive business information
13-3/4	Statistical sample	3	Col M, 22,35	Grant	Sensitive contractual and competitive business information
13-3/4	Statistical sample	4	Col M, 1-6,36	Grant	Sensitive contractual and competitive business information
13-3/4	Statistical sample	5	Col M, 1-2,8-9	Grant	Sensitive contractual and competitive business information
13-3/4	Statistical sample	6	Col M, 22	Grant	Sensitive contractual and competitive business information
13-3/4	Statistical sample	7	Col M, 1,7-10, 13,24	Grant	Sensitive contractual and competitive business information
13-3/4	Statistical sample	8	Col M, 7-9,11-15, 27-28,35-37,39	Grant	Sensitive contractual and competitive business information
13-3/4	Statistical sample	9	Col M, 14-17,37	Grant	Sensitive contractual and competitive business information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information <b>Classified Confidential</b>
43-3/4	Statistical sample	10	Col M, 2-4,28, 31,35	Grant	Sensitive contractual and competitive business information
43-3/4	Statistical sample	11	Col M, 6,14-15	Grant	Sensitive contractual and competitive business information
43-3/4	Statistical sample	12	Col M, 8-9,11-12, 18,23	Grant	Sensitive contractual and competitive business information
43-3/4	Statistical sample	13	Col M, 22,24,26,36	Grant	Sensitive contractual and competitive business information
43-3/4-1	Sample testing	1	Col B, 1,13,17	Grant	Sensitive contractual and competitive business information
43-3/4-1	Sample testing	2	Col B, 1,7,14,19	Grant	Sensitive contractual and competitive business information
43-3/4-1	Sample testing	3	Col B, 1,3	Grant	Sensitive contractual and competitive business information
43-3/5-1	Sample testing	1	Col F, 19-21	Grant	Sensitive contractual and competitive business information

A temporary copy of this recommendation will be held at I:08288-04.fplraf.doc for a short period.

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