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COMMISSION CLERK

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

DATE: January 20, 2009
TO: Katherine Fleming, Attorney, General Counsel
FROM: Division of Regulatory Compliance (Freeman, Vandiver)
RE: Docket 090002-EG, Recommendation concerning Florida Power & Light Company's (FPL) request for extension of confidential classification concerning a portion of the staff working papers prepared during "FPL Energy Conservation Cost Recovery Clause Audit for the Year Ended December 31, 2001", Audit Control No. 02-064-4-1, Documents Numbered 07733-02 and 02446-06

Special Instructions

This recommendation supersedes the recommendation provided regarding this mater filed on February 14, 2008 (Commission Document No. 01165-08 is superseded).

Updated Recommendation

On July 16, 2002, when copies of certain portions of staff's working papers obtained or prepared during the "FPL Energy Conservation Cost Recovery Clause Audit for the Year Ended December 31, 2001", 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 24, 2002, staff filed document 07733-02 consisting of those specified portions of the staff working papers.

On July 30, 2002, 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 07954-02) and highlighted copies (document 07953-02).

On October 10, 2002, after discussions with the staff, FPL reduced the amount of material for which confidential protection was requested. In support of this change, FPL filed revised, redacted copies of this material for public inspection (Exhibit B, document 11028-02) and filed revised copies with the sensitive information highlighted (document 11029-02).

On October 31, 2002, Commission Order No. PSC-02-1493-CFO-EG was issued in docket 020002-EG granting the utility's request, as modified, and providing 18 months confidential classification for the specified material.

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On April 16, 2004, FPL filed a first request for extension of the confidential classification.

On August 27, 2004, Commission Order No. PSC-04-0841-CFO-EG was issued in docket 040002-EG granting a 1<sup>st</sup> extension of 18 months to specific portions of documents 07733-02, 07953-02 and 11029-02. This 18 month period has now tolled.

On February 27, 2006, FPL requested that the confidential classification, granted by Commission Order PSC-04-0841-CFO-EG to identified portions of documents 07733-02, 07953-02 and 11029-02, be extended for another 18 month period.

On March 8, 2006, FPL withdrew its February 27, 2006, request for a second extension of confidential classification for this material. The utility presumed that the confidential materials, copies of staff's audit working papers, had been returned to FPL along with the highlighted copies provided by the company (Documents 07953-06 and 11029-02). This was not the case as staff's original working papers will remain on file for 25 years (Document 07733-02).

Later on March 8, 2006, after discussions with the staff concerning the facts in the case, the utility advised the staff to disregard the withdrawal and to proceed with the request for a second extension of confidential classification for this material.

Staff advised FPL that their filing for a second extension of confidential classification was incomplete. Documents 07953-02 and 11029-02 which provided highlighted copies of the sensitive information would have to be returned to the Commission.

On March 20, 2006, the utility filed copies of the sensitive material with the confidential information highlighted (Document 02446-06). This filing completed FPL's request for a second extension of confidential classification.

On June 29, 2006, the Commission issued Order No. PSC-06-0558-CFO in Docket 060002-EG granting Florida Power and Light company's request for a second extension of the confidential period for the information contained in documents 07733-02 and 02446-06.

On December 14, 2007, FPL requested a third extension for information contained in staff's audit working papers Document No. 07733-02. The request references redacted documents provided for public use (Document No. 11028-02, Exhibit B) and copies with the confidential information highlighted (Document No. 02446-02).

Documents 07332-02 and 02446-06 are held by the Bureau of Records in a confidential status awaiting the response to FPL's request for a third extension of 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) 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:*

*(b) Internal auditing controls and reports of internal auditors*

....

*(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(3), 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**

FPL’s request meets the requirements set out by Rule 25-22.006(4), FAC:

The request is clearly stated in writing;

The justification as to which material should be considered for confidential treatment is identified by page and line;

A copy of the information is provided with the confidential information highlighted;

Two public copies of the information with the confidential information redacted is provided; and

An affirmative statement is provided reporting that the information is intended to be and is treated as private and has not been disclosed.

Staff has filed the original copy of the audit working papers containing the sensitive information and FPL has made 3 requests for extension of the classification period enabling a confidential classification for this material. An analysis of FPL’s filings is presented below to make clear which documents were used by the staff in understanding FPL’s request and making this recommendation.

FPL's detailed requests made in this case.

Date of Filing	Description of Item	PSC Document Number	Listing of document details by the utility	FPL Witness Internal Audit materials	FPL Witness Other Business materials
July 24, 2002	Original Staff Audit Working Papers	07733-02	N/A	N/A	N/A
July 30, 2002	FPL original request for a confidential classification	07952-02	Listing is present but superseded later	Rick Del Queto  FPL Internal Audit Manager	Dennis Reynolds  FPL Budget and Regulatory Supervisor
Oct. 10, 2002	FPL revised request for confidential classification	11028-02	Complete corrected listing provided	Rick Del Queto  FPL internal Audit Manager	Dennis Reynolds  FPL Budget and Regulatory Supervisor
Apr. 16, 2004	FPL 1 <sup>st</sup> extension of confidential classification period	04581-04	Complete corrected listing provided	Robert Onsgard  FPL internal Audit Manager	Kenneth Getchell  FPL Budget and Regulatory Support Supervisor
Feb. 27, 2006	FPL 2 <sup>nd</sup> extension of confidential classification period	01678-06	Refers to Oct 10, 2002 filing	Robert Onsgard  FPL internal Audit Manager	Kenneth Getchell  FPL Budget and Regulatory Support Manager
Dec. 14, 2007	FPL 3 <sup>rd</sup> extension of confidential classification period	10922-07	Refers to Oct 10, 2002 filing	Robert Onsgard  FPL internal Audit Manager	Kenneth Getchell  FPL Budget and Regulatory Support Manager

**Staff Analysis**

Reading the filing reveals the sensitive material pertains to information from an audit pertaining to FPL's 2001 conservation cost recovery program expenditures and revenues. The working papers from the audit were filed on July 24, 2002. FPL asserts this material is not dated or stale. The material consists of:

- 1). Internal auditing controls and reports of internal auditors.

Witness Robert Onsgard, FPL Manager, Internal Auditing, identifies material concerning reports of internal auditors and internal auditing controls within FPL's request. Specifically Mr. Onsgard identifies internal auditing materials within staff working papers entitled: "Internal Audits" and "Notes from Internal Audits." Mr. Onsgard represents these documents continue to be proprietary confidential business information and should be accorded a confidential classification for an additional 18 months.

Staff notes Section 366.093(b), F.S., provides that internal auditing controls and reports of internal auditors may be granted a confidential classification.

- 2). Business plans and strategies of FPL

- 3). Customer-specific account information.

Witness Ken Getchell, FPL Budget and Regulatory Support Manager, identifies customer-specific account information within staff working papers entitled: "RTP Factors for July 2001", "Billing Invoices for July and September 2001", "Sample Testing", "Incentives", and "CILC(Commercial/Industrial Load Control) Incentives." Mr. Getchell also identifies sensitive competitive business information within staff's working papers titled "Invoices."

Mr. Getchell represents these documents continue to be proprietary confidential business information and should be accorded a confidential classification for an additional 18 months. Ms. Getchell further reports; "...FPL has a corporate policy not to disclose customer-specific 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 without the permission of that customer."

Further Mr. Getchell reports disclosure of the proprietary confidential business information may impair FPL's competitive business interests.

Section 366.093(3)(e), F.S., provides the Commission may grant a confidential classification to sensitive competitive business information if its release which would harm the provider of the information. We agree the sensitive information identified by FPL is qualifying competitive business information and recommend the information be granted a confidential classification.

**Information Held as Confidential**

FPL reports the confidential information within the filing meets the definition of confidential information set out in Section 366.093, F.S. and the utility witnesses, Mr. Onsgard and Mr. Getchell, indicate that the information identified by them is held as confidential by FPL and this information is not released to the public.

**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.

According to the provisions of Section 366.093(4), F.S., absent good cause shown, confidential classification is limited to 18 months. In the instant case, FPL is requesting that documents filed with the Commission in 2002 be granted a confidential classification today.

We have read the sensitive material identified by FPL and believe that release of these sensitive internal audit materials, business strategies and customer information if released would cause the harm the utility suggests. We therefore recommend that a 3<sup>rd</sup> extension of confidential classification for 18 months be granted.

**Staff Recommendation**

Based upon reading the filing, and for the reasons presented above, we recommend the utility's request for extension of classification period be granted and that the identified information be granted a third 18 month extension of confidential classification.

A detailed recommendation follows:

**Detailed Recommendation**

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend Granting an Extension	Type of Information Classified Confidential
Document 07733-02 and 02446-06					
9	Internal Audits	1	Col C, 1-51	Grant	Reports and information concerning internal audits
9	Internal Audits	2	Col C, 52-99	Grant	Reports and information concerning internal audits
9	Internal Audits	3	Col C, 1-5	Grant	Reports and information concerning internal audits
9	Internal Audits	4	Col C, 1-23	Grant	Reports and information concerning internal audits
9-1	Notes from Internal audits	1-7	All	Grant	Reports and information concerning internal audits
41-1/1-1	RTP Factors 7/01	1-2,4-6, 9-10, 12-16	Col A, 1,28; Col B, 2-10, 12-14,27-28; Col C, 1,3-10, 12-13,28; Col D, 17-18, 20-24,28; Col E, 17-18, 20-24; Col F, 16-18, 22-25;	Grant	Customer Account Information
41-1/1-2	Billing Invoices 7/01	2-3,6-10	Col A-B, 1-3; Col B-C,E-G, 8-45	Grant	Customer Account Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend Granting an Extension	Type of Information Classified Confidential
Document 07733-02 and 02446-06					
41-1/1-3	Billing Invoices 7/01	2-3,5-7, 9	Col A-B, 1-3; Col B-C,E-G, 8-45	Grant	Customer Account Information
43-3	Sample Testing	1	Col I-K, 1-44	Grant	Customer Account Information
43-4/1	Incentives	1-2	Col A-B, 1-3; Col B-C,E-G, 8-43	Grant	Customer Account Information
43-6	Sample Testing	1	Col I,K, 49-55, 59-62,64-91	Grant	Customer Account Information
43-6/10	Invoice	1	1	Grant	Customer Account Information
43-6/10	Invoice	2	2,4,15,19-23, 25-30	Grant	Customer Account Information
43-6/10	Invoice	3	6,7,25	Grant	Customer Account Information
43-6/10	Invoice	4	11	Grant	Customer Account Information
43-6/10	Invoice	5	1	Grant	Customer Account Information
43-6/10	Invoice	7	11-15	Grant	Customer Account Information
43-6/10	Invoice	10	Col A, 3,5,7	Grant	Customer Account Information
43-6/11	Invoice	1	1-4,6,11-12	Grant	Sensitive competitive business information



Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend Granting an Extension	Type of Information Classified Confidential
Document 07733-02 and 02446-06					
43-6/11	Invoice	2	Col A, 2-33	Grant	Sensitive competitive business information
43-6/11	Invoice	3-5	All	Grant	Sensitive competitive business information
43-6/12	Invoice	1	1-4; Col A, 5-6,8-38; Col B, 5-6,13-38; Col C, 5-6,13-38	Grant	Sensitive competitive business information
43-6/12	Invoice	2	1-19	Grant	Sensitive competitive business information
43-6/12	Invoice	3-4	All	Grant	Sensitive competitive business information
43-7	Sample Testing	1	Col J-K, 1	Grant	Customer Account Information
43-7	Sample Testing	2	Col G, 22; Col J, 9; Col N, 18-19	Grant	Customer Account Information
43-7	Sample Testing	3	Col G,K,N, 23	Grant	Customer Account Information
43-7	Sample Testing	4	Col G, 25-27; Col K, 25-27; Col J, 15-17, 32-36; Col N, 13-15, 23A-25,27	Grant	Customer Account Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend Granting an Extension	Type of Information Classified Confidential
Document 07733-02 and 02446-06					
43-7/3	Invoice	1	1-2; Col A, 3-11; Cols B-C, 3-4, 10-11; 13-36	Grant	Sensitive competitive business information
43-7/3	Invoice	2	1-7,15-23	Grant	Sensitive competitive business information
43-7/3	Invoice	3-4	All	Grant	Sensitive competitive business information
44-7/1-1/1	CILC Incentives	1	Cols A-C,J-L,N, 1,4,11,13,15,17, 19-20,23,25-26, 28-32,34,36, 41-44,49-51,53, 56-61,66-67, 69-72	Grant	Customer Account Information
44-7/1-1/1	CILC Incentives	2	Cols A-C,J-L,N, 1,5-6,9-11,14,17, 19-20,22,30, 32-33,35,41-43, 46,48-51,56-59, 61,63,65,68,70, 72-73	Grant	Customer Account Information
44-7/1-1/1	CILC Incentives	3	Cols A-C,J-L,N, 2,9,11,13,15-16, 18-20,24,27,29, 31,37-41,45-46, 48,50,52-53,57, 59,61-64,66, 68-70,72-74	Grant	Customer Account Information
44-7/1-1/1	CILC Incentives	4	Cols A-C,J-L,N, 2,4,9,11,20-22,24, 26,28,30-34,36, 38,41-3,45,53, 55-56,59,63,65, 68,71	Grant	Customer Account Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend Granting an Extension	Type of Information Classified Confidential
Document 07733-02 and 02446-06					
44-7/1-1/1	CILC Incentives	5	Cols A-C,J-L,N, 3-4,8-11,13,15, 17-18,20-22,26, 30-32,34-35,38, 41-43,49-50,52, 54,58,60-63, 66-67,71-72,74	Grant	Customer Account Information
44-7/1-1/1	CILC Incentives	6	Cols A-C,J-L,N, 1-3,8,10,13, 15-16,21,24-25, 28-29,31,36,39, 41,44-45,47, 49-51,55-57, 61-63,65-66, 70-71	Grant	Customer Account Information
44-7/1-1/1	CILC Incentives	7	Cols A-C,J-L,N, 2,4-8,10,12-20, 23,28,32,37-40, 45-46,48-51,53, 55,57,60,62	Grant	Customer Account Information
44-9/1-1/1	CILC Incentives	1	Cols A-C,J-L,N, 1,5,9,11-12,14, 17-19,21-24,27, 29,37-40,42-43, 47-51,54-55, 58-59,61-62, 64,67,69,71,74	Grant	Customer Account Information
44-9/1-1/1	CILC Incentives	2	Cols A-C,J-L,N, 6,10-11,20,22, 24-26,28-29, 33-34,39,42-44, 46,49-50,54-55, 59-60,65-66,68, 72	Grant	Customer Account Information
44-9/1-1/1	CILC Incentives	3	Cols A-C,J-L,N, 2-4,14-16,19-21, 24-27,33-34, 36-37,40-43,45, 49,53-54,57-58, 60,62-63,70-72, 74	Grant	Customer Account Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend Granting an Extension	Type of Information Classified Confidential
Document 07733-02 and 02446-06					
44-9/1-1/1	CILC Incentives	4	Cols A-C,J-L,N, 1-2,4,6-8,10,14, 20,22,25,30-31, 33,37-38,41, 45-47,52-54,56, 58,61-65,67-69, 74	Grant	Customer Account Information
44-9/1-1/1	CILC Incentives	5	Cols A-C,J-L,N, 2-4,8-9,13,17-22, 24,27-28,31-32, 34,36-38,42-44, 46-47,49-50, 55-56,58-59, 62-64,67-70, 72-74	Grant	Customer Account Information
44-9/1-1/1	CILC Incentives	6	Cols A-C,J-L,N, 4-7,9-10,12, 17-19,21-23, 25-26,31,39, 41,46,49-51, 54-57,61-65, 70-73	Grant	Customer Account Information
44-9/1-1/1	CILC Incentives	7	Cols A-C,J-L,N, 1,3-4,6,10-11, 15-20,27,32-37, 39-42,54,56,58	Grant	Customer Account Information

A temporary copy of this revised recommendation is held at I:02446-06ext3raf.doc for a short period.

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