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Public Service Commission

COMMISSION CLERK

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011362-EI

**DATE:** October 29, 2001  
**TO:** Division of Appeals (Cibula)  
**FROM:** Division of Regulatory Oversight (Freeman, Vandiver) *F. on*  
**RE:** Docket 011362-EI, Recommendation concerning Florida Power & Light Company's (FPL's) request for confidential classification for a portion of the staff working papers obtained or prepared during the audit numbered 01-173-4-1, entitled "FPL Earning Surveillance for the year ended December 31, 2000", Documents Numbered 12602-01 and 13089-01

On September 24, 2001, when copies of certain portions of staff's working papers obtained or prepared during the audit entitled "FPL Earnings Surveillance for the year ended December 31, 2000" were delivered to FPL at the audit exit conference, the utility requested that these materials be temporary excepted from public access in accordance with the provisions of Rule 25-22.006(3)(a)(2), Florida Administrative Code (FAC). On October 4, 2001, staff filed document 12602-01 consisting of those specified portions of the staff working papers.

On October 17, 2001, the utility 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 staff during the audit receive confidential classification. The utility's request includes redacted copies for public inspection (Exhibit B, document 13088-01) and highlighted copies (document 13089-01).

Documents 12602-01 and 13089-01 are currently held by the Commission's Division of Commission Clerk and Administrative Services as confidential pending resolution of FPL's request for confidential classification, as modified.

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. Subsection 366.093(3)(d) provides the following exemptions:

- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMP \_\_\_\_\_
- COM \_\_\_\_\_
- CTR \_\_\_\_\_
- ECR \_\_\_\_\_
- LEG \_\_\_\_\_
- OPC \_\_\_\_\_
- PAI \_\_\_\_\_
- RGO \_\_\_\_\_
- SEC \_\_\_\_\_
- SER \_\_\_\_\_
- OTH \_\_\_\_\_

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COMMISSION CLERK

“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 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 materials consist of:

1. Sensitive information concerning FiberNet’s financial projections, operating results, contract and pricing information, and cost data.

FiberNet Controller, Sol Stamm, identifies the sensitive information. Mr. Stamm indicates release of this information would give an unfair advantage to FiberNet’s competitors and would impair the efforts of FiberNet to enter into contracts on favorable terms.

2. Information concerning internal audit reports and internal auditing controls;

FPL Internal Audit Manager Rick Del Cueto identifies which internal audit material is considered sensitive.

Mr. Stamm and Mr. Del Cueto report FPL maintains the confidentiality of this material.

**Duration of the Confidential Classification Period**

FPL requests that the material be granted confidential classification for at least 18 months. FPL goes on to request that this material be returned to the utility once this information is no longer needed for the Commission to conduct its business. However we note audit reports and the related 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 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, as found, and that the identified material be granted a confidential classification for 18 months.

**CLOSING THE DOCKET**

Once an order granting confidential classification becomes final, the docket should be closed.

A detailed recommendation regarding the material follows:

**Detailed Recommendation**

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 12602-01 and 13089-01				
9	1-4	All	Grant	Internal Auditing Controls and Reports of Internal Audits
44	1	All	Grant	Sensitive Competitive Information
44-1	1	1-22	Grant	Sensitive Competitive Information

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
44-1	2-13	All	Grant	Sensitive Competitive Information
44-1/1	1-3	All	Grant	Sensitive Competitive Information
44-1/2	1-2	All	Grant	Sensitive Competitive Information
44-1/3	1-2	All	Grant	Sensitive Competitive Information
44-1/4	1-2	All	Grant	Sensitive Competitive Information
44-1/5	1-2	All	Grant	Sensitive Competitive Information
44-1/6	1-2	All	Grant	Sensitive Competitive Information
44-1/7	1-2	All	Grant	Sensitive Competitive Information
44-1/8	1-2	All	Grant	Sensitive Competitive Information
44-1/9	1-2	All	Grant	Sensitive Competitive Information
44-1/10	1-2	All	Grant	Sensitive Competitive Information
44-1/11	1-2	All	Grant	Sensitive Competitive Information
44-1/12	1-2	All	Grant	Sensitive Competitive Information
44-1/13	1-2	All	Grant	Sensitive Competitive Information
44-1/14	1	1-2,7-13	Grant	Sensitive Competitive Information

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
44-1/14-1	1	All	Grant	Sensitive Competitive Information
44-1/15	1	4-10,12-13,15-35	Grant	Sensitive Competitive Information
44-1/15	2	All	Grant	Sensitive Competitive Information
44-2/1	1	1-13	Grant	Sensitive Competitive Information
44-2/1-1	1	1-7,9-12	Grant	Sensitive Competitive Information
44-2/1-1/1	1-2	All	Grant	Sensitive Competitive Information
44-2/1-2/1	1-2	All	Grant	Sensitive Competitive Information
44-2/1-2/1-1	1	All	Grant	Sensitive Competitive Information
44-2/2	1	1-11	Grant	Sensitive Competitive Information
44-2/2-1	1	1-11	Grant	Sensitive Competitive Information
44-2/2-1/1	1-2	All	Grant	Sensitive Competitive Information
44-2/3	1	1-15	Grant	Sensitive Competitive Information
44-2/3-1	1	1-7,9-12	Grant	Sensitive Competitive Information
44-2/3-1/1	1-2	All	Grant	Sensitive Competitive Information
44-2/3-2	1	1-17	Grant	Sensitive Competitive Information

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
44-2/3-2	2	All	Grant	Sensitive Competitive Information
44-2/3-3	1	1-19	Grant	Sensitive Competitive Information
44-2/3-3	2-5	All	Grant	Sensitive Competitive Information
44-2/4	1	1-16	Grant	Sensitive Competitive Information
44-2/4	2	1-12	Grant	Sensitive Competitive Information
44-2/5	1	1-12	Grant	Sensitive Competitive Information
44-2/5-1	1	1-20	Grant	Sensitive Competitive Information
44-2/5-1	2-7	All	Grant	Sensitive Competitive Information
44-2/6	1	1-14	Grant	Sensitive Competitive Information
44-2/6	2	1-11	Grant	Sensitive Competitive Information
44-2/6	3-5	All	Grant	Sensitive Competitive Information
44-2/6-1	1	All	Grant	Sensitive Competitive Information
44-2/7	1	1-12	Grant	Sensitive Competitive Information
44-2/7	2	1-10	Grant	Sensitive Competitive Information
44-2/7	3	All	Grant	Sensitive Competitive Information

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
44-2/8	1	1-20	Grant	Sensitive Competitive Information
44-2/8-1	1	1-9	Grant	Sensitive Competitive Information
44-2/8-1	2	All	Grant	Sensitive Competitive Information
44-2/8-2	1	1-12	Grant	Sensitive Competitive Information
44-2/8-2	2	All	Grant	Sensitive Competitive Information
44-2/8-3	1-4	All	Grant	Sensitive Competitive Information
44-2/9	1	1-17	Grant	Sensitive Competitive Information
44-2/9	2	1-10	Grant	Sensitive Competitive Information
44-2/9	3	All	Grant	Sensitive Competitive Information
44-2/10	1	1-18	Grant	Sensitive Competitive Information
44-2/10	2	1-12	Grant	Sensitive Competitive Information
44-2/10	3-4	All	Grant	Sensitive Competitive Information
44-3	1	All	Grant	Sensitive Competitive Information

A temporary copy of this recommendation will be held at I:13089-01.RAF for a short period.

CC: Division of Regulatory Oversight (Welch)  
 Division of Commission Clerk and Administrative Services (Flynn)