



Public Service Commission

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

DATE: November 13, 2001
TO: Division of Appeals (Cibula)
FROM: Division of Regulatory Oversight (Freeman, Vandiver)
RE: Docket 011403-EI, Recommendation concerning Florida Power & Light Company's (FPL's) request for confidential classification...

On October 11, 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...

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.

Documents 13412-01 and 13656-01 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.

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FPSC-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 contained in committee minutes concerning FPL’s parent, FPL Group, and its affiliate FPL Energy, LLC

Witness Dennis P. Coyle, General Counsel and Secretary of FPL Group, Inc., and Florida Power and Light Company indicates release of this information would tend to reveal to competitors the corporate strategy of FPL Group, Inc. as well as provide notice of the existence of details of transactions then being considered. Mr. Coyle reports disclosure of the information would impair the business of FPL Group, Inc. and FPL Energy, LLC and could give rise to legal liability.

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. Coyle 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 113412-01 and 13656-01				
8-1	3	1-5	Grant	Sensitive Competitive Information
9A	1-2	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-1	1-9	All	Grant	Internal Auditing Controls and Reports of Internal Auditors

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
9-2	1-2	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-3	1-5	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-4	1-3	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-5	1-3	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-7	1-5	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-8	1-2	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-9	1-3	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-10	1-3	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-11	1	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-12	1-2	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-13	1	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-14	1	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-15	1-5	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-16	1	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-17	1-2	All	Grant	Internal Auditing Controls and Reports of Internal Auditors

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
9-18	1-2	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-19	1	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-20	1-5	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-21	1	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-22	1-4	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-23	1	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-24	1-2	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-25	1	1-11	Grant	Internal Auditing Controls and Reports of Internal Auditors
10	3	9-15	Grant	Internal Auditing Controls and Reports of Internal Auditors
59	1	20-28	Grant	Internal Auditing Controls and Reports of Internal Auditors
59	2	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
59	3	9-19	Grant	Internal Auditing Controls and Reports of Internal Auditors

A temporary copy of this recommendation will be held at I:13656-01.RAF for a short period.

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