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State of Florida



Public Service Commission

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COMMISSION CLERK

SEP 11 AM 9:10

RECEIVED FPSC

DATE September 4, 2003
TO: Office of General Counsel (Cibula)
FROM: Division of Auditing and Safety (Freeman, Vandiver)
RE: Docket 011362-EI, First request for extension of confidential classification granted by Commission order PSC-01-2334-CFO-EI

Recommendation concerning Florida Power & Light Company's (FPL's) first request for extension of confidential classification for a portion of the staff audit working papers obtained or prepared during the audit numbered 01-173-4-1, entitled "Florida Power and Light Company Revenue Refund for the Year Ended April 14, 2001," Documents numbered 12602-01 and 13089-01

On September 24, 2001, when certain staff audit working papers prepared during the audit entitled "Florida Power and Light Company Revenue Refund for the Year Ended April 14, 2001," were delivered to FPL at the audit exit conference, the utility requested that these materials be temporarily 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 this specified portion of the audit working papers.

On October 15, 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 staff audit working papers prepared by staff during the audit receive confidential classification. The utility's request included redacted copies for public inspection (Exhibit B, document 13088-01) and full and complete copies of this material with the sensitive information highlighted (document 13089-01).

On November 30, 2001, the Commission issued order PSC-01-2334-CFO-EI, granting a confidential classification lasting 18 months to identified portions of documents 12602-01 and 13089-01 in accordance with FPL's request.

On May 28, 2003, FPL requested that the confidential classification granted to these documents be extended for an additional 18 month period.

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FPSC-COMMISSION CLERK

Pursuant to Section 119.07, F.S., documents submitted to this Commission are public records. The only exceptions to this rule are specific statutory exemptions and exemptions granted by governmental agencies to the specific items of a statutory provision. Sections 366.093(b) and (e), F.S., provide the following exemptions:

“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, FPL has the burden of demonstrating that information and materials provided to the staff 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.

While FPL’s request for extension of confidential classification is pending, documents 12602-01 and 13089-01 remain accounted for as held by the Commission as confidential.

September 4, 2003

Florida Power & Light Company

1<sup>st</sup> Extension of confidential Classification

2001 Revenue Refund Audit

### **Staff Analysis of the Request**

Reading the filing reveals the sensitive audit information reported for which the additional 18 months of confidential classification is requested:

1. Internal auditing controls and reports of internal auditors; and

Rick Del Cueto, FPL Manager of Internal Auditing, identifies the staff audit working papers which contain sensitive information concerning either internal auditing controls or the reports of internal auditors in the working papers entitled, "Internal Audit Review". Internal auditing controls and reports of internal auditors are specifically listed in Section 366.093(3)(b), F.S., as qualifying for a confidential classification.

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

FiberNet LLC [FiberNet] Controller, Sol Stamm, identifies the sensitive information concerning competitive business information within the working papers entitled:

"FiberNet Adjustment to the Refund";  
"FiberNet Income Statements";  
"Not Subject to Refund Revenue";  
"ITC Fees";  
"Charges to Utility - 4/00";  
"Charges to Utility - 5/00";  
"Charges to Utility - 5/00,6/00,7/00,8/00";  
"Charges to Utility - 9/00";  
"Charges to Utility - 10/00";  
"Charges to Utility - 11/00";  
"Charges to Utility - 12/00";  
"Charges to Utility - 1/00";  
"Charges to utility - 2/00";  
"Charges to Utility - 3/00"; and  
"YTD [Year-to-Date] Charges."

Witness 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.

Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information is specifically listed in Section 366.093(3)(e), F.S., as qualifying for a confidential classification.

FPL asserts this material has not grown stale after 18 months have lapsed and requests an additional 18 months of confidential protection.

In Order PSC-94-1224-CFO-EI, the Commission provided extended confidential classification for information which was commercially sensitive for a long term. The Commission found that it was reasonable to provide an extended confidential classification period for commercially sensitive material, but the Commission also found that after the passage of a reasonable time, terms and conditions which are relevant today may not be so in the future and thus limited the term of protection granted to 5 years.

Lastly for each area of concern, FPL witnesses assert confidentiality of this information has been maintained.

#### **Duration of the Confidential Classification Period**

FPL requests 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, audit reports and the related working papers of 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 good cause shown for a longer period, we recommend that the extended period of classification be set as 18 months. The utility may request, as necessary, another extension of this period before it tolls.

#### **Missing Document**

As part of staff's routine review of this request, document 13089-03 could not be located by the Division of Auditing and Safety who had temporary custody of this document. While the Division indicates this document may be misplaced in the division's files, the document is missing and could not be located at this time. This recommendation continues to recommend a confidential classification for document 13089-01 in the event the document is located.

#### **Staff Recommendation**

For the reasons presented above, and based upon reading the filing, we recommend the identified material be granted an extension of confidential classification for 18 months.

**Close the Docket**

Once the Commission order resolving FPL's request for extension becomes final, this docket should be closed.

A detailed recommendation regarding the material follows:

**Detailed Recommendation**

Staff Work Paper Number	Page(s)	Line(s)	Grant 18 Month Extension ?	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
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

Staff Work Paper Number	Page(s)	Line(s)	Grant 18 Month Extension ?	Type of Information Classified Confidential
Documents 12602-01 and 13089-01				
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
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

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1<sup>st</sup> Extension of confidential Classification

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Staff Work Paper Number	Page(s)	Line(s)	Grant 18 Month Extension ?	Type of Information Classified Confidential
Documents 12602-01 and 13089-01				
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
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

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Florida Power &amp; Light Company

1<sup>st</sup> Extension of confidential Classification

2001 Revenue Refund Audit

Staff Work Paper Number	Page(s)	Line(s)	Grant 18 Month Extension ?	Type of Information Classified Confidential
Documents 12602-01 and 13089-01				
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
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



Staff Work Paper Number	Page(s)	Line(s)	Grant 18 Month Extension ?	Type of Information Classified Confidential
Documents 12602-01 and 13089-01				
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 electronic copy of this document will be kept at "l:extend.13089-01.wpd" for a short time.

CC: Division of Auditing and Safety (Welch)  
 Division of Commission Clerk and Administrative Services (Flynn)