

ORIGINAL

State of Florida



Public Service Commission

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COMMISSION
CLERK

DATE: January 30, 2004
TO: Office of General Counsel (Brown) *F W*
FROM: Division of Auditing and Safety (Freeman, Vandiver) *AMA*
RE: Docket 040002-EG, Recommendation concerning Florida Power & Light Company's (FPL's) second request for extension of confidential classification granted by Order PSC-00-1569-CFO-EG, regarding certain staff work papers obtained during FPL Energy Conservation Cost Recovery audit for the year ended December 31, 1999, Audit No. 00-047-4-1, Document Nos. 08718-00 & 09551-00

On July 17, 2000, when copies of certain portions of staff's working papers prepared during the staff audit of FPL's Energy Conservation Cost Recovery program for 1999 were delivered to FPL, the utility requested that these materials be temporarily exempt from public access pursuant to Rule 25-22.006(3)(a)(2), Florida Administrative Code (FAC).

On July 19, 2000, these identified working papers were filed with the Commission Clerk (Document 08718-00).

On August 7, 2000, FPL requested pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, FAC, that selected portions of these working papers be granted a confidential classification. The utility's request included redacted public copies (Document 09550-00) and copies with the sensitive information highlighted (Document 09551-00) as required by Rule 25-22.006, FAC.

On August 31, 2000, Commission Order PSC-00-1569-CFO-EI granted an 18 month confidential classification to this audit material in accordance with FPL's request.

On February 27, 2002, FPL filed a request to extend the confidential protection granted by Order PSC-00-1569-CFO-EG for an additional 18 months.

On May 2, 2002, Commission Order 02-0605-CFO-EI granted an 18 month extension of confidential classification to this audit material in accordance with FPL's request.

On October 22, 2003, FPL requested pursuant to Rule 25-22.006(9)(c), FAC, that the confidential period for this material be extended a second time.

The Bureau of Records and Reporting still retains the following documents: the staff-filed originals of the sensitive working papers (Document 08718-00), FPL-filed public copies of the working papers with the sensitive portions redacted (Document 09550-00), and FPL-filed copies of the working papers with the sensitive information highlighted (Document 09551-00). Documents 08718-00 and 09551-00 will be held in a confidential status until FPL's request for a second extension of the confidential classification is resolved.

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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 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) 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:....

(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 and services on favorable terms.

(e) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information....”

Section 25-22.006(9)(c) entitled “Duration of Confidential Classification” provides:

“Confidential information not returned at the conclusion of the period established...shall no longer be exempt from S. 119.07(1), F.S. unless the utility or affected person shows, and the Commission finds, the information continues to be confidential. Upon such filing, the duration of confidential classification may be extended for a period of up to 18 months, or for a longer period if the Commission finds, for good cause, that such longer period is necessary to protect the business operations of the utility or affected person. While the commission is considering an extension under this paragraph, the information in question shall remain exempt from s. 19.07(1), F.S.”

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

FPL incorporates from its initial August 7, 2000 filing:

- Appendix A – Highlighted copies of staff's working papers -- (Document 09551-00),
- Appendix B – Public copies of this information with the sensitive information redacted (Document 09550-00, Appendix B)
- Appendix C – Justification Table demonstrating line, page and reason why the material is confidential (Document 09550, Appendix C)

FPL also files Appendix D consisting of the affidavit of Ken Gretchell, dated Oct. 20, 2003.

Reading the FPL filing reveals the sensitive materials consist of:

Customer specific information with respect to non governmental customers

“FPL has withheld names of customers on the lists of information provided...to avoid disclosing the specific rate and contract information associated with those customer's accounts. Nothing has changed since the issuance of Order PSC-00-1569-EG and Order No. PSC-02-0605-CFO to render the information stale or public such that continued confidential treatment would not be appropriate.”

FPL witness Ken Getchell, FPL Budget and Regulatory Support Supervisor, has reviewed the sensitive material and reports the material is customer specific account information of non governmental customers. Mr. Getchell adds FPL has a corporate policy not to reveal customer specific information. This policy would encompass customer names, addresses, telephone numbers, account numbers, rates billing determinants (KW and KW usage), conservation savings in KW, kWh and bills. According to Mr. Getchell, “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 the customer.” He further asserts; “FPL's Policy is premised on the customers' right to privacy and the potential that disclosure of customer specific information may harm some of the customers competitive interests.”

In its pleading FPL states; “The material for which confidential treatment is sought is intended to be and is treated by FPL as private and has not been disclosed.

Duration of the Extension

FPL requests extension of the confidential classification be granted for an additional 18 months. In addition, FPL requests that these materials be returned to FPL once the Commission no longer needs this material to conduct Commission business. Audit materials of this type are retained by the Commission for 25 years.

Section 366.093(4), F.S., limits the duration of confidential classification to 18 months unless cause is shown for a longer period.

Commission Order PSC-03-1437-CFO-EG, issued December 19, 2003, provided a 5 year extension for similar material described as customer account information associated with usage obtained by staff auditors during the 1998 audit of FPL's Energy Conservation Cost Recovery program. The Commission found that the information should be protected for an additional 5 year period as described below:

“...In this instance, I find that FPL has shown the need for a longer period of confidential classification for the 1998 information concerning customer-specific information associated with electric usage. FPL has demonstrated its intent to protect this information by repeatedly filing for an extension of confidential classification of this material, and has also provided a reasonable explanation as to why this information remains sensitive for five years, and why it will remain so for a reasonable time in the future. This is consistent with past Commission action when the Commission considered how long confidential classification should last for commercial business information that remained sensitive for an extended period. See, Order No. PSC 94-1224-CFO-EI, issued October 6, 1994, in Docket No. 950001-EI, In re: Fuel and Purchased Power Cost Recovery Clause and Generating Performance Incentive Factor, wherein the Commission found a five year period to be a reasonable period of time to grant confidential classification of material which remained sensitive for an extended period.”

Staff Recommendation

Based upon reading the filing, we find the material is essentially the same type of information as that which was granted a 5 year extension of confidential classification by commission order PSC-03-1437-CFO-EI. We also find FPL has repeatedly requested extensions for confidential classification for sensitive customer-specific information and that FPL in this case, along with its request for a second extension of confidential classification, has asked that the information be protected by the Commission until it can be returned to FPL. Therefore based upon the demonstrated continued and extended sensitivity of customer specific information when it is associated with electric usage, we recommend the Commission find FPL has provided cause as to why this customer specific information be granted an extension of additional 5 years of confidential protection.

This recommendation follows a long standing Commission policy to protect customer specific rate and usage information (See: Commission Order PSC-96-1478, dated December 4, 1996; Commission Order PSC-98-0421, dated March 24, 1998; and Commission Order 98-0620, dated May 4, 1998).

A detailed recommendation follows:

Staff Work Paper Number	Page	Line(s)	Recommend Extension for 5 Years	Type of Information Classified Confidential
Documents 08718-00 and 09551-00				
41-1/1-1	1-2	Lines 1-4	Grant	Customer-Specific Information
41-1/1-1	3	Col A, Lines 1-4; Col B, Line 2	Grant	Customer-Specific Information
41-1/1-1	4-7	Lines 1-4	Grant	Customer-Specific Information
41-1/1-1	8-9	Col A, Lines 1-4; Col B, Line 2	Grant	Customer-Specific Information
41-1/1-1	10	Lines 1-4	Grant	Customer-Specific Information
41-1/1-1	11	Col A, Lines 1-4; Col B, Line 2	Grant	Customer-Specific Information
41-1/1-1	12	Col A, Lines 1-4; Col B, Lines 2-3	Grant	Customer-Specific Information
41-1/1-1	13-15	Lines 1-4	Grant	Customer-Specific Information
41-1/1-1	16	Col A, Lines 1-4; Col B, Lines 2-3	Grant	Customer-Specific Information

Staff Work Paper Number	Page	Line(s)	Recommend Extension for 5 Years	Type of Information Classified Confidential
Documents 08718-00 and 09551-00				
41-1/1-1	17	Col A, Lies 1-4; Col B, Lines 2	Grant	Customer-Specific Information
41-1/1-1	18-20	Col A, Lines 1-4; Col B, Lines 2-3	Grant	Customer-Specific Information
41-1/1-2	1	Col A, Lines 1-4; Col B, Line 2	Grant	Customer-Specific Information
41-1/1-3	1	Line 1-8, Col A	Grant	Customer-Specific Information
41-1/1-3/1	1-8	Col A, Lines 1-2 Col B, Lines 1-3	Grant	Customer-Specific Information
41-1/1-4	1	Lines 1-9	Grant	Customer-Specific Information
41-1/1-4	2,3	Line 1, Col A-B	Grant	Customer-Specific Information
41-1/1-4	5,6	Line 1, Col A-B	Grant	Customer-Specific Information
41-1/1-4	8,9	Line 1, Col A-B	Grant	Customer-Specific Information
41-1/1-4	10,11	Col A, Lines 1-2 Col B, Lines 1-3	Grant	Customer-Specific Information
41-1/2-1	1	Col A, Lines 1-4 Col B, Line 2	Grant	Customer-Specific Information
41-1/2-1	2	Lines 1-4, Col A	Grant	Customer-Specific Information
41-1/2-1	3	Col A, Lines 1-4 Col B, Lines 2-3	Grant	Customer-Specific Information
41-1/2-1	4	Lines 1-4, Col A	Grant	Customer-Specific Information
41-1/2-1	5	Col A, Lines 1-4 Col B, Line 2	Grant	Customer-Specific Information
41-1/2-1	6	Col A, Lines 1-4 Col B, Lines 2-3	Grant	Customer-Specific Information
41-1/2-1	7-8	Lines 1-4, Col A	Grant	Customer-Specific Information
41-1/2-1	9-10	Col A, Lines 1-4 Col B, Line 2	Grant	Customer-Specific Information

Staff Work Paper Number	Page	Line(s)	Recommend Extension for 5 Years	Type of Information Classified Confidential
Documents 08718-00 and 09551-00				
41-1/2-1	11	Lines 1-4, Col A	Grant	Customer-Specific Information
41-1/2-1	12	Col A, Lines 1-4 Col B, Line 2	Grant	Customer-Specific Information
41-1/2-1	13	Col A, Lines 1-4 Col B, Lines 2-3	Grant	Customer-Specific Information
41-1/2-1	14-15	Lines 1-4, Col A	Grant	Customer-Specific Information
41-1/2-1	16	Col A, Lines 1-4 Col B, Line 2	Grant	Customer-Specific Information
41-1/2-1	17	Col A, Lines 1-4 Col B, Lines 2-3	Grant	Customer-Specific Information
41-1/2-1	18	Lines 1-4, Col A	Grant	Customer-Specific Information
41-1/2-1	19	Col A, Lines 1-4 Col B, Line 2	Grant	Customer-Specific Information
41-1/2-1	20	Col A, Lines 1-4 Col B, Lines 2-3	Grant	Customer-Specific Information
41-1/2-2	1	Col A, Lines 1-4 Col B, Line 2	Grant	Customer-Specific Information
41-1/2-3	1	Lines 1-22, Col A	Grant	Customer-Specific Information
41-1/2-3/1	1-7	Col A, Lines 1-2 Col B, Lines 1-3	Grant	Customer-Specific Information
41-1/2-3/2	1-7	Col A, Lines 1-2 Col B, Lines 1-3	Grant	Customer-Specific Information
41-1/2-3/4	3	Col A, Lines 1-2 Col B, Lines 1-3	Grant	Customer-Specific Information
41-1/2-3/5	1-7	Col A, Lines 1-2 Col B, Lines 1-3	Grant	Customer-Specific Information
41-1/2-4	1	Lines 1-3, Col A	Grant	Customer-Specific Information
41-1/2-4	2-4	Line 1, Col A-B	Grant	Customer-Specific Information

Staff Work Paper Number	Page	Line(s)	Recommend Extension for 5 Years	Type of Information Classified Confidential
Documents 08718-00 and 09551-00				
43-3	1	Col A, Lines 1-3	Grant	Customer-Specific Information
43-3	2	Col A-C, Lines 1-13	Grant	Customer-Specific Information
43-3	3	Cols A-C, Lines 1-30	Grant	Customer-Specific Information
43-3	4	Col A, Line 1	Grant	Customer-Specific Information
43-4	3	Col A, Line 1	Grant	Customer-Specific Information
43-13/1	2	Col B, Lines 1,3-7, 10-11,12,15-18,21, 24-32,40-41	Grant	Customer-Specific Information
43-13/1	3	Col B, Lines 2,5-9, 11,14-17,20-22, 24-27,29,31,33-34, 36,39,41-44	Grant	Customer-Specific Information
43-13/1	4	Col B, Lines 1-7, 9-13,14,16-25, 27-29,31-32,34, 36-40,41-43,44-45	Grant	Customer-Specific Information
43-13/1	5	Col B, Lines 3,5, 8-11,13-16,18,20-23, 26,29-30,33,35-36, 39-41,43,45	Grant	Customer-Specific Information
43-13/1	6	Col B, Lines 3-4,6, 8,9-10,13-15,17, 19-20,23-26,28,32, 34,38-41	Grant	Customer-Specific Information
43-13/1	7	Col B, Lines 1-2,4-7, 8-11,13-14,17-18, 20-22,26-27,29-31, 33-34,36-38	Grant	Customer-Specific Information
43-13/1	8	Col B, Lines 1-4, 13-14,16-17,20, 22-23,25-30,33,35	Grant	Customer-Specific Information

Staff Work Paper Number	Page	Line(s)	Recommend Extension for 5 Years	Type of Information Classified Confidential
Documents 08718-00 and 09551-00				
43-13/1	9	Col B, Lines 2-5,7-8, 14-16,18,20,24-27, 29,31,33-36,39,41	Grant	Customer-Specific Information
43-13/1	10	Col B, Lines 1,3,4-7, 11,13-16,19,22, 25-27,29-30,38-39	Grant	Customer-Specific Information
43-13/1	11	Col B, Lines 5,7-8, 10-15,19-21,23-24, 26,30,35	Grant	Customer-Specific Information
43-13/1	12	Col B, Lines 1-5, 9-10,12,17,21-29, 31-36,39	Grant	Customer-Specific Information
43-13/1	13	Col B, Lines 3-5	Grant	Customer-Specific Information
44-13/1-1	1	Col A, Lines 1-2 Col B, Lines 1-3	Grant	Customer-Specific Information
44-13/1-1/1	1	Col A, Lines 1-2 Col B, Line 1	Grant	Customer-Specific Information
44-13/1-1/1	2	Col A, Line 1 Col B, Lines 1-4	Grant	Customer-Specific Information
44-13/1-2	1	Col A, Lines 1-2 Col B, Lines 1-3	Grant	Customer-Specific Information
44-13/1-2/1	1	Col A, Lines 1-3 Col B, Line 2	Grant	Customer-Specific Information
44-13/2	2	Lines 1-10	Grant	Customer-Specific Information
44-13/2	3-4	Lines 1-12	Grant	Customer-Specific Information
44-13/2	5	Lines 1-18	Grant	Customer-Specific Information
44-13/2	6	Lines 1-6	Grant	Customer-Specific Information
44-13/2	7	Lines 1-16	Grant	Customer-Specific Information

Staff Work Paper Number	Page	Line(s)	Recommend Extension for 5 Years	Type of Information Classified Confidential
Documents 08718-00 and 09551-00				
44-13/2	8	Lines 1-16	Grant	Customer-Specific Information
44-13/2	9	Lines 1-20	Grant	Customer-Specific Information
44-13/2	10	Lines 1-12	Grant	Customer-Specific Information
44-13/2	11	Lines 1-10	Grant	Customer-Specific Information
44-13/2	12	Lines 1-12	Grant	Customer-Specific Information
44-13/2	13	Lines 1-18	Grant	Customer-Specific Information
44-13/2	14	Lines 1-6	Grant	Customer-Specific Information
44-13/2	15	Lines 1-10	Grant	Customer-Specific Information
44-13/2	16	Lines 1-6	Grant	Customer-Specific Information
44-13/2	17	Lines 1-16	Grant	Customer-Specific Information
44-13/2	18,19	Lines 1-18	Grant	Customer-Specific Information
44-13/2	20	Lines 1-16	Grant	Customer-Specific Information
44-13/2	21	Lines 1-12	Grant	Customer-Specific Information
44-13/2	22	Lines 1-20	Grant	Customer-Specific Information
44-13/2	23	Lines 1-30	Grant	Customer-Specific Information
44-13/2	24	Lines 1-24	Grant	Customer-Specific Information
44-13/2	25	Lines 1-28	Grant	Customer-Specific Information
44-13/2	26	Lines 1-16	Grant	Customer-Specific Information
44-13/2	27	Lines 1-20	Grant	Customer-Specific Information
44-13/2	28	Lines 1-14	Grant	Customer-Specific Information
44-13/2-1	1	Col A, Lines 1-6	Grant	Customer-Specific Information
44-13/2-1	2	Col A-B, Line 1	Grant	Customer-Specific Information
44-13/2-1/1	1	Col A, Lines 1-2 Col B, Line 2	Grant	Customer-Specific Information

Staff Work Paper Number	Page	Line(s)	Recommend Extension for 5 Years	Type of Information Classified Confidential
Documents 08718-00 and 09551-00				
44-13/2-1/1	2	Col A, Lines 1-2 Col B, Lines 1-4	Grant	Customer-Specific Information
44-13/2-2	1	Col A, Lines 1-12	Grant	Customer-Specific Information
44-13/2-2	2	Col A-B, Line 1	Grant	Customer-Specific Information
44-13/3	2	Col B, Lines 2,4,7,9,11-12,16-17, 19-21,23-24,26, 28-36,38	Grant	Customer-Specific Information
44-13/3	3	Lines 1-4,6,10,13-14, 16-27,34,36,38,40	Grant	Customer-Specific Information
44-13/3	4	Lines 1-2,6-8,10-11, 16-18,21,23-25, 27-30,33,36-38,40	Grant	Customer-Specific Information
44-13/3	5	Lines 2-3,5-8,10-11, 14-16,22-23,27-30, 36-37,39-40	Grant	Customer-Specific Information
44-13/3	6	Lines 1-4,7,9,15-18, 21,23,25-27,31-35, 37,39-40	Grant	Customer-Specific Information
44-13/3	7	Lines 3,5,6-12,15, 17-18,21-23,25-29, 31-39	Grant	Customer-Specific Information
44-13/3	8	Lines 2,5-7,9,13, 15-17,20,23-24, 26-39,41-43,45	Grant	Customer-Specific Information
44-13/3	9	Lines 2,4-9,12-14, 18,21-22,24,26-30, 32-33,35,37-39, 41-45	Grant	Customer-Specific Information
44-13/3	10	Lines 3-4,6,12-15, 17,19,21,23,32-33, 35-36,39	Grant	Customer-Specific Information

Staff Work Paper Number	Page	Line(s)	Recommend Extension for 5 Years	Type of Information Classified Confidential
Documents 08718-00 and 09551-00				
44-13/3	11	Lines 1,3,5,7,8-11, 12,14,18,22,24-25, 27,29,31,34,36,38	Grant	Customer-Specific Information
44-13/3	12	Lines 2-4,7-8,14,16, 18-20,22,24-32, 34-36,39,41-45	Grant	Customer-Specific Information
44-13/3	13	Lines 2,4,8-9,12, 14,16-17,19-20, 22-23,27,29,31,34, 36	Grant	Customer-Specific Information
44-13/3	14	Lines 1,4,9,12-15, 18,20,22,23,26-27, 33,36-37,39	Grant	Customer-Specific Information
44-13/3	15	Lines 1-3,6-7,9-12, 14-27,32-38,40	Grant	Customer-Specific Information
44-13/3	16	Lines 1-3,5-7,9-11	Grant	Customer-Specific Information
44-13/3-1	1	Col A, Lines 1-2 Col B, Lines 1-3	Grant	Customer-Specific Information
44-13/3-1/1	1	Line 1-3, Col A Line 2, Col B	Grant	Customer-Specific Information
44-13/3-1/1	3	Col A, Lines 1-4	Grant	Customer-Specific Information
44-13/3-2	1	Col A, Lines 1-2 Col B, Lines 1-3	Grant	Customer-Specific Information
44-13/3-3	1	Col A, Lines 1-2 Col B, Lines 1-3	Grant	Customer-Specific Information
45	1	Col A, Line 1 Col B, Lines 1-3	Grant	Customer-Specific Information
45	2	Col A, Lines 2-8	Grant	Customer-Specific Information

Staff Work Paper Number	Page	Line(s)	Recommend Extension for 5 Years	Type of Information Classified Confidential
Documents 08718-00 and 09551-00				
45	3	Col A, Lines 1-6	Grant	Customer-Specific Information
45	4-5	Col A, Line 1	Grant	Customer-Specific Information
45-1/7-1	1	Col A, Lines 2-3 Col B, Lines 1-2	Grant	Customer-Specific Information
45-1/7-1	2	Col B, Lines 1-4	Grant	Customer-Specific Information
48	1	Col. A-C, Lines 1-42	Grant	Customer-Specific Information
48-1	1	Col A, Lines 1,4, 6,8,10,12,14,16,18, 24 Col B, Lines 1,4, 6,8,10,12,14,16,18 Col C, Lines 1,8-12, 14,16,18 Col D, Lines 1-3,5, 7-13,15,17-26	Grant	Customer-Specific Information
48-1	2	Col A, Lines 1,3, 5,7,10,13,16,19,23 Col B, Line 1,3,5,7, 10,13,16,19,23, 24 Col C, Lines 1,3, 5,7,10,13,16,19,23 Col D, Lines 1-25	Grant	Customer-Specific Information

Staff Work Paper Number	Page	Line(s)	Recommend Extension for 5 Years	Type of Information Classified Confidential
Documents 08718-00 and 09551-00				
48-1	3	Col A-B, Lines 1,5, 7-8,12,15,18,22, 25 Col C, Lines 1,5, 7-8,12,15,18-19,22, 25 Col D, Lines 1-28	Grant	Customer-Specific Information
48-1	4	Col A-B, Lines 1,3,6, 7,9,11,17,22 Col C, Lines 1,3-4, 6-9,11,17,22 Col D, Lines 1-26	Grant	Customer-Specific Information
48-1	5	Cols A-C, Lines 1,6, 10,14,20,23 Col D, Lines 1-26	Grant	Customer-Specific Information

A temporary copy of this recommendation will be held at I:09551-00.extend2.raf.wpd

CC: Division of Auditing and Safety (Welch)
 Bureau of Records and Hearing Services (Flynn)