



ORIGINAL

Public Service Commission

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COMMISSION  
CLERK

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**DATE:** June 19, 2001  
**TO:** Division of Legal Services (Stern)  
**FROM:** Division of Regulatory Oversight (Freeman, Vandiver)  
**RE:** Docket 010002-EG, Recommendation concerning Florida Power & Light Company's (FPL's) request for extension of the confidential classification for a portion of the staff audit working papers obtained during the preparation of the FPL Conservation Cost Recovery Audit for the year ended September 30, 1997, Audit Numbered 97-269-4-1, Documents 13247-97 and 00395-98

On December 18, 1997, when copies of certain portions of staff's audit working papers obtained or prepared during the FPL Conservation Cost Recovery Audit for the year ended September 30, 1997, 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 December 26, 1997, staff filed document 13247-97, consisting of those specified portions of the staff audit report and working papers,

On January 8, 1998, 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 audit working papers prepared by staff receive confidential classification. The utility's request included redacted copies for public inspection (Document 00396-98) and highlighted copies (document 00395-98).

On July 28, 1998, the Commission issued Order PSC-98-1024-CFO-EG which granted the utility's request that the material be granted a confidential classification for 18 months. That confidential classification period ended on January 28, 2000.

On December 27, 1999, the utility requested that the confidential classification period for these materials be extended for an additional 18 months. (DN 15741-99)

On June 6, 2001, the Division of Commission Clerk and Administrative Services returned working paper 43-10/1 to FPL. This working paper was part of document 13247-97 and document 00395-98. Working paper 43-10/1 reported social security numbers of FPL employees. Review of the audit revealed this sensitive information was no longer needed to support the audit and therefore it was returned to FPL.

The remainder of documents 13247-97 and 00395-98 are currently held by the Division of Commission Clerk and Administrative Services as confidential pending resolution of FPL's request for extension of the confidential classification.

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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:

"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.

(f) Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities.

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 filing and Commission Order 98-1024 reveals FPL's request for extension of the confidential period applies to the following the sensitive materials:

1) Material related to internal auditing controls and reports of internal auditors.

FPL's Manager of Internal Auditing, Rick Del Cueto, asserts in his December 16, 1999, deposition that these internal audit documents remain sensitive and should be granted an additional 18 months of protection (Section 366.093(3)(b), Florida Statutes). Mr. Del Cueto also asserts the materials have been held as confidential by FPL.

2) Social security numbers of FPL employees

Commission Order PSC-98-1024 found that the full social security numbers as reported qualifies for a confidential classification since this is employee personnel information unrelated to compensation, duties, qualifications or responsibilities (Section 366.093(3)(f), Florida Statutes). As previously discussed, this information has been returned to FPL.

3) Customer account information

Dennis Brandt, FPL's Director of Sales and Marketing Product Support and Services, identifies customer-specific account information for which an additional 18 months of confidential protection is sought. Mr. Brandt further attests that this information is maintained as confidential and is not released by FPL to third parties except as required by law or with the permission of the customer.

Commission Order 98-1024 granted this customer-specific account information a confidential classification because the customer information is private and is held in confidence by FPL and release of this information would cause harm to the provider of the information. FPL maintained that disclosure of this information would cause harm to its competitive interests by disclosing private information its customers would not otherwise reveal. This could cause uneconomic bypass of FPL's facilities as customer might seek other means of meeting their energy needs (Section 366.093(3)(e), Florida Statutes).

The Commission has a long history of granting confidential classification to customer-specific account information. See Commission Order 22851, dated April 23, 1990; Commission Order 96-1478, dated December 4, 1996; and Commission Order 98-0421, dated March 24, 1998.

**Staff Analysis of the Request** (continued)

4) Contract pricing information of certain FPL lighting contractors/vendors

Through affidavit, Mr. Brandt identified information concerning contract pricing of certain FPL conservation vendors. According to Mr. Brandt, this information is held as confidential by FPL and should be held as confidential by the Commission for an additional 18 months pursuant to the provisions concerning protection of competitive interests (Section 366.093(3)(e), Florida Statutes).

Commission Order 98-1024 finds release of such contract pricing information would impair the competitive business of the particular vendors involved. FPL asserted this private information might not otherwise be disclosed. The Order also indicated release of this information could "lead to higher prices for FPL ratepayers as vendors with whom FPL has negotiated favorable rates with might refuse to do further business with the utility if their private contractual information would no longer be private."

**Duration of the Confidential Classification Period**

The utility requests that the Commission grant an extension to the confidential classification period. The utility further requests that this material be returned to the utility once this information is no longer needed for the Commission to conduct its business.

The retention period for audit working papers of this nature is 25 years. According to the provisions of Section 366.093(4), F.S., absent good cause shown for a longer period of protection, a confidential classification is limited to 18 months. Absent cause shown for a definite length of the retention period, we therefore recommend that the period of classification be set as 18 months. As deemed necessary, the utility may request another 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 and that the identified material be granted a confidential classification for 18 months.

A detailed recommendation regarding the material follows:

**Detailed Recommendation (as found)**

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 13247-97 and 00395-98				
9	1-5	All	Grant	Internal Audit Information
10-11	1	1-6	Grant	Customer Account Information
10-30	2	1-5,8	Grant	Competitive Information
41-1/4	1-9	2-5	Grant	Customer Account Information
43-8/1	1	Col A, line 22 Col B, lines 1-28 Col C lines 22-28	Grant	Competitive Information
43-8/1	2	Col A, lines 1 & 6 Col B, lines 1-3, 6-8, 13, 19-25, 30 Col C lines 1-12	Grant	Competitive Information
44-1/1-1/1	1-33	Col A	Grant	Customer Account Information
44-1/1-1/1-1	1	2,6	Grant	Customer Account Information
44-1/1-1/1-2	1	6	Grant	Customer Account Information
44-1/1-1/1-3	1	6	Grant	Customer Account Information
44-1/1-1/1-4	1	6	Grant	Customer Account Information
44-1/1-1/1-5	1	6	Grant	Customer Account Information
44-1/1-1/1-6	1	6	Grant	Customer Account Information
44-1/1-1/1-7	1	6	Grant	Customer Account Information and Competitive Information
58	1-4	1-7	Grant	Customer Account Information and Competitive Information

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 13247-97 and 00395-98				
58	5-8	1-3	Grant	Customer Account Information and Competitive Information
58	9,10	1-5,6,7	Grant	Customer Account Information and Competitive Information
58	13	1-6	Grant	Customer Account Information and Competitive Information
58	14	1-3	Grant	Customer Account Information and Competitive Information
58	15	1-7	Grant	Customer Account Information and Competitive Information
58	16	2-9	Grant	Customer Account Information and Competitive Information
58	17	3-5	Grant	Customer Account Information and Competitive Information
58	20-23	1-7	Grant	Customer Account Information and Competitive Information
58	24	1	Grant	Customer Account Information and Competitive Information
58	26	All	Grant	Customer Account Information and Competitive Information
58	27-29	1-7 and Col A	Grant	Customer Account Information and Competitive Information

A temporary copy of this recommendation will be held at I:00395-98.RAF for a short period.

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