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

DATE: November 8, 2006

TO: Samantha Cibula, Attorney, Office of General Counsel

FROM: Division of Regulatory Compliance and Consumer Assistance (Freeman, Vandiver)

RE: Docket 011403-EI, Recommendation concerning Florida Power & Light Company's (FPL's) request for a 3rd extension of confidential classification concerning a portion of the staff working papers obtained or prepared during the audit numbered 01-073-4-1 entitled "FPL Earnings Surveillance for the year ended December 31, 2000", Documents Numbered 13412-01 and 13656-01

On October 11, 2001, when copies of certain portions of staff's working papers obtained or prepared during the "FPL Earnings Surveillance Audit for the year ended December 31, 2000", were delivered to FPL at the audit exit conference, the utility requested that these materials be temporarily exempted from public access in accordance with the provisions of Rule 25-22.006(3)(a)2., Florida Administrative Code (FAC).

On October 23, 2001, staff filed document 13412-01 consisting of those specified portions of the staff working papers.

On October 29, 2001, FPL filed a request pursuant to Section 366.093, Florida Statutes (F.S), and Rule 25-22.006, FAC, that selected portions of the working papers prepared by the staff during the audit receive confidential classification. The utility's request included redacted copies for public inspection (Exhibit B, document 13655-01) and complete copies of the material with the sensitive portions highlighted (document 13656-01).

On December 5, 2001, Commission Order No. PSC-01-2339-CFO-EI was issued in Docket 011403-EI granting the utility's request and providing 18 months confidential classification for the specified material.

On May 30, 2003, FPL filed a first request for extension of the confidential classification for material granted by Commission Order PSC-01-2339-CFO-EI.

On August 4, 2003, Commission Order No. PSC-03-0892-CFO-EI issued in Docket 011403-EI granted FPL's request for extension of the confidential classification for an additional 18 months.

On February 3, 2005, FPL requested that confidential classification for this materials be extended a second time.

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- COM _____
- CTR _____
- ECR _____
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FPSC-COMMISSION CLERK

November 8, 2006
Florida Power & Light Request for 3rd Extension

On March 23, 2005, Commission Order No. PSC-05-0332-CFO-EI issued in Docket 011403-EI granted FPL's request for an extension of confidential classification for a second 18 month period. That extension has now tolled.

On September 28, 2006, FPL requested that confidential classification for this material be extended for a third time.

Documents 13412-01 and 13656-01 are currently held by the Commission's Division of the Commission Clerk and Administrative Services as confidential pending resolution of FPL's request for a 3rd extension of confidential classification.

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)(b), F.S., provides the following exemption:

Subsection 366.093, F.S., provides; "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...."

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.

November 8, 2006
Florida Power & Light Request for 3rd Extension

Staff Analysis of the Request

Reading the FPL filing reveals the sensitive material consists of:

Internal auditing controls and reports of internal auditors.

Witness Robert Onsgard, FPL Manager, Internal Auditing, identifies material concerning reports of internal auditors and internal auditing controls within FPL's request. Specifically Mr. Onsgard identifies internal auditing materials within staff working papers entitled: "Summary Internal and External Audit", "Internal Audit Notes", "Audit Reports", and "Reconciliation." Mr. Onsgard represents this information is not stale and continues to be proprietary confidential business information and should be accorded a confidential classification for an additional 18 months.

Section 366.093(b), F.S., provides that internal auditing controls and reports of internal auditors may be granted a confidential classification.

Information Held as Confidential

The FPL witness Onsgard indicates that the information identified is held as confidential by FPL and this information is not released to the public.

Duration of the Confidential Classification Period

FPL requests that this material be returned to the utility once the information is no longer needed for the Commission to conduct its business.

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 confidential 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 for extension of classification period be granted and that the identified material be granted a confidential classification for 4th 18 month term.

Close Docket

Any Commission Order issued in this case should include language providing that when the Order becomes final the docket should be closed.

A detailed recommendation follows:

November 8, 2006

Florida Power & Light Request for 3rd Extension

Detailed Recommendation

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend Granting an 18 Month Extension	Type of Information Classified Confidential
Documents 13412-01 and 13656-01					
9A	Summary Internal and External Audit	1-2	All	Grant	Internal auditing controls and reports of internal auditors
9-1	Internal Audit Notes	1-9	All	Grant	Internal auditing controls and reports of internal auditors
9-2	Internal Audit Notes	1-2	All	Grant	Internal auditing controls and reports of internal auditors
9-3	Internal Audit Notes	1-5	All	Grant	Internal auditing controls and reports of internal auditors
9-4	Internal Audit Notes	1-3	All	Grant	Internal auditing controls and reports of internal auditors
9-5	Internal Audit Notes	1-3	All	Grant	Internal auditing controls and reports of internal auditors
9-7	Internal Audit Notes	1-5	All	Grant	Internal auditing controls and reports of internal auditors
9-8	Internal Audit Notes	1-2	All	Grant	Internal auditing controls and reports of internal auditors
9-9	Internal Audit Notes	1-3	All	Grant	Internal auditing controls and reports of internal auditors
9-10	Internal Audit Notes	1-3	All	Grant	Internal auditing controls and reports of internal auditors
9-11	Internal Audit Notes	1	All	Grant	Internal auditing controls and reports of internal auditors
9-12	Internal Audit Notes	1-2	All	Grant	Internal auditing controls and reports of internal auditors
9-13	Internal Audit Notes	1	All	Grant	Internal auditing controls and reports of internal auditors
9-14	Internal Audit Notes	1	All	Grant	Internal auditing controls and reports of internal auditors
9-15	Internal Audit Notes	1-5	All	Grant	Internal auditing controls and reports of internal auditors
9-16	Internal Audit Notes	1	All	Grant	Internal auditing controls and reports of internal auditors
9-17	Internal Audit Notes	1-2	All	Grant	Internal auditing controls and reports of internal auditors
9-18	Internal Audit Notes	1-2	All	Grant	Internal auditing controls and reports of internal auditors
9-19	Internal Audit Notes	1	All	Grant	Internal auditing controls and reports of internal auditors
9-20	Internal Audit Notes	1-5	All	Grant	Internal auditing controls and reports of internal auditors
9-21	Internal Audit Notes	1	All	Grant	Internal auditing controls and reports of internal auditors

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend Granting an 18 Month Extension	Type of Information Classified Confidential
Documents 13412-01 and 13656-01					
9-22	Internal Audit Notes	1-4	All	Grant	Internal auditing controls and reports of internal auditors
9-23	Internal Audit Notes	1	All	Grant	Internal auditing controls and reports of internal auditors
9-24	Internal Audit Notes	1-2	All	Grant	Internal auditing controls and reports of internal auditors
9-25	Internal Audit Notes	1	All	Grant	Internal auditing controls and reports of internal auditors
10	Audit Reports	3	9-15	Grant	Internal auditing controls and reports of internal auditors
59	Reconciliation	1	20-28	Grant	Internal auditing controls and reports of internal auditors
59	Reconciliation	2	All	Grant	Internal auditing controls and reports of internal auditors
59	Reconciliation	3	9-19	Grant	Internal auditing controls and reports of internal auditors

A temporary copy of this recommendation will be held at I:13656-01ext3 surveillance raf.doc for a short period.

CC: Division of Regulatory Compliance and Consumer Assistance (Welch)
Division of Commission Clerk and Administrative Services (Flynn)