



Public Service Commission

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

**DATE:** August 16, 2001  
**TO:** Division of Legal Services (Stern)  
**FROM:** Division of Regulatory Oversight (Freeman, Vandiver) *F W JMF*  
**RE:** Docket 010002-EG, Recommendation concerning Florida Power & Light Company's (FPL's) request for confidential classification for a portion of the staff working papers obtained during the preparation of audit report numbered 01-058-4-2, FPL Energy Conservation Cost Recovery Audit for the year ended December 31, 2000, Documents Numbered 08528-01 and 08099-01

On June 13, 2001, when copies of certain portions of staff's working papers obtained or prepared during the FPL conservation cost recovery audit for the year ended December 31, 2000, 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 July 12, 2001, staff filed document 08528-01 consisting of those specified portions of the staff working papers,

On June 29, 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. The utility's request includes redacted copies for public inspection (Exhibit B, document 08098-01) and highlighted copies (document 08099-01).

Documents 08528-01 and 08099-01 are currently held by the Commission's Division of the Commission Clerk and Administrative Services as confidential pending resolution of FPL's request for 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)(d) provides the following exemptions:

- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMP \_\_\_\_\_
- COM \_\_\_\_\_
- CTR \_\_\_\_\_
- ECR \_\_\_\_\_
- LEG \_\_\_\_\_
- OPC \_\_\_\_\_
- PAI \_\_\_\_\_
- RGO \_\_\_\_\_
- SEC   I
- SER \_\_\_\_\_
- OTH \_\_\_\_\_

*Starvante*

DOCUMENT NUMBER-DATE

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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....

(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....”

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 material consists of:

1. Customer-specific account information;

FPL requests confidential classification for customer-specific rate and contract information. "...FPL considers such (customer-specific account) information to be confidential proprietary business information of the customer and does not disclose such information unless required by law or unless the customer consents to the disclosure. Disclosure of such information in many cases would tend to reveal certain operating characteristics, including costs, of FPL's commercial customers. Such information would provide an unfair competitive advantage to competitors of FPL's customers."

In the past year based upon findings in a staff audit examining FPL's unregulated natural gas enterprise, it appears that information concerning electric customers may have been intentionally or unintentionally provided from FPL to its unregulated gas enterprise. Has customer specific information been disclosed in this case? Based on the affidavit of Dennis Reynolds, FPL Budget and Regulatory Supervisor, FPL has not released customer-specific information to the general public.

Customer specific-information includes customer name, address, telephone numbers, rates, billing determinants – kW and kWh usage – and customer bills. Release of this information to the general public could cause harm to the customer or the customer's business. FPL states it does not release the information unless the release is required by law or unless the release is authorized by the customer. Our recommendation is to grant a confidential classification to this customer-specific information. The Commission should not release sensitive customer information which is protected by FPL.

Long-standing Commission policy has allowed non governmental customer-specific information to be granted a confidential classification (See Order 22851, dated April 23, 1990, Order 96-1478, dated December 4, 1996; Order 98-0421, dated March 24, 1998, and Order 00-1569, dated August 31, 2000).

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

2. Vendor-specific data, such as pricing and contract terms; and

FPL states; "Disclosure of such data would impair FPL's business interests as well as the business interests of its vendors. In particular, disclosure would impair FPL's ability to contract for goods and services on favorable terms."

In an affidavit filed by Dennis Reynolds, FPL Budget and Regulatory Supervisor, in support of the request for confidential classification for both business information and customer information, Mr. Reynolds states, in part; "...some of the data...constitutes customer-specific information including contract prices and other contract-related (energy-conservation-related) information. Disclosure of this information may impair FPL's competitive business interests and ability to contract on favorable terms."

3. Information concerning internal audit reports and internal auditing controls and notes taken by the staff auditors based upon the reading of FPL Internal audit materials.

Through written testimony filed along with the request, FPL Internal Audit Manager Rick Del Cueto identifies the internal audit material which is considered sensitive and recommends that these materials be held by the Commission as confidential for a period of not less than 18 months.

The affiants, Reynolds and Del Cueto, each identify the material in their area of expertise which is sensitive and report FPL maintains the confidentiality of this information.

**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 the Commission staff's 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 and that the identified material be granted a confidential classification for 18 months.

A detailed recommendation regarding the material follows:

**Detailed Recommendation**

| Staff Work Paper Number | Page(s) | Line(s) | Recommend | Type of Information Classified Confidential                 |
|-------------------------|---------|---------|-----------|---|
| 9                       | 1       | 3,5-43  | Grant     | Internal auditing controls and reports of internal auditors |
| 9                       | 2       | 1-42    | Grant     | Internal auditing controls and reports of internal auditors |
| 9                       | 3       | 1-37    | Grant     | Internal auditing controls and reports of internal auditors |
| 9-1                     | 1-2     | 1-51    | Grant     | Internal auditing controls and reports of internal auditors |
| 9-1                     | 3       | 1-22    | Grant     | Internal auditing controls and reports of internal auditors |

| Staff Work Paper Number | Page(s) | Line(s)   | Recommend | Type of Information Classified Confidential       |
|-------------------------|---------|---|-----------|---|
| 43-6                    | 1       | Col G, 1-21;<br>Col H, 1-30;<br>Col I, 1-21                                 | Grant     | Sensitive competitive and contractual information |
| 43-6                    | 2       | Col G, 1-27;<br>Col H & I, 1-30   | Grant     | Sensitive competitive and contractual information |
| 43-6                    | 3       | Col G, 1-29;<br>Col H, 1-31;<br>Col I, 1-29                                 | Grant     | Sensitive competitive and contractual information |
| 43-6                    | 4       | Col G, 1-5;<br>Col H, 1-10;<br>Col I, 1-10                                  | Grant     | Sensitive competitive and contractual information |
| 43-6/1                  | 1-9     | Col A-C,J-L,N   | Grant     | Sensitive competitive and contractual information |
| 43-6/2                  | 1-9     | Col A-C,J-L,N   | Grant     | Sensitive competitive information                 |
| 43-6/2-1                | 1       | Col A & B, 1-3;<br>Col C & F, 8-44;<br>Col B, 11-16;<br>Col E, 11-19;<br>36 | Grant     | Sensitive competitive information                 |
| 43-6/2-1/1              | 1       | Col B, 2-10   | Grant     | Sensitive competitive information                 |
| 44-8/4                  | 1-10    | Col A-C,J-L,N   | Grant     | Sensitive competitive information                 |

| Staff Work Paper Number | Page(s) | Line(s)  | Recommend | Type of Information Classified Confidential |
|-------------------------|---------|--|-----------|---|
| 44-8/4-1                | 1       | A & B, 1-3;<br>Col C & F, 8-44;<br>Col B, 11-16;<br>Col E, 11-19;<br>36      | Grant     | Sensitive competitive information           |
| 44-8/4-1/1              | 1       | Col B, 2-10  | Grant     | Sensitive competitive information           |
| 44-8/4-1/1-1            | 1       | 2-3,20-21  | Grant     | Sensitive competitive information           |
| 44-8/4-1/1-1            | 2       | 40-43  | Grant     | Sensitive competitive information           |
| 44-8/4-2                | 1       | Col A & B; 1-3;<br>Col B, 5,11-16;<br>Col C & F, 8-44;<br>Col E, 11-19<br>36 | Grant     | Sensitive competitive information           |
| 44-8/4-2/1              | 1       | Col B, 2-10  | Grant     | Sensitive competitive information           |
| 44-8/4-2/1-1            | 1       | 2-3  | Grant     | Sensitive competitive information           |
| 44-8/4-2/1-1            | 2       | 38-45  | Grant     | Sensitive competitive information           |

A temporary copy of this recommendation will be held at I:08099-01.RAF for a short period.

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