



Public Service Commission
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COMMISSION
CLERK

DATE: August 22, 2002
TO: Office of General Counsel (Bellak) *W*
FROM: Division of Auditing and Safety (Vandiver, Freeman) *F JMA*
RE: Docket 001237-EI, Recommendation concerning Florida Power and Light Company's (FPL's) request for extension of confidential classification of Materials Granted by Order No. PSC-01-0132-CFO-EO, Materials gathered during audit No. 99-279-4-1, entitled "FPL's Fiber Optic Transfer to Subsidiary, documents 10602-00, 10603-00, 10604-00, 10553-00, 13117-00 and 14935-00"

On August 4, 2000, when copies of certain portions of staff's audit report and working papers prepared during FPL's Fiber Optic Transfer to Subsidiary audit 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 August 28, 2000, staff filed documents 10602-00, 10603-00 and 10604-00 consisting of these materials. On November 20, 2000, staff filed additional materials, document 14935-00, which were also associated with the items identified at the exit conference.

On August 25, 2000, the utility filed a request pursuant to Rule 25-22.006 FAC and Section 366.093 Florida Statutes (F.S.) that certain portions of the audit report and working papers prepared by the staff receive a confidential classification. The utility request includes redacted copies for public inspection (Exhibit B, document 10552-00) and copies with the sensitive information highlighted (document 10553-00).

On October 16, 2000, after discussions with the staff regarding a technical deficiency, the utility filed replacement information concerning a page of the staff audit report which was revised after the exit conference. The revision includes highlighted (document 13117-00) and redacted public copies (document 13118-00).

On January 18, 2001, the Commission issued order PSC-01-0132-CFO-EI granting FPL's request as revised providing an 18 month classification period for the sensitive materials contained within documents 10602-00, 10603-00, 10604-00, 10553-00, 13117-00 and 14935-00.

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On July 9, 2002, FPL filed a request that the protection granted by order PSC 01-0132-CFO-EI be extended for an additional 18 months. This request is currently pending.

In accordance with Section 119.07, F.S., documents submitted to this Commission are public records. The only exceptions to this law are specific statutory exceptions and exemptions granted by governmental agencies pursuant to the specific items of a statutory provision. Subsections 366.093 (b)(d) and (e), F.S. provide the following exemptions:

DOCUMENT NUMBER-DATE
09097 AUG 28 02
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, and 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 or 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 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 seeks to extend the protection provided by Commission order 01-132-CFO-EI and protect sensitive information provided to PSC staff auditors during the staff audit concerning FPL's Fiber Optic Transfer to Subsidiary. FPL asserts this information remains sensitive and should be protected for an additional 18 months.

Reading the FPL filing reveals the sensitive materials consist of:

1. Internal audits or internal audit reports;

FPL witness Maria Fogarty, Director, Internal Auditing, asserts this material consists of information regarding auditing controls or information taken from the reports of internal auditors.

2. FiberNet's financial projections;

3. FiberNet's operating results;

4. Contract and pricing information;

5. Cost data;

6. Detailed descriptions by location of FiberNet's telecommunications system and equipment that would tend to reveal FiberNet's system capabilities and/or deficiencies by location; and

7. Names of FiberNet employees.

FPL witness Sol Stamm, FPL FiberNet, LLC, (FiberNet) Controller, reports the information concerning FiberNet's includes proprietary confidential business information including "FiberNet's financial projections, operating results, contract and pricing information, and cost data. In addition the information includes detailed descriptions by location of FiberNet's telecommunications system and equipment....This information, if made public, would afford FiberNet's competitors an unfair advantage over FiberNet and would impair FiberNet's efforts to enter into contracts on commercially favorable terms. The information also includes the names of FiberNet employees. FiberNet considers its employee directories and lists to be confidential. Employee retention is extremely difficult in today's telecommunications market. Disclosure of such lists provides recruiters with information that can be used to conduct comprehensive "raids of a company's employees, thus impairing its competitive business. These materials continue to be competitively sensitive...."

Witnesses Fogarty and Stamm further report FPL has maintained the confidentiality of this information.

Staff's reading of the sensitive material reveals it is information regarding internal controls, internal auditing controls, contractual information or commercial information release of which could cause the utility, the provider of the information or the ratepayer harm. We therefore recommend that the confidential classification be extended for an additional 18 months. A detailed recommendation is provided below:

Length of the Classification Period

FPL requests this information be returned once it is no longer needed for Commission business. Audits of this nature are retained on file for 25 years. Section 366.093(4), F.S., limits any period for a confidential classification to a period of 18 months, unless good cause is shown. Since cause has not been shown for a longer period of protection within this filing, we recommend any extension of confidential classification should be limited to 18 months. If the utility finds additional protection is needed, another extension may be filed before any granted protection period tolls.

Should the docket be closed?

Once any order granting extension of the confidential classification becomes final, the docket should be closed.

Detailed Staff Recommendation (As Found)

Staff Work Paper	Page(s)	Lines(s)	Recommend	Type of Information Classified confidential
Documents 10603-00 and 10553-00				
1	1	1-13	Grant Extension for 18 months	Competitive business information
1	2	1-4	Grant Extension for 18 months	Competitive business information
Documents 10603-00 and 13117-00				
1	4 (revised)	1-2	Grant Extension for 18 months	Competitive business information
Documents 10603-00 and 10553-00				
1	5	1-4	Grant Extension for 18 months	Competitive business information
Documents 10604-00 and 10553-00				
5-4	3	1-3	Grant Extension for 18 months	Competitive business information
5-5	1	1	Grant Extension for 18 months	Competitive business information

Staff Work Paper	Page(s)	Lines(s)	Recommend	Type of Information Classified confidential
Documents 10604-00 and 10553-00				
5-5	4	1-7	Grant Extension for 18 months	Contractual information
5-6	1	38	Grant Extension for 18 months	Contractual information
5-6	2	11,30-31, 33	Grant Extension for 18 months	Contractual information
5-6	3	3,6,9,17, 26-27	Grant Extension for 18 months	Contractual information
5-6	5	1-9	Grant Extension for 18 months	Contractual information
5-8	2	21-23	Grant Extension for 18 months	Competitive business information
5-8	3	20	Grant Extension for 18 months	Competitive business information
9	1	1-27	Grant Extension for 18 months	Internal auditing controls or reports
9	2-3	1-51	Grant Extension for 18 months	Internal auditing controls or reports
9	4	1-25	Grant Extension for 18 months	Internal auditing controls or reports
9-1	1	1-35	Grant Extension for 18 months	Internal auditing controls or reports
9-2	1	2-34	Grant Extension for 18 months	Internal auditing controls or reports
9-2	2	1-17	Grant Extension for 18 months	Internal auditing controls or reports
9-2	3	Col A, Lines 1-41	Grant Extension for 18 months	Internal auditing controls or reports
9-2	4	1-15	Grant Extension for 18 months	Internal auditing controls or reports

Staff Work Paper	Page(s)	Lines(s)	Recommend	Type of Information Classified confidential
Documents 10604-00 and 10553-00				
9-2	5	1-31	Grant Extension for 18 months	Internal auditing controls or reports
9-2	6	2-35	Grant Extension for 18 months	Internal auditing controls or reports
9-2	7	1-30	Grant Extension for 18 months	Internal auditing controls or reports
9-2	8	4-41	Grant Extension for 18 months	Internal auditing controls or reports
9-2	9	1-41	Grant Extension for 18 months	Internal auditing controls or reports
9-2	10	1-30	Grant Extension for 18 months	Internal auditing controls or reports
9-2/1	1	2-41	Grant Extension for 18 months	Internal auditing controls or reports
9-2/1	2	1-16	Grant Extension for 18 months	Internal auditing controls or reports
9-2/2	1	1a-40	Grant Extension for 18 months	Internal auditing controls or reports
9-2/2	2	2-42	Grant Extension for 18 months	Internal auditing controls or reports
9-3	1	1-42	Grant Extension for 18 months	Internal auditing controls or reports
9-3	2	1-41	Grant Extension for 18 months	Internal auditing controls or reports
9-3	3	1-8	Grant Extension for 18 months	Internal auditing controls or reports
9-3/1	1	1-21	Grant Extension for 18 months	Internal auditing controls or reports
9-3/2-1	1-12	1-41	Grant Extension for 18 months	Internal auditing controls or reports

Staff Work Paper	Page(s)	Lines(s)	Recommend	Type of Information Classified confidential
Documents 10604-00 and 10553-00				
9-3/2-1	13	1-6	Grant Extension for 18 months	Internal auditing controls or reports
9-3/2-2	1	1-61	Grant Extension for 18 months	Internal auditing controls or reports
9-3/2-2	2-6	1-60	Grant Extension for 18 months	Internal auditing controls or reports
9-3/2-2	7-8	1-61	Grant Extension for 18 months	Internal auditing controls or reports
9-3/2-2	9-12	1-64	Grant Extension for 18 months	Internal auditing controls or reports
9-3/2-2	13	1-10	Grant Extension for 18 months	Internal auditing controls or reports
9-3/2-3	1	1-64	Grant Extension for 18 months	Internal auditing controls or reports
9-3/2-3	2	1-62	Grant Extension for 18 months	Internal auditing controls or reports
9-3/2-3	3	1-32	Grant Extension for 18 months	Internal auditing controls or reports
9-3/2-4	1	1-28	Grant Extension for 18 months	Internal auditing controls or reports
9-3/2-4	2	1-14	Grant Extension for 18 months	Internal auditing controls or reports
9-3/2-4	3	1-65	Grant Extension for 18 months	Internal auditing controls or reports
9-3/2-4	4	1-14	Grant Extension for 18 months	Internal auditing controls or reports
9-3/2-5	1	1-55	Grant Extension for 18 months	Internal auditing controls or reports
9-3/2-5	2-18	1-56	Grant Extension for 18 months	Internal auditing controls or reports

Staff Work Paper	Page(s)	Lines(s)	Recommend	Type of Information Classified confidential
Documents 10604-00 and 10553-00				
9-3/2-5	19	1-47	Grant Extension for 18 months	Internal auditing controls or reports
9-3/2-5	20	1-14	Grant Extension for 18 months	Internal auditing controls or reports
9-3/2-6	1	1-28	Grant Extension for 18 months	Internal auditing controls or reports
9-3/2-7	1	1-45	Grant Extension for 18 months	Internal auditing controls or reports
16	1	1-5	Grant Extension for 18 months	Competitive business information
16-1/1	1	1-13	Grant Extension for 18 months	Contractual information
16-2	1	1-8	Grant Extension for 18 months	Contractual information
16-2	2	1-10	Grant Extension for 18 months	Contractual information
16-2/1	1	Col A, Line 1 Cols, B-C, Lines 1-13	Grant Extension for 18 months	Contractual information
16-2/2	1	1-14	Grant Extension for 18 months	Contractual information
16-2/2	2	1	Grant Extension for 18 months	Contractual information
16-2/3-1/1	1	1-2	Grant Extension for 18 months	Contractual information
16-2/3-1/1	2	1-3	Grant Extension for 18 months	Contractual information
16-2/4	1-2	1-6	Grant Extension for 18 months	Competitive business information

Staff Work Paper	Page(s)	Lines(s)	Recommend	Type of Information Classified confidential
Documents 10604-00 and 10553-00				
16-2/4	3	1-3	Grant Extension for 18 months	Competitive business information
16-2/5	1	Cols A-B, Lines 1-2 Cols C-E Line 2	Grant Extension for 18 months	Contractual information
16-3	1	1-5	Grant Extension for 18 months	Contractual information
16-4	1	1-2	Grant Extension for 18 months	Competitive business information
16-5/1	1	Col A, Lines 1-33	Grant Extension for 18 months	Competitive business information
16-5/1	2	Col A, Lines 1-14	Grant Extension for 18 months	Competitive business information
16-6	1	Col A	Grant Extension for 18 months	Competitive business information
16-6	2-28	Cols A-B	Grant Extension for 18 months	Competitive business information
16-6	29	Col A	Grant Extension for 18 months	Competitive business information
16-7/1	1-2	Col A	Grant Extension for 18 months	Competitive business information
16-9	1	1-11	Grant Extension for 18 months	Competitive business information
16-9	2	1-8	Grant Extension for 18 months	Competitive business information
16-9/1	1	Col A	Grant Extension for 18 months	Competitive business information
16-10	1	1-3	Grant Extension for 18 months	Contractual information

Staff Work Paper	Page(s)	Lines(s)	Recommend	Type of Information Classified confidential
Documents 10604-00 and 10553-00				
16-11	1	1	Grant Extension for 18 months	Contractual information
40-1	1-3	All	Grant Extension for 18 months	Competitive business information
40-2	1-5	All	Grant Extension for 18 months	Competitive business information
40-3	1-5	All	Grant Extension for 18 months	Competitive business information
40-4	1-8	All	Grant Extension for 18 months	Competitive business information
41	1	1-13	Grant Extension for 18 months	Competitive business information
41	2	1-4	Grant Extension for 18 months	Competitive business information
41	4	1-2	Grant Extension for 18 months	Competitive business information
43-4	3	1	Grant Extension for 18 months	Contractual information
43-4	4	1-13	Grant Extension for 18 months	Contractual information
43-4	5	1-6	Grant Extension for 18 months	Competitive business information
43-4	6	1-2	Grant Extension for 18 months	Competitive business information
43-6	1	1-27	Grant Extension for 18 months	Contractual information
45	1	8,42-44	Grant Extension for 18 months	Contractual information
45-1	1-3	All	Grant Extension for 18 months	Contractual information

Staff Work Paper	Page(s)	Lines(s)	Recommend	Type of Information Classified confidential
Documents 10604-00 and 10553-00				
45-2	1-4	All	Grant Extension for 18 months	Contractual information
45-3	1-4	All	Grant Extension for 18 months	Contractual information
45-4	1-2	All	Grant Extension for 18 months	Contractual information
45-5	1-3	All	Grant Extension for 18 months	Contractual information
45-6	1-3	All	Grant Extension for 18 months	Contractual information
45-7	1-2	All	Grant Extension for 18 months	Contractual information
45-8	1-4	All	Grant Extension for 18 months	Contractual information
45-9	1-2	All	Grant Extension for 18 months	Contractual information
Documents 10602-00, 10553-00 and 14935-00				
Index	1	1-10	Grant Extension for 18 months	Contractual information

A temporary copy of this recommendation will be held at I:10553-00.extend1.raf for a short time.

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