

ORIGINAL

State of Florida



Public Service Commission  
-M-E-M-O-R-A-N-D-U-M-

**DATE** December 3, 2002  
**TO:** Office of General Counsel (Bellak)  
**FROM:** Division of Auditing and Safety (Vandiver, Freeman) *F*  
**RE:** Docket 001564-EI, Recommendation concerning Florida Power and Light Company's (FPL's) request for extension of confidential classification of materials granted by Order No. PSC-01-0276-CFO-EI concerning Audit Number 00-222-4-1, "FPL Operating Revenue Audit", Documents 12782-00 and 13160-00 *AMA*

On September 27, 2000, when copies of certain portions of staff's working papers prepared during "FPL's Operating Revenue Audit", Audit Number 00-222-4-1, 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 6, 2000, staff filed document 12782-00 consisting of these materials.

On October 17, 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 working papers prepared by the staff receive a confidential classification. The utility request includes redacted copies for public inspection (exhibit B, document 13159-00) and copies with the sensitive information highlighted (document 13160-00).

On January 30, 2001, the Commission issued order PSC-01-0276-CFO-EI granting FPL's request for 18 month's confidential protection to the selected audit information.

On July 25, 2002, FPL requested an extension of commission order PSC-01-0276-CFO-EI.

Documents 12782-00 and 13160-00 are currently held as confidential by the Division of Commission Clerk and Administrative Services pending the resolution of FPL's request for extension.

AUS \_\_\_\_\_  
CAF \_\_\_\_\_  
CMP \_\_\_\_\_  
COM \_\_\_\_\_  
CTR \_\_\_\_\_  
ECR \_\_\_\_\_  
GCL \_\_\_\_\_  
OPC \_\_\_\_\_  
MMS \_\_\_\_\_  
SEC \_\_\_\_\_  
OTH *Mauger*

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  
13236 DEC-4 02  
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, 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**

Reading FPL's request for extension reveals the sensitive materials consist of:

1. Internal audit controls or reports or information relating to internal audit controls.

FPL witness Rick Del Cueto, FPL Manager, Internal Auditing, identifies material concerning reports of internal auditors and internal auditing controls. Specifically Mr. Del Cueto identifies internal auditing materials within staff work papers entitled; "Internal Audit Report (17 pages)."

PSC staff work paper entitled "Internal Audit Report (17 pages)" discloses, describes and analyzes FPL internal controls and procedures which are designed to protect the assets of FPL and/or its affiliates and to ensure the policies of FPL management are effective and in effect. Without the proper application of these controls, assets may not be fully protected or compliance with important management policies may be avoided. It is reasonable to expect this material describing "internal auditing controls" would be sensitive for a period longer than 18 months. Therefore we recommend an extension of 18 months be granted for this internal audit material.

2. FiberNet's financial projections

3. FiberNet's operating results

4. Contract and pricing information

5. Cost Data: and
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.

FPL witness Sol Stamm, FPL FiberNet, LLC ("FiberNet") controller, asserts release of this sensitive information would provide competitors with an unfair advantage over FiberNet by providing competitors with proprietary operating information, financial projections, system capabilities and deficiencies, and cost data as well as contact and pricing information. Mr. Stamm attests all or portions of the following working papers contain this proprietary information:

Audit requests 4, 5, and 8 (3 pages);  
FiberNet charge back (3 pages);  
Sales and municipal tax (2 pages);  
Revenue not subject to refund and ITC fees (4 pages);  
Gross fiber revenues (1 page);  
Income statements (8 pages);  
Income statement adjustment (2 Pages);  
Pole attachment revenue (1 page);  
Rent revenue (1 page)

As described by FiberNet Controller Stamm, these working papers describe sensitive proprietary operating information which could be used by competitors to gain an advantage over FPL and its affiliate FiberNet. It is reasonable to assume competitors could still gain such a competitive advantage if this information from calendar year 2000 were released today. FiberNet is a fully competitive enterprise which is dependant upon its competitive business abilities. Release of detailed key business information could harm FiberNet's competitive operations; therefore we recommend that 18 months of additional confidential protection be granted to this sensitive business information.

Lastly, witnesses Del Cueto and Stamm assert the information they have identified was and has remained confidential.

#### **Length of the Classification Period**

FPL requests this information be returned once it is no longer needed for Commission business.

Audit reports and related audit working papers of this nature are retained by the Commission for 25 years. Section 366.093(4), F.S., limits the length of any confidential classification to 18 months, unless cause is shown for allowing a longer period of protection. Since cause has not been shown for a longer period of protection within this filing, we recommend any confidential classification should be limited to 18 months. If the utility finds additional protection is needed, an extension may be filed before any granted protection period tolls.

**CLOSING THE DOCKET**

Once any order addressing this request for extension becomes final, the docket should be closed.

**STAFF RECOMMENDATION**

Staff's reading of the sensitive material reveals it discloses information regarding: (1) reports of internal auditors and internal auditing controls or (2) information release of which would harm the competitive business of the provider of that information and information release of which would harm the ability of a public utility or its affiliates to contract on favorable terms. We therefore recommend the utility's request for confidential classification be granted for 18 months. A detailed recommendation is provided below:

**Detailed Staff Recommendation, as Found**

Staff Work Paper	Page(s)	Lines(s)	Recommend	Type of Information Classified Confidential
Documents 12782-00 and 13160-00				
9	1	1-3	Grant 18 Months Extension	Internal auditing controls and report of internal auditor
9	2	1-32	Grant 18 Months Extension	Internal auditing controls and report of internal auditor
9	3	1-11; Col A-C, 12-38	Grant 18 Months Extension	Internal auditing controls and report of internal auditor
9	4	1-2; Col A-C, 3-24	Grant 18 Months Extension	Internal auditing controls and report of internal auditor
9	5	1-37	Grant 18 Months Extension	Internal auditing controls and report of internal auditor
9	6	1-38	Grant 18 Months Extension	Internal auditing controls and report of internal auditor
9	7	1-36	Grant 18 Months Extension	Internal auditing controls and report of internal auditor
9	8	1-35	Grant 18 Months Extension	Internal auditing controls and report of internal auditor

Staff Work Paper	Page(s)	Lines(s)	Recommend	Type of Information Classified Confidential
Documents 12782-00 and 13160-00				
9	9	1-41	Grant 18 Months Extension	Internal auditing controls and report of internal auditor
9	10	1-37	Grant 18 Months Extension	Internal auditing controls and report of internal auditor
9	11	1-32	Grant 18 Months Extension	Internal auditing controls and report of internal auditor
9	12	1-32	Grant 18 Months Extension	Internal auditing controls and report of internal auditor
9	13	1-22	Grant 18 Months Extension	Internal auditing controls and report of internal auditor
9	14	Col A-E, 3-23	Grant 18 Months Extension	Internal auditing controls and report of internal auditor
9	15	Col A, 2-18; Col B, 2-13; Col C, 2-7	Grant 18 Months Extension	Internal auditing controls and report of internal auditor
9	16	Col A-D, 2-50	Grant 18 Months Extension	Internal auditing controls and report of internal auditor
9	17	Col A-F, 5-52	Grant 18 Months Extension	Internal auditing controls and report of internal auditor
10-1	Request 4	1-2,4-7	Grant 18 Months Extension	Sensitive competitive and contractual information
10-1	Request 5	1-2,4-7	Grant 18 Months Extension	Sensitive competitive and contractual information
10-1	Request 8	4-7	Grant 18 Months Extension	Sensitive competitive and contractual information
41-1/2-1/1	1	Col A-F, 1-7	Grant 18 Months Extension	Sensitive competitive and contractual information
41-1/2-1/2	1	Col A-P, 1-39	Grant 18 Months Extension	Sensitive competitive and contractual information

Staff Work Paper	Page(s)	Lines(s)	Recommend	Type of Information Classified Confidential
Documents 12782-00 and 13160-00				
41-1/2-1/2	2	Col A-P, 1-38	Grant 18 Months Extension	Sensitive competitive and contractual information
41-1/2-1/3	1	1-6	Grant 18 Months Extension	Sensitive competitive and contractual information
41-1/2-1/3	2	1-5	Grant 18 Months Extension	Sensitive competitive and contractual information
41-1/2-1/4	1	1-16	Grant 18 Months Extension	Sensitive competitive and contractual information
41-1/2-1/4	2	Col A-B, 1-30; Col C-D, 18-30; Col E, 25-28; 31-36	Grant 18 Months Extension	Sensitive competitive and contractual information
41-1/2-1/4	3	Col A-B, 1-25; Col C-D, 18-25; Col E, 25-29; 26-29	Grant 18 Months Extension	Sensitive competitive and contractual information
41-1/2-1/4	4	Col A-G, 1-31	Grant 18 Months Extension	Sensitive competitive and contractual information
41-1/2-1/5	1	1; Col B-F, 1-9	Grant 18 Months Extension	Sensitive competitive and contractual information
41-1/2-1/6	1	Col A-E, 1-35	Grant 18 Months Extension	Sensitive competitive and contractual information
41-1/2-1/6	2	Col A-B, 1	Grant 18 Months Extension	Sensitive competitive and contractual information
41-1/2-1/6	3	Col A-E, 1-37	Grant 18 Months Extension	Sensitive competitive and contractual information

Staff Work Paper	Page(s)	Lines(s)	Recommend	Type of Information Classified Confidential
Documents 12782-00 and 13160-00				
41-1/2-1/6	4	Col A-B, 1	Grant 18 Months Extension	Sensitive competitive and contractual information
41-1/2-1/6	5	Col A-E, 1-36	Grant 18 Months Extension	Sensitive competitive and contractual information
41-1/2-1/6	6	Col A-B, 1	Grant 18 Months Extension	Sensitive competitive and contractual information
41-1/2-1/6	7	Col A-E, 1-37	Grant 18 Months Extension	Sensitive competitive and contractual information
41-1/2-1/6	8	Col A-B, 1	Grant 18 Months Extension	Sensitive competitive and contractual information
41-1/2-1/6-1	1	1-3	Grant 18 Months Extension	Sensitive competitive and contractual information
41-1/2-1/6-1	2	Col A-D, 5-21	Grant 18 Months Extension	Sensitive competitive and contractual information
41-1/2-2	1	1; Col A-D, 2-6; 7-11	Grant 18 Months Extension	Sensitive competitive and contractual information
41-1/2-3	1	1-14	Grant 18 Months Extension	Sensitive competitive and contractual information

A temporary copy of this recommendation will be kept at I:13160-00.extend.raf for a short time.

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