

ORIGINAL

State of Florida



Public Service Commission

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

DATE July 29, 2003
TO: Office of General Counsel (Cibula)
FROM: Division of Auditing and Safety (Freeman, Vandiver)
RE: Docket 011403-EI, First request for extension of confidential classification granted by Commission order PSC-01-2339-CFO-EI

Recommendation concerning Florida Power & Light Company's (FPL's) first request for extension of confidential classification for a portion of the staff audit working papers obtained or prepared during the audit numbered 01-073-4-1, entitled "FPL Earning Surveillance for the Year Ended December 31, 2000," Documents numbered 13412-01 and 13656-01

On October 11, 2001, when certain staff audit working papers prepared during the audit entitled "FPL Earning Surveillance 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 October 23, 2001, staff filed document 13412-01 consisting of this specified portion of the audit working papers.

On October 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 staff audit working papers prepared by staff during the audit receive confidential classification. The utility's request included redacted copies for public inspection (Exhibit B, document 13655-01) and full and complete copies of this material with the sensitive information highlighted (document 13656-01).

On December 5, 2001, the Commission issued order PSC-01-2339-CFO-EI, granting a confidential classification lasting 18 months to identified portions of documents 13412-01 and 13656-01 in accordance with FPL's request.

On May 30, 2003, FPL requested that the confidential classification granted to certain portions of these documents be extended for an additional 18 month period.

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Florida Power & Light Company

1st Extension of confidential Classification

2000 Earning Surveillance Audit

Pursuant to Section 119.07, F.S., documents submitted to this Commission are public records. The only exceptions to this rule are specific statutory exemptions and exemptions granted by governmental agencies to the specific items of a statutory provision. Sections 366.093(b), F.S., provide 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....

According to Section 366.093, F.S., and Rule 25-22.006, FAC, FPL has the burden of demonstrating that information and materials provided to the staff 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.

While FPL's request for extension of confidential classification is pending, documents 13412-01 and 13656-01 remain held by the Commission as confidential.

Staff Analysis of the Request

Reading the filing reveals FPL is requesting an 18 month extension of the confidential classification period for sensitive information concerning internal auditing controls and reports of internal auditors. Rick Del Cueto, FPL Manager of Internal Auditing, identifies the staff audit working papers which contain sensitive information concerning either internal auditing controls or the reports of internal auditors in the working papers entitled, "Summary Int(ernal) & External Audit", "Internal Audit Notes", "Audit reports", and "Reconciliation".

Internal auditing controls and reports of internal auditors are specifically listed in Section 366.093(3)(b), F.S., as qualifying for a confidential classification.

FPL asserts this material has not grown stale after 18 months have lapsed and requests an additional 18 months of confidential protection.

In Order PSC-94-1224-CFO-EI, the Commission provided extended confidential classification for information which was commercially sensitive for a long term. The Commission found that it was reasonable to provide an extended confidential classification period for commercially sensitive material, but the Commission also found that after the passage of a reasonable time, terms and conditions which are relevant today may not be so in the future and thus limited the term of protection granted to 5 years.

Lastly, FPL and FPL witness Del Cueto assert confidentiality of the information has been maintained.

Duration of the Confidential Classification Period

FPL requests 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, audit reports and the related working papers of 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 good cause shown for a longer period, we recommend that the extended period of classification be set as 18 months. The utility may request, as necessary, another extension of this period before it tolls.

Staff Recommendation

For the reasons presented above, and based upon reading the filing, we recommend the identified material be granted an extension of confidential classification for 18 months.

Close the Docket

Once the Commission order resolving FPL's request for extension becomes final, this docket should be closed.

A detailed recommendation regarding the material follows:

Detailed Recommendation

Staff Work Paper Number	Page(s)	Line(s)	Grant 18 Month Extension?	Type of Information Classified Confidential
9A	1-2	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-1	1-9	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-2	1-2	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-3	1-5	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-4	1-3	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-5	1-3	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-7	1-5	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-8	1-2	All	Grant	Internal Auditing Controls and Reports of Internal Auditors

Staff Work Paper Number	Page(s)	Line(s)	Grant 18 Month Extension?	Type of Information Classified Confidential
9-9	1-3	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
Documents 13412-01 and 13656-01				
9-10	1-3	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-11	1	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-12	1-2	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-13	1	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-14	1	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-15	1-5	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-16	1	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-17	1-2	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-18	1-2	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-19	1	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-20	1-5	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-21	1	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-22	1-4	All	Grant	Internal Auditing Controls and Reports of Internal Auditors

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Staff Work Paper Number	Page(s)	Line(s)	Grant 18 Month Extension?	Type of Information Classified Confidential
9-23	1	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
9-24	1-2	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
Documents 13412-01 and 13656-01				
9-25	1	1-11	Grant	Internal Auditing Controls and Reports of Internal Auditors
10	3	9-15	Grant	Internal Auditing Controls and Reports of Internal Auditors
59	1	20-28	Grant	Internal Auditing Controls and Reports of Internal Auditors
59	2	All	Grant	Internal Auditing Controls and Reports of Internal Auditors
59	3	9-19	Grant	Internal Auditing Controls and Reports of Internal Auditors

CC: Division of Auditing and Safety (Welch)
 Division of Commission Clerk and Administrative Services (Flynn)