



Public Service Commission

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

DATE: December 11, 2003
TO: Office of General Counsel (Bellak) f o
FROM: Division of Auditing and Safety (Freeman, Vandiver)
RE: Docket 030930-EI, Recommendation concerning Florida Power & Light Company's (FPL's) request for confidential classification concerning a portion of the staff working papers prepared during "Florida Power and Light Audit and Test – Reliability Indices for the Year Ended December 31, 2002", Audit Control No. 03-002-4-1, Documents Numbered 08466-03 and 09128-03

On September 2, 2003, when copies of certain portions of staff's working papers obtained or prepared during the "Florida Power and Light Audit and Test – Reliability Indices for the Year Ended December 31, 2002", 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 September 9, 2003, staff filed document 08466-03 consisting of those specified portions of the staff working papers,

On September 23, 2003, FPL 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 included redacted copies for public inspection (exhibit B, document 09127-03) and highlighted copies (document 09128-03).

Documents 08466-03 and 09128-03 are currently held by the Commission's Division of the Commission Clerk and Administrative Services as confidential pending resolution of FPL's request for 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. Subsections 366.093(3)(b) and (e), F.S., provide the following exemptions:

DOCUMENT NUMBER - DATE
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FPSC-COMMISSION CLERK

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....

(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. Internal audit reports and associated documents.

Subsection 366.093(3)(b), F.S., provides that internal auditing controls and reports of internal audits may be granted a confidential classification.

Mr. Rick Del Cueto, FPL Manager, Internal Auditing, identifies staff working papers describing internal audit controls, reports of internal auditors, and information relating to these reports and controls. Mr. Del Cueto specifically identifies sensitive internal audit materials within staff working papers entitled "Internal Audit Working Papers".

Staff Analysis of the Request (Continued)

Witness Del Cueto reports internal audit materials obtained by the PSC audit staff also contain a list of internal audits conducted. According to Mr Del Cueto; "...In some cases, the audits are conducted on FPL's contracts and relationships with specific vendors. In other cases, the audits are conducted on internal processes or controls.... Typically FPL would only communicate to the vendor the fact that such an audit was performed in the event that FPL concluded that it needed to take specific action against the vendor on the basis of the audit. Publishing audit descriptions is potentially problematic from the standpoint of perception or, more accurately stated, misperception that can arise in connection with audits. While utilities and other large companies such as FPL routinely conduct internal audits as a part of ongoing business and corporate governance, the fact that a particular audit was conducted can be misconstrued, intentionally or unintentionally, by others to suggest that the company has or had issues or concerns on a particular subject. For example, audit lists frequently are used by plaintiffs' lawyers and others as 'shopping lists' for issues to pursue with a company...."

Staff concurs that release of a list of internal audits performed by FPL would harm the company and recommends these materials be granted a confidential classification.

FPL's internal auditor selects, retains, and uses certain public information in internal audits. FPL does not voluntarily release the contents of internal audits or the working papers supporting internal audits. While public information does not normally qualify for a confidential classification, the Florida Statutes provide for confidential treatment of internal audits and internal auditing controls.

In this case, upon request from the commission staff, FPL provided certain materials including public information which was contained in the internal auditor's working papers. FPL asserts that disclosing which public information was used during the internal audit would reveal the subject and nature of an internal audit to the detriment of FPL. After reading the documents provided by FPL, we agree with FPL that revealing which information was used in an internal audit would reveal the sensitive strategy, objective, purpose, subject or nature of that internal audit thus causing harm to FPL. Therefore, we recommend that public information as directly associated with these internal audits be granted confidential classification as set out by the exemption provided in Section 366.093(3)(b), Florida Statutes.

Staff Analysis of the Request (Continued)

2. Customer-Specific Information for Non Governmental Customers

FPL witness, David T. Bromley, FPL Manager, Regulatory Strategy, Distribution Business Unit, specifically identifies sensitive customer-specific information from non governmental customers in staff working papers identified "Customer Call Information."

FPL asserts that the sensitive customer information at the subject of this request consists of customer names, account or identification numbers, telephone numbers and addresses. FPL considers such information to be confidential and proprietary to the customer and, as a matter of policy, does not disclose such information to third parties unless required by law or unless the customer consents to the disclosure. FPL's customers themselves consider the information to be confidential. In addition FPL points out access to a customer's account or identification number could result in potential mischief or misfeasance by a third person with respect to a customer's account to the detriment of both the customer and FPL. FPL also notes the Commission in the past has found customer-specific information to be proprietary confidential business information and cites the following Commission Orders in support of this policy PSC-98-0421-CFO-EI, PSC-98-0620-CFO-EI and PSC-96-1478-CFO-EI.

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. However, we note the Commission staff's 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 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 be granted and that the identified material be granted a confidential classification for 18 months.

Close the Docket

Once any order granting confidentiality becomes final this docket can be closed.

A detailed recommendation, as found, regarding the material follows:

Detailed Recommendation, as Found

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 08466-03 and 09128-03				
9	1-25	All	Grant	Internal auditing controls and reports of internal auditors
9A	1-2	All	Grant	Internal auditing controls and reports of internal auditors
9-1	1	All	Grant	Internal auditing controls and reports of internal auditors
9-2	1	All	Grant	Internal auditing controls and reports of internal auditors
9-3	1-34	All	Grant	Internal auditing controls and reports of internal auditors
9-4	1-5	All	Grant	Internal auditing controls and reports of internal auditors
9-5	1-2	All	Grant	Internal auditing controls and reports of internal auditors
✓ 9-6	1-2	All	Grant	Internal auditing controls and reports of internal auditors
9-7	1-2	All	Grant	Internal auditing controls and reports of internal auditors
9-8	1-14	All	Grant	Internal auditing controls and reports of internal auditors
9-9	1-8	All	Grant	Internal auditing controls and reports of internal auditors

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 08466-03 and 09128-03				
10-71	1	1-4	Grant	Customer-specific account information
10-72	1	1	Grant	Customer-specific account information
44-1/2-1/1, Page 7	1	Col. A	Grant	Customer-specific account information
44-1/2-1/1, Page 8	1	Col. A	Grant	Customer-specific account information
44-1/2-1/1, Page 9	1	Col. A	Grant	Customer-specific account information
44-1/2-1/1, Page 10	1	Col. A	Grant	Customer-specific account information
44-1/2-1/1, Page 11	1	1	Grant	Customer-specific account information
44-1/2-1/1, Page 12	1	Col. A	Grant	Customer-specific account information
44-1/2-1/1, Page 13	1	Col. A	Grant	Customer-specific account information
44-1/2-1/1, Page 15	1	Col. A	Grant	Customer-specific account information
44-1/2-1/1, Page 23	1	Col. A	Grant	Customer-specific account information
44-1/2-1/1, Page 24	1	Col. A	Grant	Customer-specific account information
44-1/2-1/1, Page 25	1	Col. A	Grant	Customer-specific account information
44-1/2-1/1, Page 26	1	Col. A	Grant	Customer-specific account information
44-1/2-1/1, Page 27	1	Col. A	Grant	Customer-specific account information

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 08466-03 and 09128-03				
44-1/2-1/1, Page 28	1	Col. A	Grant	Customer-specific account information
44-1/2-1/1, Page 29	1	Col. A	Grant	Customer-specific account information
44-1/2-1/1, Page 30	1	Col. A	Grant	Customer-specific account information
44-1/2-1/1, Page 31	1	Col. A	Grant	Customer-specific account information
44-1/2-1/1, Page 32	1	1	Grant	Customer-specific account information
44-1/2-1/1, Page 33	1	Col. A	Grant	Customer-specific account information
44-1/2-1/1, Page 34	1	Col. A	Grant	Customer-specific account information
44-1/2-1/1, Page 35	1	1	Grant	Customer-specific account information
44-1/2-1/1, Page 36	1	Col. A	Grant	Customer-specific account information
44-1/2-1/1, Page 37	1	Col. A	Grant	Customer-specific account information
44-1/2-1/1, Page 38	1	1	Grant	Customer-specific account information
44-1/2-1/1, Page 39	1	Col. A	Grant	Customer-specific account information
44-1/2-1/1, Page 40	1	Col. A	Grant	Customer-specific account information
44-1/2-1/1, Page 42	1	Col. A	Grant	Customer-specific account information
44-1/2-1/1, Page 43	1	Col. A	Grant	Customer-specific account information

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 08466-03 and 09128-03				
44-1/2-1/1, Page 44	1	Col. A	Grant	Customer-specific account information
44-1/2-1/1, Page 45	1	Col. A	Grant	Customer-specific account information
44-1/2-1/1, Page 46	1	Col. A	Grant	Customer-specific account information
44-1/2-1/1, Page 47	1	Col. A	Grant	Customer-specific account information
44-1/2-1/1, Page 48	1	Col. A	Grant	Customer-specific account information
44-1/2-1/1, Page 49	1	Col. A	Grant	Customer-specific account information
44-1/2-1/1, Page 50	1	Col. A	Grant	Customer-specific account information
44-1/2-1/1, Page 51	1	Col. A	Grant	Customer-specific account information
44-1/2-1/1, Page 52	1	Col. A	Grant	Customer-specific account information
44-1/2-1/1, Page 53	1	Col. A	Grant	Customer-specific account information
44-1/2-1/1, Page 54	1	Col. A	Grant	Customer-specific account information
44-1/2-1/1, Page 55	1	Col. A	Grant	Customer-specific account information
44-1/2-1/1, Page 56	1	Col. A	Grant	Customer-specific account information
44-1/2-1/1, Page 57	1	Col. A	Grant	Customer-specific account information
44-1/2-1/1, Page 58	1	Col. A	Grant	Customer-specific account information

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 08466-03 and 09128-03				
✓ 44-1/2-1/2-1, Page 1	1	Col. A-B	Grant	Customer-specific account information
44-1/2-1/2-1, Page 2	1	Col. A	Grant	Customer-specific account information
44-1/2-1/2-1, Page 7	1	Col. A	Grant	Customer-specific account information
44-1/2-1/2-2, Page 1	1	Col. A-B	Grant	Customer-specific account information
44-1/2-1/2-2, Page 7	1	Col. A	Grant	Customer-specific account information
44-1/2-1/2-2, Page 8	1	Col. A	Grant	Customer-specific account information
44-1/2-1/2-2, Page 10	1	Col. A	Grant	Customer-specific account information
44-1/2-1/2-2, Page 11	1	Col. A	Grant	Customer-specific account information
44-1/2-1/2-3, Page 1	1	Col. A-B	Grant	Customer-specific account information
44-1/2-1/2-3, Page 6	1	Col. A	Grant	Customer-specific account information
46-1/1, Page 6	1	Col. A	Grant	Customer-specific account information
46-1/1, Page 7	1	Col. A	Grant	Customer-specific account information
46-1/1, Page 8	1	Col. A	Grant	Customer-specific account information
46-1/1, Page 9	1	Col. A	Grant	Customer-specific account information
46-1/1, Page 10	1	Col. A	Grant	Customer-specific account information

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 08466-03 and 09128-03				
46-1/1, Page 11	1	Col. A	Grant	Customer-specific account information
46-1/1, Page 12	1	Col. A	Grant	Customer-specific account information
46-1/1, Page 13	1	Col. A	Grant	Customer-specific account information
46-1/1, Page 14	1	Col. A	Grant	Customer-specific account information
46-1/1, Page 15	1	Col. A	Grant	Customer-specific account information
46-1/1, Page 16	1	Col. A	Grant	Customer-specific account information
46-1/1, Page 17	1	1	Grant	Customer-specific account information
46-1/2, Page 6	1	Col. A	Grant	Customer-specific account information
46-1/2, Page 7	1	1	Grant	Customer-specific account information
46-1/2, Page 8	1	Col. A	Grant	Customer-specific account information
46-1/2, Page 9	1	Col. A	Grant	Customer-specific account information
46-1/2, Page 10	1	1	Grant	Customer-specific account information
46-1/2, Page 11	1	Col. A	Grant	Customer-specific account information
46-1/2, Page 12	1	Col. A	Grant	Customer-specific account information
46-1/3, Page 6	1	Col. A	Grant	Customer-specific account information

Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 08466-03 and 09128-03				
46-1/3, Page 7	1	Col. A	Grant	Customer-specific account information
46-1/3, Page 9	1	Col. A	Grant	Customer-specific account information
46-1/3, Page 10	1	Col. A	Grant	Customer-specific account information
47-1/2-1, Page 5	1	Col. A	Grant	Customer-specific account information
47-1/2-1, Page 6	1	Col. A	Grant	Customer-specific account information
47-1/2-1, Page 7	1	Col. A	Grant	Customer-specific account information
47-1/2-1, Page 8	1	Col. A	Grant	Customer-specific account information
47-1/2-1, Page 9	1	Col. A	Grant	Customer-specific account information
47-1/2-1, Page 10	1	Col. A	Grant	Customer-specific account information
47-1/2-1, Page 11	1	Col. A	Grant	Customer-specific account information
47-1/2-1, Page 12	1	1	Grant	Customer-specific account information
47-1/2-1, Page 13	1	Col. A	Grant	Customer-specific account information
47-1/2-1, Page 14	1	Col. A	Grant	Customer-specific account information
47-1/2-1, Page 15	1	Col. A	Grant	Customer-specific account information
47-1/2-1, Page 16	1	Col. A	Grant	Customer-specific account information

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 FPL
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 2002 Audit and Test of Reliability Indices
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Staff Work Paper Number	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
Documents 08466-03 and 09128-03				
47-1/2-1, Page 17	1	Col. A	Grant	Customer-specific account information
47-1/2-1, Page 19	1	Col. A	Grant	Customer-specific account information

A temporary copy of this recommendation will be held at I:09128-03.fpl.raf.wpd for a short period.

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