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State of Florida



Public Service Commission

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COMMISSION  
CLERK

**DATE:** August 2, 2004

**TO:** Jennifer Rodan, Attorney, General Counsel

**FROM:** Division of Regulatory Compliance and Consumer Assistance (Freeman, Vandiver) <sup>F a</sup>

**RE:** Docket 040001-EI, Recommendation concerning Florida Power & Light Company's (FPL) request for extension of confidential classification concerning a portion of the staff working papers prepared during "FPL Fuel and Purchased Power Cost Recovery Clause Audit for the Year Ended December 31, 2001", Audit Control No. 02-056-4-2, Documents Numbered 07735-02 and 08169-02

On July 16, 2002, when copies of certain portions of staff's working papers obtained or prepared during the "FPL Fuel and Purchased Cost Recovery Clause Audit for the Year Ended December 31, 2001", 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 July 24, 2002, staff filed document 07735-02 consisting of those specified portions of the staff working papers.

On August 5, 2002, FPL filed a request pursuant to Section 366.093, Florida Statutes (F.S), and Rule 25-22.006, FAC, that selected portions of the working papers prepared by the staff during the audit receive confidential classification. The utility's request included redacted copies for public inspection (Exhibit B, document 08168-02) and highlighted copies (document 08169-02).

On October 21, 2002, Commission Order No. PSC-02-1438-CFO-EI was issued in docket 020001-EI granting the utility's request and providing 18 months confidential classification for the specified material. That 18 month period has now tolled.

CMP \_\_\_\_\_

COM \_\_\_\_\_ On April 19, 2004, FPL filed a first request for extension of the confidential classification for material granted by Commission Order PSC-02-1438-CFO-EI.

CTR \_\_\_\_\_

ECR \_\_\_\_\_ Documents 07735-02 and 08169-02 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.

GCL \_\_\_\_\_

OPC \_\_\_\_\_

MMS \_\_\_\_\_

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DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

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 399.093(3)(b)(d) and (e), F.S., provide the following exemptions.

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

....

(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 business 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 auditing controls and reports of internal auditors.

Witness Robert Onsgard, FPL Manager, Internal Auditing, identifies material concerning reports of internal auditors and internal auditing controls within FPL’s request. Specifically Mr. Onsgard identifies internal auditing materials within staff working papers entitled: “ Internal Audits” and “List of Internal Audits.” Mr. Onsgard represents these documents continue to be proprietary confidential business information and should be accorded a confidential classification for an additional 18 months.

Staff notes Section 366.093(b), F.S., provides that internal auditing controls and reports of internal auditors may be granted a confidential classification.

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Florida Power & Light Request for Extension

- 2). Information including vendor-specific materials, contracts, contract prices and other contract related data.
- 3). Disclosure of competitive interests, release of which would harm the competitive business of the provider of that information.
- 4). Sensitive internal company procedures release of which would harm FPL

Witness Gerard J. Yupp, FPL Energy and Marketing Division's Manager of Regulated Wholesale Trading, identifies sensitive material concerning competitive interests, contractual information and internal company procedures within FPL's request. Specifically, Mr. Yupp identifies this information within staff working papers entitled: "Sample Account 151", "Sample of Fuel Expenses", "Process for Recording Gains on Non-Broker Sales", "Invoice", "Lambda Report", and "Deal Tickets".

Witness Osvaldo J. Lom, FPL Supervisor of Purchased Power Contracts, identifies sensitive material concerning competitive interests and contractual information within FPL's request. Specifically, Mr. Lom identifies this information within staff working papers entitled: "Worksheet UPS Energy Transaction", "Invoice", "Reconciliation of Schedule A3 and A4 to the Natural Gas Conservation Report", "Daily Energy Payment Schedule", "Daily Energy Payment Summary", and "Billing Statement".

Witnesses Yupp and Lom represent these documents remain sensitive and continue to be proprietary confidential business information and should be accorded a confidential classification for an additional 18 months.

Staff notes Section 366.093(3)(d), F.S., provides that the Commission may grant a confidential classification to sensitive contractual or contract bid information. Section 366.093(3)(e), F.S., provides that sensitive competitive business information the release of which would harm the provider of the information may be granted a confidential classification.

### **Information Held as Confidential**

The three FPL utility witnesses, Onsgard, Yupp and Lom, indicate that the information identified by them is held as confidential by FPL and this information is not released to the public.

**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 for extension of classification period be granted and that the identified material be granted a confidential classification for an additional 18 months.

A detailed recommendation follows:

**Detailed Recommendation**

| Staff Work Paper Number | Page(s) | Line(s)        | Recommend Granting an 18 Month Extension | Type of Information Classified Confidential                |
|-------------------------|---------|----------------|--|--|
| 9                       | 1-10    | All            | Grant                                    | Internal auditing reports and controls                     |
| 9-1                     | 1       | Col C, 1-51    | Grant                                    | Internal auditing reports and controls                     |
| 9-1                     | 2       | Col C, 52-99   | Grant                                    | Internal auditing reports and controls                     |
| 9-1                     | 3       | Col C, 1-5     | Grant                                    | Internal auditing reports and controls                     |
|                         | 4       | Col C, 1-23    | Grant                                    | Internal auditing reports and controls                     |
| 43-4/1-1                | 2       | Col D, 4,7     | Grant                                    | Sensitive contractual and competitive business information |
| 43-4/1-1                | 3       | Col D, 6       | Grant                                    | Sensitive contractual and competitive business information |
| 43-6                    | 3       | Col C, 3,10,22 | Grant                                    | Sensitive contractual and competitive business information |
| 43-6                    | 4       | Col C, 1,9,32  | Grant                                    | Sensitive contractual and competitive business information |

| Staff Work Paper Number | Page(s) | Line(s)  | Recommend Granting an 18 Month Extension | Type of Information Classified Confidential                |
|-------------------------|---------|--|--|--|
| <b>Documents 0</b>      |         |  |  |  |
| 43-6                    | 5       | Col C, 2,4,7,11, 13,20                               | Grant                                    | Sensitive contractual and competitive business information |
| 43-6                    | 6       | Col C, 18,23,40                                      | Grant                                    | Sensitive contractual and competitive business information |
| 45-1/1-1                | 1       | All  | Grant                                    | Sensitive contractual and competitive business information |
| 45-1/1-1/1              | 1       | All  | Grant                                    | Sensitive contractual and competitive business information |
| 45-1/1-2                | 1       | Cols A-C, 14-36;<br>Cols A-B, 39-47                  | Grant                                    | Sensitive contractual and competitive business information |
| 46-1                    | 1       | Col A, 6-29,32-34                                    | Grant                                    | Sensitive contractual and competitive business information |
| 47-1/1-1                | 1       | 2,3;<br>Cols A-C, 4-35;<br>36-38                     | Grant                                    | Sensitive contractual and competitive business information |
| 47-1/1-3                | 1       | 2-4;<br>Cols A-C, 5-36;<br>Col D, 36-39;<br>38-40    | Grant                                    | Sensitive contractual and competitive business information |
| 47-2/1                  | 1       | 2,3;<br>Cols A-C, 4-33;<br>Cols B-C, 34-35;<br>36-38 | Grant                                    | Sensitive contractual and competitive business information |
| 47-2/2                  | 1       | 5,7;<br>Cols A-C, 8-9,<br>Cols A,C, 10-12            | Grant                                    | Sensitive contractual and competitive business information |
| 47-2/2-1                | 1       | 2-3;<br>Cols A-C, 4-37;<br>38-40                     | Grant                                    | Sensitive contractual and competitive business information |

| Staff Work Paper Number         | Page(s) | Line(s)   | Recommend Granting an 18 Month Extension | Type of Information Classified Confidential                |
|---------------------------------|---------|---|--|--|
| Documents 07735-02 and 08169-02 |         |   |  |  |
| 47-2/3                          | 1       | 2-3;<br><br>Cols A-D, 4-37;<br><br>38-40  | Grant                                    | Sensitive contractual and competitive business information |
| 49C                             | 3       | All   | Grant                                    | Sensitive contractual and competitive business information |
| 49-1/1-1                        | 1       | 2,4;<br><br>Cols A-B, 5;<br><br>Col B, 9;<br><br>10-13,16A,17-21, 23;<br><br>Cols A,C-D, 25-30<br><br>Col D. 31 | Grant                                    | Sensitive contractual and competitive business information |
| 49-1/2                          | 1       | Cols B-J, 3-6;  | Grant                                    | Sensitive contractual and competitive business information |
| 49-1/2                          | 2       | Cols B-N, 5-10  | Grant                                    | Sensitive contractual and competitive business information |
| 49-1/2-1                        | 1       | 4,6,8,9-20A;<br><br>Cols B-E, 8-23;<br><br>24-26,28,30  | Grant                                    | Sensitive contractual and competitive business information |
| 49-1/2-1                        | 2       | 4,8-20A;<br><br>Cols B-E, 8-23;<br><br>24-27A,30  | Grant                                    | Sensitive contractual and competitive business information |
| 49-1/2-1                        | 3       | Cols A-E, 2-30  | Grant                                    | Sensitive contractual and competitive business information |
| 49-1/2-1                        | 4       | Cols A-E, 2-33;<br><br>Col I, 4,9,13,15,17, 19,21;  | Grant                                    | Sensitive contractual and competitive business information |
| 49-1/2-1                        | 5       | Cols A-E, 2-35;<br><br>Cols G-H, 7,11,18, 24,28,32;   | Grant                                    | Sensitive contractual and competitive business information |

| Staff Work Paper Number | Page(s) | Line(s)  | Recommend Granting an 18 Month Extension | Type of Information Classified Confidential                |
|-------------------------|---------|--|--|--|
| 49-1/2-1                | 6       | Cols A-E, 2-33;<br><br>Cols H-I, 11,20, 22-23,25-26                                | Grant                                    | Sensitive contractual and competitive business information |
| 49-1/2-1                | 7       | Cols A-E, 2-35;<br><br>Col H, 17,19-21,23, 32,34;<br><br>Col I, 19-21,23-26, 32-35 | Grant                                    | Sensitive contractual and competitive business information |
| 49-1/2-1                | 8       | Cols A-E, 2-35;<br><br>Col H, 8,13,20, 27,32;<br><br>Col I, 17-19,21, 23-25        | Grant                                    | Sensitive contractual and competitive business information |

A temporary copy of this recommendation will be held at I:08169-02ext1raf.doc for a short period.

CC: Division of Regulatory Compliance and Consumer Assistance (Welch)  
Division of Commission Clerk and Administrative Services (Flynn)