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DATE: October 20,2004
TO: Martha Brown, Attorney, General Counsel
FROM: Division of Regulatory Compliance and Consumer Assistance (Freeman, Vandiver) F W
RE: Docket 040002-EG, Recommendation concerning Florida Power & Light Company's (FPL) request for confidential classification concerning a portion of the staff working papers prepared during "FPL Energy Conservation Cost Recovery Clause Audit for the Year Ended December 31, 2003", Audit Control No. 04-070-4-1, Documents Numbered 08245-04 and 08396-04

On July 14,2004, when copies of certain portions of staffs audit report and working papers obtained or prepared during the "FPL Energy Conservation Cost Recovery Clause Audit for the Year Ended December 31, 2003", 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 29,2004, staff filed document 08245-04 consisting of those specified portions of the staff working papers.

On August 3,2004, 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 a redacted copy for public inspection (Exhibit B, document 08395-04) and a highlighted copy (document 08396-04).

Documents 08245-04 and 08396-04 are currently held by the Commission's Division of the Commission Clerk and Administrative Services as confidential pending resolution of FPL's request for confidential classification.

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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.

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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** the reports of internal auditors.

....

(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. Information related to internal auditing reports and associated documents.

Subsection 366.093(b), F.S., provides that the Commission may grant a confidential classification to internal auditing **controls and** to the reports of internal auditors.

Witness Robert Onsgard, FPL Manager, Internal Auditing, identifies materials associated with FPL’s internal audits as reported within staff working papers entitled: “Internal Audit List”, and “Internal Audit Notes.”

After reading the material identified by witness Onsgard, we agree that release of this material would reveal internal auditing controls and the reports of internal auditors.

2. Customer-specific account information

FPL asserts that customer-specific information should be granted a confidential classification on the basis that customer-specific information would harm competitive business interests. Subsection 366.093(e), F. S., provides that the Commission may grant a confidential classification to sensitive information concerning competitive business interests **if** release **of** that information will harm the **provider** of that information.

FPL witness Ken Ketchell, FPL Budget and Regulatory Support Supervisor, identifies materials associated with customer-specific account information within staff working papers entitled: "Calculation of Standby and Supplemental Factor – July 2003", "Calculation **of** Standby **and** Supplemental Factor -- October 2003", "List of RTP Customers", "Calculation of RTP ECCR Factor July 2003", "Calculation **of** RTP ECCR Factor October 2003", "Audit Analyzer Sample **of** Source Code 50", "Sample Source Code 50's", "Sample of Source **Code** 11", "CILC Billing **Report**", "Calculation of **CILC** Credits", "Power Billing Detail Report", "C/I **Load** Control Agreement."

FPL **and** FPL witness Ketchell state "FPL treats customer-specific information as confidential to include: **customer names, addresses**, telephone numbers, account numbers, rates, billing determinants (kW **and** kW **usage**), conservation savings in kW, kWh **and** bills. FPL's policy is premised upon customers' right to privacy and the potential that **the** disclosure of customer specific information may harm some customers' competitive interests **or** disclose their trade secrets. FPL's customers have affirmed to FPL their interest in having this information maintained confidential, For **many** of those customers, electric **usage** is **an** important part of their production or operating costs. Thus, the disclosure of **rate or** contract information, as well as consumption levels or patterns, could provide competitors with commercially sensitive information that would afford such competitors an **unfair** advantage. For others, non-disclosure **of** the information is simply a matter of privacy. While it **may** be that disclosure of such information may be more sensitive for some customers than for others, FPL **has** not sought to make a case-by-case determination as to the level **of** sensitivity **or** potential **harm** with respect to disclosing a particular customer's information; rather, in deference to its customers, as a matter of policy, and in the interest of customer privacy, **FPL** has **not** disclosed to third parties specific rate and contract information for customers unless required by law **or** unless the customer consents to such disclosure. This policy is **important** from both a practical **and** theoretical standpoint. Customers want the assurance that their information is protected to the **same** extent as any other customer's. **Also** practically speaking, it would be a difficult and perhaps impossible task to make a case-by-case determination as to what level **of** protection each customer's data **may** merit."

After reading the information identified by witness Ketchell, we recommend that this customer-specific account information be held as confidential because the information meets the definition of "proprietary confidential business information" set out in Section 366.093, **Florida** Statutes, in that release of this privately-held sensitive information would **cause** the provider of that information harm. We further note the Commission has held in many prior decisions that customer-specific **rate** information be granted a confidential classification.

We further recommend that this information not be granted a confidential classification on the basis that the information reports a trade secret or secrets. The utility has not met the burden of proof that this information **rises** to the level of a trade secret nor has the utility provided **an** administrative precedent where such information was held to be a trade secret.

Information Held as Confidential

To qualify as proprietary confidential business information the material must also be held **as** private **and** not be released to the public. FPL asserts that this information has not been released to the public. FPL witnesses Onsgard and Ketchell also **assert** FPL has maintained the confidentiality of those materials they have identified **as** sensitive.

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.

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.

A detailed recommendation, as found, follows:

Detailed Recommendation, as found

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential
	Internal Audit List	1	Col B, 1-51	Grant	Internal auditing controls and reports of internal auditors
	Internal Audit List	2	Col B, 52-63	Grant	Internal auditing controls and reports of internal auditors

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information Classified - Confidential
9-1	Internal Audit Notes	1-2	All	Grant	Internal auditing controls and reports of internal auditors
9-2	Internal Audit Notes	1-3	All	Grant	Internal auditing controls and reports of internal auditors
41-1/1-1	Calculation of Standby & Supplemental Factor July 2003	1	Cols A-B, 1,3,6,7; Col G, 1b,3b, 6b,7b;	Grant	Customer-specific account information
41-1/1-1	Calculation of Standby & Supplemental Factor July 2003	2	Cols A-B, 10-11, 14-15; Col G, 10b,11b, 14b,15b	Grant	Customer-specific account information
41-1/2-1	Calculation of Standby & Supplemental Factor October 2003	1	Cols A-B, 1,3,6-7,9; Col G,1b,3b, 6b,7b;	Grant	Customer-specific account information
41-1/2-1	Calculation of Standby & Supplemental Factor October 2003	2	Cols, A-B, 12-15; Col G,12b,13b, 14b,15b;	Grant	Customer-specific account information
41-3	List of RTP Customers	1	Cols A-C, 1-8,11-12,14-19, 27-31,35-38;	Grant	Customer-specific account information
41-3/1	Calculation of RTP ECCR Factor July 2003	1	Cols A-B, 1,3; Col G, 1b,3b	Grant	Customer-specific account information
41-3/2	Calculation of RTP ECCR Factor October 2003	1	Cols A,B, 1,3; Col G, 1b,3b	Grant	Customer-specific account information
43-4	Audit Analyzer Sample of Source code 50	1	Col B, 5b,6b,8b, 11b,14b,15b,16b, 17b,18b,19b,20b, 21b; Col E, 5-6,11, 14-21	Grant	Customer-specific account information
43-4	Audit Analyzer Sample of Source code 50	2	Col B, 22b,23b, 24b,25b,26b,27b, 28b,29b,30b,31b, 32b,33b,34b,35b, 36b,37b,37b,38b; Col E, 22-38	Grant	Customer-specific account information
43-4	Audit Analyzer Sample of Source Code 50	3	Col B; 39b Col E, 39	Grant	Customer-specific account information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information Classified - Confidential
Documents 08245-04 and 08396-04					
43-4/1	Sample of Source Code 0's	1	Cols A,D, 1; Col E, 3-4,11-13, 16	Grant	Customer-specific account information
43-4/1	Sample of Source Code 0's	2	Cols A, 1,21; Col D, 1-2,21-22; Col E, 1,21	Grant	Customer-specific account information
43-4/1	Sample of Source Code 0's	3	Col A, 9,14; Col D, 14; Col E, 11	Grant	Customer-specific account information
43-4/1	Sample of Source Code 0's	4	Cols A,D, 1,4,7,10, 13,16-17,19,21, 23-24; Col E, 17-22,24	Grant	Customer-specific account information
43-4/1	Sample of Source Code 50's	5	Cols A,D, 1,4,7,10, 13,16,19	Grant	Customer-specific account information
43-4/1	Sample of Source Code 50's	5	Cols A,D, 1,3,6,9, 12,15-18; Col E, 15-18	Grant	Customer-specific account information
43-4/1	Sample of Source Code 50's	7	Cols A,D, 1,7,10, 13,16,19,22	Grant	Customer-specific account information
43-5/1	Sample of Source Code 11	1	Col B, 2-7; Col E,F, 2-6	Grant	Customer-specific account information
44-7/2-1	CILC Billing Report	1	Cols A-C,J-L,N, 3,5,8-9,11-12, 14-15,17,19-21, 23-27,29,33-34,36, 38,40,42-43,47-48, 50-51,54-55,60,62, 64	Grant	Customer-specific account information
44-7/2-1	CILC Billing Report	2	Cols A-C,J-L,N, 73-74,77-82,87,89, 92-93,99-100,103, 105-106,108, 110-111,115,120, 122,124,129	Grant	Customer-specific account information
44-7/2-1	CILC Billing Report	3	Cols A-C,J-L,N, 134-135,139-140, 144-147,149-154, 156-161,164-166, 168-171,173,177, 179-180,184-187, 189-194,198	Grant	Customer-specific account information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information Classified - Confidential
Documents 08245-04 and 08396-04					
44-7/2-1	CILC Billing Report	1	Cols A-C,J-L,N, 199,209,212,214, 216,219,222-223, 226-229,235,237, 239-240,243-244, 246,248-249, 253-254,256,259, 261-264	Grant	Customer-specific account information
4-7/2-1	CILC Billing Report		Cols A-C,J-L,N, 265,269-270,272, 274-276,278,280, 282,284,286, 289-294,296,298, 300,302,306-308, 314,318,320, 326-330	Grant	Customer-specific account information
4-7/2-1	CILC Billing Report		Cols A-C,J-L,N, 331,333,338,344, 346,348,355,357, 359-361,363, 365-366,368-373, 375,383,389-391, 393,396	Grant	Customer-specific account information
4-7/2-1	CILC Billing Report	7	Cols A-C,J-L,N, 398-399,401-404, 408,411,413,415, 417-418,420-421, 426,428-432,434, 437,439,442-443, 445,451-453, 456-457,459, 461-462	Grant	Customer-specific account information
44-7/2-1	CILC Billing Report	8	Cols A-C,J-L,N, 463,465,468-470, 474-477,480,482, 486-487,490-493, 496,499-500	Grant	Customer-specific account information
44-7/2-1/1	Calculation of CILC Credits	1	Cols B,C,E,H,I, 1-11	Grant	Customer-specific account information
44-7/2-111-1	Power Billing Detail Report	2	Col A, 1-3 Col B, 1-3;10-12, 15-16; Col C, 7-8, 10-12,1546, 22-29,33-44 Col E, 10-12, 15-20,31-32 Col F, 7-8,10-13, 15-30,33-44	Grant	Customer-specific account information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information Classified - Confidential
Documents 08245-0					
44-7/2-1/1-1	Power Billing Detail Report		Col A, 1-3; Col B, 1-3,10-12, 5-16; Col C, 7-8,10-12, 5-16,22-29,33-44; Col E, 10-12, 5-16,18-20, 1-32; Col F, 7-8,10-13, 5-30,33-44	Grant	Customer-specific account information
44-7/2-1/1-1	Power Billing Detail Report		Col A, 1-3 Col B, 1-3, 10-12,14-15; Col C, 7-8,10-12, 14-15,20-27,30-41; Col E, 10-12, 14-18,28-29 Col F, 7-12,14-28, 30-41	Grant	Customer-specific account information
44-7/2-1/1-1	Power Billing Detail Report	8	Col A, 1-3; Col B, 1-3,10-12, 14-15; Col C, 7-8,10-12, 14-15,20-27,30-41; Col E, 10-12, 14-18,28-29; Col F, 7-8,10-12, 14-28,30-41	Grant	Customer-specific account information
44-7/2-1/1-1	Power Billing Detail Report	9	Col A, 1-3; Col B, 1-3,10-12, 14-15; Col C, 7-8,10-12, 14-15,20-27,31-42 Col E, 10-12, 14-18,29-30 Col F, 7-8,10-12, 14-28,31-42	Grant	Customer-specific account information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information Classified Confidential -
44-7/2-1/1-2	C/I Load Agreement	1	2-3	Grant	Customer-specific account information

A temporary copy of this recommendation will be held at I:08396-04.fplraf.doc for a short period.

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