

State of Florida



ORIGINAL

Public Service Commission PSC

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TALLAHASSEE, FLORIDA 32399-0850 N-6 AM 11:00

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

**DATE:** January 5, 2005

**TO:** Chris Moore, Attorney, Office of General Counsel

**FROM:** Division of Regulatory Compliance and Consumer Assistance (Freeman, Vandiver)

**RE:** Docket 021111-EI, Recommendation concerning Florida Power & Light Company's (FPL) request for extension of confidential classification concerning a portion of the staff audit report and working papers prepared during "FPL Revenue Refund Audit for the Year Ended April 14, 2002", Audit Control No. 02-174-4-1, Documents Numbered 11267-02 and 11872-02

On October 9, 2002, when copies of certain portions of staff's audit report and working papers obtained or prepared during the "FPL Revenue Refund Audit for the Year Ended April 14, 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 October 16, 2002, staff filed document 11267-02 consisting of those specified portions of the staff working papers.

On October 29, 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 copies with the sensitive information highlighted (document 06955-02).

**CMP** \_\_\_\_\_ On January 23, 2003, after discussions with the staff, FPL filed a revision to its request reducing  
**COM** \_\_\_\_\_ the amount of material requested as confidential and provided a final public copy of the sensitive  
**CTR** \_\_\_\_\_ staff audit report and working papers with the sensitive information redacted (document 00741-  
**ECR** \_\_\_\_\_ 03) and filed a final listing by page and line of the information requested to be granted a  
 confidential classification.

**GCL** \_\_\_\_\_ On April 17, 2003, Commission Order No. PSC-03-0511-CFO-EI was issued in docket 021111-  
**OPC** \_\_\_\_\_ EI granting the utility's request and providing 18 months confidential classification for the  
**MMS** \_\_\_\_\_ specified material. That 18 month period has now tolled.

**RCA** \_\_\_\_\_ On October 18, 2004, FPL filed a first request for extension of the confidential classification for  
**SCR** \_\_\_\_\_ material granted by Commission Order PSC-03-0511-CFO-EI.

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DOCUMENT NUMBER-DATE

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Documents 11267-02 and 11872-02 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.

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)(c)(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:

(c) Security measures, systems, or procedures.

(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 filing reveals FPL requests that the confidential classification granted by Commission Order PSC-03-0511-CFO-EI be extended for an additional 18 months. The sensitive material for which the extension of confidential classification consists of:

- 1). Non governmental, customer-specific account information;

Four FPL witnesses identify sensitive customer-specific account information within this filing.

FPL Witness Antonio Cuba, FPL Director of Regulatory and Tax Accounting, identifies sensitive customer information within staff's working papers entitled: "Sample Testing Accounts 450 and 454." FPL witness Ken Getchell, FPL Budget and Regulatory Support Supervisor, identifies sensitive customer information within staff's working papers entitled: "Payment Coupon" and "Sample Testing Accounts 451 and 456". FPL witness George Maas, FPL Customer Bill Manager, identifies sensitive customer information within staff's working paper entitled: "Answer to Document Request 41." Lastly, witness David Bromley, FPL Manager Regulatory Strategy" identifies sensitive customer information found within staff's working paper entitled: "Response to Document Request No. 10."

FPL's reports its sensitive customer information consists of, but is not limited to; customer names, addresses, telephone numbers, account numbers, rates, billing determinants (kW and kWh usage), conservation savings in kW, kWh and bills.

Within their initial October 29, 2002 request FPL points out several previous Florida Public Service Commission decisions which granted customer account information a confidential status:

Commission Order PSC-98-0421-CFO-EI, March 24, 1998, Docket 941102-EI;

*The decision involves confidential treatment of a quarterly report for a real time pricing program. The Order held that customer specific information is confidential.*

Commission Order PSC-98-0620-CFO-EI, May 4, 1998, Docket 971668-EI

*The decision involves confidentiality of customers who filed complaints. The identity of customers who filed a complaint was granted a confidential classification as long as the complaint was not already a public record.*

Commission Order PSC-96-1478-CFO-EI, December 4, 1996, Docket 961013-EI

*The decision involves the identity of customers who have requested studies regarding energy alternatives in their competitive businesses as well as the contents of these studies which identify cost saving measures. The Order held that the customer's names and the contents of the studies receive a confidential classification.*

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FPL points out that the electric usage component of a customer's business is an important part of the production and operating costs and that revealing this sensitive competitive business information to competitors would be harmful to that customer. Other customers merely want to keep their information private. FPL claims that it would be impractical to determine which customers would consider their account information is sensitive and therefore has not sought to make a case-by-case determination of the level of sensitivity or potential harm for each of its customers. FPL treats all customer specific account information as confidential because generally customers prefer to have their account information kept private. FPL will only release customer account information as required by law unless that customer authorizes the its release.

Staff Opinion

We recommend the Commission continue its long standing policy of granting a confidential classification to electric customer account information on the basis that release of customer account information would harm the competitive business of the provider of that information. We therefore recommend that the account information identified in this filing be granted an addition 18 months of confidential classification as release of this information would harm the provider of that information. Such a decision is in accordance with the exemption provided by Section 366.093(3)(e), Florida Statutes.

2). Business Plans and Strategies

3). Security Measures, Systems or Procedures

FPL witness Antonio Cuba identifies sensitive information concerning FPL's business plans and strategies that are provided in staff's audit report at pages 8 and 9 of that report. Mr. Cuba also identifies the staff working paper entitled "Physical Distribution Center" as reporting sensitive security measures, systems and procedures.

Staff Opinion

Section 366.093(3)(e), F.S., provides that the Commission may grant a confidential classification to competitive business information if release of that information would harm the competitive business of the provider of that information.

Section 366.093(3)(c), F.S., provides that the Commission may grant a confidential classification to information concerning security measures, systems and procedures.

We have read the sensitive information FPL identifies here and agree it is either sensitive competitive business information or a description of sensitive security measures, systems or procedures release of which would harm the provider of the information. We find that this information remains sensitive and recommend that it be granted an extension of the confidential classification period.

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4). FPL FiberNet's customer and pricing information, financial projections, operating results and cost data

FPL witness Carmen Perez, FPL FiberNet, LLC, (FiberNet), controller identifies sensitive competitive business information concerning FiberNet's customer and pricing information, financial projections and cost data found within staff's working papers entitled: "Refund Calculation", "FiberNet Revenues" and "FiberNet Income Statement"

### Staff Opinion

Section 366.093(3)(e), F.S., provides that the Commission may grant a confidential classification to competitive business information if release of that information would harm the competitive business of the provider of that information.

We have read the information associated with FiberNet's operations. We agree this information concerning an affiliate of FPL is sensitive competitive information which remains sensitive. We therefore recommend that this information be granted an extension of confidential classification.

### Information Held as Confidential

FPL and FPL witnesses assert the sensitive information considered in this request is held as confidential.

### 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

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, as found, follows:

**Detailed Recommendation, as found**

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend Granting an 18 Month Extension	Type of Information Classified Confidential
Documents 11267-02 and 11872-02					
1	Audit Report	8	5	Grant	Sensitive competitive business information
1	Audit Report	9	Col A, 6,11, 16,21,26,31;  Col B-D, 4-7, 9-12,14-17, 19-22,24-27, 29-33	Grant	Sensitive competitive business information
41-3/1-1/7	Payment Coupon	1	2,4;  Col A-B, 6:  10-13,17-22, 24	Grant	Sensitive Contractual and Competitive Business Information
41-3/1-1/8	Payment Coupon	1	2,4;  Col A-B, 6;  10-14,18-24, 26	Grant	Sensitive Contractual and Competitive Business Information
41-3/1-1/9	Payment Coupon	1	2,4;  Col A-B, 6;  10-12,16-21, 23	Grant	Sensitive Contractual and Competitive Business Information
41-3/1-1/10	Payment Coupon	1	2,4;  Col A-B, 6;  10-13,17-22, 24	Grant	Sensitive Contractual and Competitive Business Information
41-3/1-1/11	Payment Coupon	1	2,4;  Col A-B, 6;  10-12,16-21, 23	Grant	Sensitive Contractual and Competitive Business Information
41-8/3-1	Answer to Document Request No. 41	5	3-6	Grant	Sensitive Contractual and Competitive Business Information
41-8/3-1		6	3-6	Grant	Sensitive Contractual and Competitive Business Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend Granting an 18 Month Extension	Type of Information Classified Confidential
41-8/3-1	Answer to Document Request No. 41	7	3-6	Grant	Sensitive Contractual and Competitive Business Information
41-8/3-1	Answer to Document Request No. 41	10	3-6	Grant	Sensitive Contractual and Competitive Business Information
41-8/3-1	Answer to Document Request No. 41	11	3-6	Grant	Sensitive Contractual and Competitive Business Information
41-8/3-1	Answer to Document Request No. 41	12	3-6	Grant	Sensitive Contractual and Competitive Business Information
41-9/5-1	Sample Account 451	1	16-17,26-27	Grant	Sensitive Contractual and Competitive Business Information
41-9/5-1	Sample Account 451	2	2-3,12-13, 15-16,18-19	Grant	Sensitive Contractual and Competitive Business Information
41-10/1	Sample Testing Account 454	1	Col E, 14,27, 38-39	Grant	Sensitive Contractual and Competitive Business Information
41-10/1	Sample Testing Account 454	16	Col E, 21-22, 35-36	Grant	Sensitive Contractual and Competitive Business Information
41-10/1	Sample Testing Account 454	18	Col E, 9,31,32	Grant	Sensitive Contractual and Competitive Business Information
41-10/1	Sample Testing Account 454	19	Col E, 40	Grant	Sensitive Contractual and Competitive Business Information
41-10/1	Sample Testing Account 454	27	Col E, 27	Grant	Sensitive Contractual and Competitive Business Information
41-10/1	Sample Testing Account 454	29	Col E, 6,8,12	Grant	Sensitive Contractual and Competitive Business Information
41-10/1	Sample Testing Account 454	42	Col E, 32	Grant	Sensitive Contractual and Competitive Business Information
41-10/1-1	Response to Document Request No. 10	1	Col C, 2,5,8, 11,14-16,19, 22,25,29	Grant	Sensitive Contractual and Competitive Business Information
41-10/1-1/1	Response to Document Request No. 10	1	1,6,10,14,18, 22,26,30,34,38	Grant	Sensitive Contractual and Competitive Business Information
41-10/1-1/1-1	Response to Document Request No. 10	1	2,4; Col A-B, 6; 10-13,17-22, 24	Grant	Sensitive Contractual and Competitive Business Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend Granting an 18 Month Extension	Type of Information Classified Confidential
41-10/1-1/1-1	Response to Document Request No. 10	2	2,4;  Col A-B, 6;  10-13,17-22, 24	Grant	Sensitive Contractual and Competitive Business Information
41-10/1-1/1-1	Response to Document Request No. 10	3	2,4;  Col A-B, 6;  10-13,17-22, 24	Grant	Sensitive Contractual and Competitive Business Information
41-11	Physical Distribution Center	1-4	All	Grant	Security measures
41-11/5	Sample Testing Account 450	2	Col E, 11-15	Grant	Sensitive Contractual and Competitive Business Information
41-11/5	Sample Testing Account 450	21	Col E, 21-22	Grant	Sensitive Contractual and Competitive Business Information
41-11/9-1	Sample Testing Account 456	1	Col B, 7-10, 16-19	Grant	Sensitive Contractual and Competitive Business Information
43-2, page 2	Refund Calculation	1	Col D-E, 7-20	Grant	Sensitive Competitive Business Information
44	FiberNet Revenues	1	8,11	Grant	Sensitive Competitive Business Information
44	FiberNet Revenues	2	Col D-E, 8-20	Grant	Sensitive Competitive Business Information
44-1	FiberNet Revenues	1-16	All	Grant	Sensitive Competitive Business Information
44-1/1	FiberNet Income Statement	1-13	All	Grant	Sensitive Competitive Business Information
44-1/2	FiberNet Revenues	1-3	All	Grant	Sensitive Competitive Business Information
44-2	FiberNet Revenues	1	Col A, 9,14, 19,24,29,34;  Col B, 7-10, 12-15,17-20, 22-25,27-30, 32-36,39-43;  Col C-D, 7-10, 12-15,17-20, 22-25,27-30, 32-36	Grant	Sensitive Competitive Business Information

A temporary copy of this recommendation will be held at I:11872-02ext1raf.doc for a short period.

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