

State of Florida



ORIGINAL

Public Service Commission

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

**DATE:** March 9, 2005

**TO:** Samantha Cibula, Attorney, Office of General Counsel

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

**RE:** Docket 011321-EI, Recommendation concerning Florida Power & Light Company's (FPL's) request for a 2<sup>nd</sup> extension of confidential classification concerning a portion of the staff audit report and working papers obtained or prepared during the audit numbered 01-067-4-1 entitled "Allocation Methodology for Costs Charged from FPL FiberNet, LLC ("Fiber net") to FPL for the Estimated Year Ended December 31, 2001", Documents Numbered 11852-01, 11853-01 and 12244-01

On September 11, 2001, when copies of certain portions of staff's audit report and working papers obtained or prepared during the audit entitled "Allocation Methodology for Costs Charged from FiberNet to FPL for the Estimated 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 Rule 25-22.006(3)(a)2., Florida Administrative Code (FAC).

On September 21, 2001, staff filed documents 11852-01 and 11853-01 consisting of those specified portions of the staff working papers.

On September 27, 2001, FPL filed a request pursuant to Rule 25-22.006, FAC, and Section 366.093, Florida Statutes (F.S), that selected portions of the audit report and 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 12243-01) and complete copies of the material with the sensitive portions highlighted (document 12244-01).

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On December 5, 2001, after discussions with the staff, FPL revised its filing and provided additional redacted copies for public inspection (document 15206-01).

On January 2, 2002, the Commission issued Order No. PSC-02-0058-CFO-EI as amended on January 31, 2002, by order PSC-02-0058A-CFO-EI, which granted a confidential classification to the identified portions of documents 11852-01, 11853-01, and 12244-01.

On June 24, 2003, FPL filed a first request for extension of the confidential classification for this material.

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On August 28, 2003, Commission Order No. PSC-03-0972-CFO-EI in docket 011321-EI granted FPL's request for extension of the confidential classification for an additional 18 months. That extension has now tolled.

On February 25, 2005, FPL requested that confidential classification for this materials be extended a second time.

Documents 11852-01, 11853-01, and 12244-01 are currently held by the Commission's Division of the Commission Clerk and Administrative Services as confidential pending resolution of FPL's request for a 2<sup>nd</sup> 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:

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. Sensitive information concerning FiberNet's pricing and costs

In FPL's September 2001 initial request for a confidential classification and again in FPL's request for a 2<sup>nd</sup> extension of the classification period, the utility asserts staff's working papers contain sensitive information concerning FiberNet's pricing and costs which if released would provide competitors with an unfair advantage and impair the ability of FiberNet to contract on favorable terms.

FPL witness Carmen M. Perez, FPL FiberNet, LLC, Controller, identifies the following staff working papers as containing this sensitive competitive business information;

"Audit Report Page 1, Disclosure 1, FiberNet Allocation of Assets and Expenses to FPL Utility",  
"Audit Report Pages 2 and 3, Disclosure 2, Allocation of Depreciation on FiberNet Assets",  
"Audit Report Page 5, Disclosure 3, Calculation of Return on Assets",  
"Audit Report Page 6, Disclosure 4, Allocation of Property Taxes",  
"Audit Report Page 7, Disclosure 5, Expense Allocated to FPL from FiberNet",  
"Audit Report Page 8, Disclosure 6, PSC Staff Revised 2001 Estimated Charges to FPL from FiberNet", "Audit Report Pages 9, 10 and 11, Recalculation of Company Allocation",  
"WP 5, Notes from Meeting with company", "WP 43, Summary of Findings",  
"WP 43-1, Calculation on Estimated 2001 Charges", "WP 43-2, Support for Asset Accounts",  
"WP 43-2/1, Printout of All property Records",  
"WP 43-2/2, Printout of Pre 96 Electronics Asset", WP 43-3, Calculation of Fiber Miles",  
"WP 43-3/1, Support for Fiber Miles", "WP 43-3/2 Support for Fiber Miles",  
"WP 43-3/3, Support for Fiber Miles", "43-3/4 Support for fiber Miles",  
"WP 43-4, Printout for Pre 96 Fiber Assets", "WP 43-4/1, "Printout of Post 95 Fiber Assets",  
"WP 43-5 Printout of Post 95 Electronic Assets", "WP 43-6, Support For DS3 Calculations",  
"WP 43-6/1, Support for DS3 Calculations", "WP 43-10, Billing to FPL for 2001",  
"WP 43-10/1, First Quarter Billing to FPL", "WP43-10/2, Second Quarter Billing to FPL", and  
"WP 43-11, Info Re Return on Investment."

**Staff Analysis**

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

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2. 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: "Notes from Internal Audit report" and "Info from Internal Audit Report."

**Staff Analysis**

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

**Information Held as Confidential**

Both FPL witnesses Perez and Onsgard report the identified material remains sensitive and recommend continuing the confidential classification period. The FPL witnesses also report the identified material is held as confidential by FPL and the material has not been 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.

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 3rd 18 month term.

Commission Order PSC-94-1224-CFO-EI provides a guideline for commercial material which remains sensitive for an extended period. The Commission found that it was reasonable to provide an extended confidential classification 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 a five year period. The term of confidential treatment for the sensitive commercial material in this docket has not yet reached five years and therefore we recommend that the material be granted a confidential classification.

**Close Docket**

Any Commission Order issued in this case should include language providing that when the Order becomes final the docket should be closed.

A detailed recommendation follows:

**Detailed Recommendation**

Staff Work Paper Number	Description	Page(s)	Line(s)	Grant Second 18 Month Extension	Type of Information Classified Confidential
2-01 and 12244-01					
WP 1 - Report	Disclosure 1, FiberNet Allocation of Assets and Expenses to FPL Utility	1	22: Col B, 13-20, 24-26	Grant	Sensitive competitive information pertaining to FiberNet
WP 1 - Report	Disclosure 2, Allocation of Depreciation on FiberNet Assets	2	Col B, 14,16, 26,28,30	Grant	Sensitive competitive information pertaining to FiberNet
WP 1 - Report		3	Col B, 11,13, 15,27-29,31, 33,35	Grant	Sensitive competitive information pertaining to FiberNet
WP 1 - Report	Disclosure 3, Calculation of Return on Assets	5	3,8-10; Col B, 12-21	Grant	Sensitive competitive information pertaining to FiberNet
WP 1 - Report	Disclosure 4, Allocation of Property Taxes	6	Col B, 8-10,14	Grant	Sensitive competitive information pertaining to FiberNet
WP 1 - Report	Disclosure 5, Expense Allocated to FPL from FiberNet	7	6	Grant	Sensitive competitive information pertaining to FiberNet
WP 1 - Report	Disclosure 6, PSC Staff Revised 2001 Estimated Charges to FPL from FiberNet	8	9-10; Col B, 14,17, 19; Col C, 14,17, 21	Grant	Sensitive competitive information pertaining to FiberNet
WP 1 - Report	Recalculation of Company Allocation	9	Col A, 15,21, 32;	Grant	Sensitive competitive information pertaining to FiberNet

Staff Work Paper Number	Description	Page(s)	Line(s)	Grant Second 18 Month Extension	Type of Information Classified Confidential
WP 1 – Report	Recalculation of Company Allocation	10	Col B-C, 9-17, 19-21,23-27, 29-30,32,34	Grant	Sensitive competitive information pertaining to FiberNet
WP 1 – Report		11	Col A, 11; Col B, 8-10, 14,16-18; Col C, 8,12-15	Grant	Sensitive competitive information pertaining to FiberNet
5	Notes from Meeting with Company	1	11	Grant	Sensitive competitive information pertaining to FiberNet
5		2	3,12,18,23,37	Grant	Sensitive competitive information pertaining to FiberNet
		3	1,3	Grant	Sensitive competitive information pertaining to FiberNet
	Notes from Internal Audit Report	1-5	All	Grant	Internal Audit Controls and Reports
2-1	Info from Internal Audit Report	1	10-14	Grant	Internal Audit Controls and Reports
2-1/1		1	4-8	Grant	Internal Audit Controls and Reports
43	Summary of Findings	1	21-22; Col B, 13-20, 23-25	Grant	Sensitive competitive information pertaining to FiberNet
		2	13,21,32; Col A, 15,29; Col B, 14-16, 25-30	Grant	Sensitive competitive information pertaining to FiberNet
		3	17,25,35; Col A, 12,14, 32; Col B, 11-15, 27-33	Grant	Sensitive competitive information pertaining to FiberNet
		5	3,8-10; Col B, 12-21	Grant	Sensitive competitive information pertaining to FiberNet
		6	Col B, 8-11,14	Grant	Sensitive competitive information pertaining to FiberNet
		7	3-6	Grant	Sensitive competitive information pertaining to FiberNet



Staff Work Paper Number	Description	Page(s)	Line(s)	Grant Second 18 Month Extension	Type of Information Classified Confidential
	Summary of Findings		9-10; Col B, 14,17, 19; Col C, 14,17, 21	Grant	Sensitive competitive information pertaining to FiberNet
43-1	Calculation on Estimated 2001 Charges	1	Col A, 9,16, 24,27,41-42; Col B, 46-50; Col C, 4-5, 7-10;12-17, 19-34,36-44, 48-49	Grant	Sensitive competitive information pertaining to FiberNet
43-1		2	Col A, 11, 7-18,23-24, 34,36,38; Col B, 10-11, 14-18,20-24, 27-37; Col C, 10-11, 14-18,20-24, 27-34,38	Grant	Sensitive competitive information pertaining to FiberNet
43-1		3	Col B, 11-19, 21-29,31-36	Grant	Sensitive competitive information pertaining to FiberNet
43-1		4	Col A, 13; Col B, 10-13, 16,18-20; Col C, 10, 13-17	Grant	Sensitive competitive information pertaining to FiberNet
43-2	Support for Asset Accounts	1	Col A, 13, 17-18; Col B, 3-11, 13-15,17-20, 22-26	Grant	Sensitive competitive information pertaining to FiberNet
43-2/1	Printout of All property Records	1-18	Col A-B, 1-46	Grant	Sensitive competitive information pertaining to FiberNet
43-2/1		19	Col A-B, 1-15	Grant	Sensitive competitive information pertaining to FiberNet
43-2/2	Printout of Pre 96 Electronics Assets	1	Col A-B, 1-46	Grant	Sensitive competitive information pertaining to FiberNet

Staff Work Paper Number	Description	Page(s)	Line(s)	Grant Second 18 Month Extension	Type of Information Classified Confidential
Documents 11853-01 and 12244-01					
43-2/2	Printout of pre 96 Electronic Assets	2-3	Col A-B, 1-47	Grant	Sensitive competitive information pertaining to FiberNet
					information pertaining to FiberNet
43-3	Calculation of Fiber Miles		Col A, 8,10, 12-13; Col B, 1-8, 10,12-13	Grant	Sensitive competitive information pertaining to FiberNet
43-3/1	Support for Fiber Miles Support for Fiber Miles		Col A-D, 1-40	Grant	Sensitive competitive information pertaining to FiberNet
43-3/1		1	Col A-D, 1-49	Grant	Sensitive competitive information pertaining to FiberNet
43-3/1		3	Col A-D, 1-45	Grant	Sensitive competitive information pertaining to FiberNet
43-3/1		4	Col A-D, 1-50	Grant	Sensitive competitive information pertaining to FiberNet
43-3/1		5	Col A-D, 1-46	Grant	Sensitive competitive information pertaining to FiberNet
43-3/1		6	Col A-D, 1-48	Grant	Sensitive competitive information pertaining to FiberNet
43-3/1		7	Col A-D, 1-49	Grant	Sensitive competitive information pertaining to FiberNet
43-3/1		8	Col A-D, 1-27	Grant	Sensitive competitive information pertaining to FiberNet
43-3/2		1	Col A-D,1-51	Grant	Sensitive competitive information pertaining to FiberNet
43-3/2		2	Col A-D, 1-49	Grant	Sensitive competitive information pertaining to FiberNet
43-3/2		3	Col A-D, 1-46	Grant	Sensitive competitive information pertaining to FiberNet
43-3/2		4	Col A-D, 1-44	Grant	Sensitive competitive information pertaining to FiberNet
43-3/3		1	Col A-D, 1-53	Grant	Sensitive competitive information pertaining to FiberNet
43-3/4		1	Col A-D, 1-47	Grant	Sensitive competitive information pertaining to FiberNet



Staff Work Paper Number	Description	Page(s)	Line(s)	Grant Second 18 Month Extension	Type of Information Classified Confidential	
43-4	Printout of Pre 96 fiber Assets	1	Col A-D, 1-15	Grant	Sensitive competitive information pertaining to FiberNet	
43-4		-7	Col A-B, 1-46	Grant	Sensitive competitive information pertaining to FiberNet	
43-4		3	Col A-B, 1-29	Grant	Sensitive competitive information pertaining to FiberNet	
43-4/1	Printout of Post 95 Fiber Assets	1	Col A-B, 1-46	Grant	Sensitive competitive information pertaining to FiberNet	
43-4/1		2	Col A-B, 1-48	Grant	Sensitive competitive information pertaining to FiberNet	
43-4/1		3	Col A-B, 1-47	Grant	Sensitive competitive information pertaining to FiberNet	
43-4/1		4	Col A-B, 1-31	Grant	Sensitive competitive information pertaining to FiberNet	
43-5		Printout of Post 95 Electronic Assets	1	Col A-B, 1-46	Grant	Sensitive competitive information pertaining to FiberNet
43-5			2-3	Col A-B, 1-47	Grant	Sensitive competitive information pertaining to FiberNet
43-5	4		Col A-B, 1-47; Col C, 1,9	Grant	Sensitive competitive information pertaining to FiberNet	
43-5	5		Col A, 30; Col B, 1-28; Col C, 1-29; Col D, 27	Grant	Sensitive competitive information pertaining to FiberNet	
43-6	Support for DS3 Calculations		1	6-9,18-21	Grant	Sensitive competitive information pertaining to FiberNet
43-6		2	Col A-O, 2-3	Grant	Sensitive competitive information pertaining to FiberNet	
43-6		3	Col A-P, 3-4	Grant	Sensitive competitive information pertaining to FiberNet	
43-6		4	Col A-Q, 3-5	Grant	Sensitive competitive information pertaining to FiberNet	
43-6		5	Col A-J, 3-5	Grant	Sensitive competitive information pertaining to FiberNet	

Staff Work Paper Number	Description	Page(s)	Line(s)	Grant Second 18 Month Extension	Type of Information Classified Confidential	
43-6	Support for DS3 Calculations	5-7	Col A-P, 3-4	Grant	Sensitive competitive information pertaining to FiberNet	
43-6		8	Col A-P, 3-5	Grant	Sensitive competitive information pertaining to FiberNet	
43-6		9	Col A-Q, 3-4	Grant	Sensitive competitive information pertaining to FiberNet	
43-6		10-12	Col A-M, 3-5	Grant	Sensitive competitive information pertaining to FiberNet	
43-6		13	Col A-I, 3-5	Grant	Sensitive competitive information pertaining to FiberNet	
43-6		14	Col A-G, 3-5	Grant	Sensitive competitive information pertaining to FiberNet	
43-6		15	Col A-J, 3-5	Grant	Sensitive competitive information pertaining to FiberNet	
43-6		16	Col A-N, 3-4	Grant	Sensitive competitive information pertaining to FiberNet	
43-6		17	Col A-F, 3-5	Grant	Sensitive competitive information pertaining to FiberNet	
43-6		18	Col A-G, 2-3	Grant	Sensitive competitive information pertaining to FiberNet	
43-6		19	Col A-H, 3-5	Grant	Sensitive competitive information pertaining to FiberNet	
43-6/1			1-3	All	Grant	Sensitive competitive information pertaining to FiberNet
43-10		Billing to FPL for 2001	1	2-4,6-8; Col B, 10-12	Grant	Sensitive competitive information pertaining to FiberNet
43-10/1	First quarter billing to FPL	1	12,14,22	Grant		
43-10/1		2	1-22	Grant	FiberNet	
43-10/1		3	1-3	Grant	Sensitive competitive	
43-10/1		4	Col A, 5-16	Grant	Sensitive competitive information pertaining to FiberNet	

Staff Work Paper Number	Description	Page(s)	Line(s)	Grant Second 18 Month Extension	Type of Information Classified Confidential
Documents 11853 01 and 12244-01					
43-10/1	First quarter billing to FPL	5	Col A, 12; Col B, 5-11, 6,25-26; Col C, 3,5, 8-9,11, 17-24,26; Col D, 3,5-11, 16,19,22,24-25	Grant	Sensitive competitive information pertaining to FiberNet
43-10/1			7,11-12	Grant	Sensitive competitive information pertaining to FiberNet
43-10/2	Second Quarter Billing to FPL	1	1-4	Grant	Sensitive competitive information pertaining to FiberNet
43-10/2		2	1-23	Grant	Sensitive competitive information pertaining to FiberNet
43-10/2		3	Col A, 6-16, 20-21	Grant	Sensitive competitive information pertaining to FiberNet
43-10/2		4	Col A, 5-11, 15,24-25; Col B, 3,5,8-9, 11,16-23,25; Col C, 3,5-11, 15,18,21,23-24; Col D, 15,18, 21,23-24; Col E, 18	Grant	Sensitive competitive information pertaining to FiberNet
43-10/2		5	11-12	Grant	Sensitive competitive information pertaining to FiberNet
43-11	Info Re Return on Investment	1	25	Grant	Sensitive competitive information pertaining to FiberNet

A temporary copy of this recommendation will be held at I:12244-01.ext2fplraf.doc for a short period.

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