



ORIGINAL

Public Service Commission

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**DATE:** June 15, 2007

**TO:** Martha Brown, Attorney, General Counsel

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

**RE:** Docket 070007-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 Environmental Cost Recovery Clause Audit for the Year Ended December 31, 2004", Audit Control No. 05-033-4-1, Documents Numbered 07166-05 and 07567-05

On July 14, 2005, when copies of certain portions of staff's working papers obtained or prepared during the "FPL Environmental Cost Recovery Clause Audit for the Year Ended December 31, 2004", 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 27, 2005, staff filed documents 07166-05 consisting of those specified portions of the staff working papers.

On August 4, 2005, 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 (document 07568-05) and highlighted copies (document 07567-05).

On September 16, 2005, the Commission issued Order No. PSC-05-0917-CFO-EI in Docket 050007-EI, granting FPL's request. That confidential classification period has now tolled.

CMP On March 15, 2007, FPL filed a request to extend the confidential classification period granted by Commission Order PSC-05-0917-CFO-EI

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CTR Documents 07166-05 and 07567-05 are currently held by the Office of the Commission Clerk as confidential pending resolution of FPL's request for extension of the confidential classification period.

GCL

OPC 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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Florida Power & Light Request

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 for Extension of the Confidential Classification Period**

Reading the FPL request for extension 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, points out the material is not either stale or public. Witness Onsgard further recommends that the identified material be held as confidential for an additional period of not less than 18 months, and identifies the sensitive materials found within staff working papers titled: “List of Internal Audits” and “Internal audit.”

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

## 2. Customer-specific account information

FPL witness Korel M. Dubin, FPL Manager of Regulatory Issues, asserts that the identified customer-specific information remains sensitive and is not stale or public and should be granted an extension of the confidential classification period on the basis that release of this information would harm competitive business interests. Subsection 366.093(e), F. S., provides that the Commission may grant a confidential classification to sensitive competitive business information if public release will harm the provider of that information.

Witness Dubin identifies materials that are still sensitive and associated with customer-specific account information as reported within staff working papers titled: "Revenue."

She states: "It is FPL's corporate policy not to disclose customer-specific information. This policy includes, 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. FPL treats such information as confidential and does not disclose it, except as required by law, to entities or persons other than the customer absent the customer's consent...." Witness Dubin further recommends that the identified material be held as confidential for at least an additional 18 months.

After reading the information identified by witness Dubin we recommend that this 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 business information would cause the provider of that information harm.

### **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 Dubin 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. 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 extension of the confidential classification period 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 an extension of confidential classification for 18 months.

A detailed recommendation follows:

**Detailed Recommendation**

| Staff Work Paper Number         | Description             | Page(s) | Line(s)     | Recommend Grant 18 Month Extension | Type of Information Classified Confidential                 |
|---------------------------------|-------------------------|---------|-------------|------------------------------------|---|
| Documents 07166-05 and 07567-05 |                         |         |             |                                    |   |
| 9                               | List of Internal Audits | 1       | Col C       | Grant                              | Internal auditing controls and reports of internal auditors |
| 9-1                             | Internal Audit          | 1-2     | All         | Grant                              | Internal auditing controls and reports of internal auditors |
| 41-1/1-1                        | Revenue                 | 1-2     | Col A, 1-51 | Grant                              | Sensitive competitive business information                  |
| 41-1/1-2                        | Revenue                 | 1       | Col A, 1-51 | Grant                              | Sensitive competitive business information                  |
| 41-1/1-2                        | Revenue                 | 2       | Col A, 1-9  | Grant                              | Sensitive competitive business information                  |

A temporary copy of this recommendation will be held at I:07567-05. ext fp1 raf.doc for a short period.

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