



RECEIVED-FPSC Public Service Commission

08 SEP -5 PM 3:40 CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD TALLAHASSEE, FLORIDA 32399-0850

COMMISSION CLERK

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

DATE: September 4, 2008
TO: Roseanne Gervasi, Attorney, Office of General Counsel
FROM: Division of Regulatory Compliance and Consumer Assistance (Freeman, Vandiver)
RE: Docket 011403-EI, Recommendation concerning Florida Power & Light Company's (FPL's) request for a 4th extension of confidential classification concerning a portion of the staff working papers obtained or prepared during the audit numbered 01-073-4-1 entitled "FPL Earnings Surveillance for the year ended December 31, 2000", Documents Numbered 13412-01 and 13656-01

On October 11, 2001, when copies of certain portions of staff's working papers obtained or prepared during the "FPL Earnings Surveillance Audit for the year ended December 31, 2000", 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 23, 2001, staff filed Document No. 13412-01 consisting of those specified portions of the staff working papers.

On October 29, 2001, 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 No. 13655-01) and complete copies of the material with the sensitive portions highlighted (Document No. 13656-01).

On December 5, 2001, Commission Order No. PSC-01-2339-CFO-EI was issued in Docket No. 011403-EI granting the utility's request and providing 18 months confidential classification for the specified material.

On May 30, 2003, FPL filed a first request for extension of the confidential classification for material granted by Commission Order PSC-01-2339-CFO-EI.

COM
ECR On August 4, 2003, Commission Order No. PSC-03-0892-CFO-EI issued in Docket No. 011403-
GCL EI granted FPL's request for extension of the confidential classification for an additional 18
OPC months.

RCP On February 3, 2005, FPL requested that confidential classification for this materials be
SSC extended a second time.

SGA

ADM

CLK Marguente

DOCUMENT NUMBER-DATE

08242 SEP-5 08

FPSC-COMMISSION CLERK

On March 23, 2005, Commission Order No. PSC-05-0332-CFO-EI issued in Docket No. 011403-EI granted FPL's request for an extension of confidential classification for a second 18 month period.

On September 28, 2006, FPL requested that confidential classification for this material be extended for a third time.

On November 28, 2006, Commission Order No. PSC-06-0980-CFO-EI issued in Docket No. 011403-EI granted FPL's request for an extension of confidential classification for a third 18 month period. That extension has now tolled.

On May 28, 2008, FPL requested that confidential classification for this material be extended for a fourth time.

On June 11, 2008, after discussions with the staff, FPL amended its request for a 4th extension of confidential classification reducing the amount of material to be granted an extended classification.

Documents numbered 13412-01 and 13656-01 are currently held by the Commission's Office of Commission Clerk as confidential pending resolution of FPL's request for a 4th 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. Subsection 366.093(3)(b), F.S., provides the following exemption:

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...."

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:

Internal auditing controls and reports of internal auditors.

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: "Summary Internal and External Audit", "Internal Audit Notes, "Audit Reports", and "Reconciliation." Mr. Onsgard represents this information is not stale and continues to be proprietary confidential business information and should be accorded a confidential classification.

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

FPL employee Onsgard indicates that the information identified is held as confidential by FPL and this information is not released to the public.

Duration of the Confidential Classification Period

According to the provisions of Section 366.093(4), F.S., absent good cause shown, confidential classification is limited to 18 months. Further, FPL requests that this material be returned to the utility once the information is no longer needed for the Commission to conduct its business.

In this case, the sensitive material pertains to information gathered from internal audits describing specific FPL operations pertaining to calendar year 2000. Thus, the information has been held as confidential for longer than a 5 year period and the utility is requesting that the information remain confidential for an even longer period. In a prior case, Commission Order No. PSC-94-1224-CFO-EI, issued October 6, 1994, in Docket No. 940001-EI, held that 5 years is a reasonable time to hold sensitive commercial information as confidential when the material remains sensitive over a long period. Commission Order PSC-94-1224-CFO-EI also provides that if a utility requests that information be held as sensitive for longer than 5 years, the utility would have to specifically justify the need for a longer classification period.

In the past, the Commission has allowed customer-specific account information to be held as confidential for longer than 5 years (See Commission Order No. PSC-03-1437-CFO-EG, issued on December 19, 2003, in Docket 030002-EG and Commission Order No. PSC-04-0794-CFO-EG, issued August 13, 2004, in Docket No. 040002-EG).

Here the information at issue is information taken from the internal audits of the company. Further, the material has been specifically reviewed by the utility and the staff to eliminate information which is stale or no longer sensitive. Internal audits are the method by which management of a company examines and prepares written reports concerning how efficiently a company operates to include how well a company safeguards its assets. The internal auditing information remaining at issue here pertains to the current processes the utility uses to conduct its business. These processes are commonly referred to as the internal controls of the company which are used to safeguard the assets of the company.

We also note that FPL has requested 4 times that the internal auditing information presented here be held in a confidential status and staff agrees with the Utility that this information if released would still reasonably cause harm to the company and its ratepayers. Thus, according to the provisions of Section 366.093(4), Florida Statutes, technical staff recommends that FPL has demonstrated good cause for setting a 5 year extension of the confidential classification period for the identified internal auditing information.

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 an extension of confidential classification for 5 years.

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)	Recommend Granting an 5 year Extension	Type of Information Classified Confidential
Documents 13412-01 and 13656-01					
9A	Summary Internal and External Audit	1-2	All	Grant	Internal auditing controls and reports of internal auditors
9-1	Internal Audit Notes	1-9	All	Grant	Internal auditing controls and reports of internal auditors
9-2	Internal Audit Notes	1-2	All	Grant	Internal auditing controls and reports of internal auditors
9-3	Internal Audit Notes	1-5	All	Grant	Internal auditing controls and reports of internal auditors
9-4	Internal Audit Notes	1-3	All	Grant	Internal auditing controls and reports of internal auditors
9-7	Internal Audit Notes	1-5	All	Grant	Internal auditing controls and reports of internal auditors

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend Granting an 5 year Extension	Type of Information Classified Confidential
Documents 13412-01 and 13656-01					
9-9	Internal Audit Notes	1-3	All	Grant	Internal auditing controls and reports of internal auditors
9-15	Internal Audit Notes	1-5	All	Grant	Internal auditing controls and reports of internal auditors
9-17	Internal Audit Notes	1-2	All	Grant	Internal auditing controls and reports of internal auditors
9-18	Internal Audit Notes	1-2	All	Grant	Internal auditing controls and reports of internal auditors
9-22	Internal Audit Notes	1-4	All	Grant	Internal auditing controls and reports of internal auditors
9-24	Internal Audit Notes	1-2	All	Grant	Internal auditing controls and reports of internal auditors
9-25	Internal Audit Notes	1	All	Grant	Internal auditing controls and reports of internal auditors
10	Audit Reports	3	9-15	Grant	Internal auditing controls and reports of internal auditors
59	Reconciliation	1	20-28	Grant	Internal auditing controls and reports of internal auditors
59	Reconciliation	2	All	Grant	Internal auditing controls and reports of internal auditors
59	Reconciliation	3	9-19	Grant	Internal auditing controls and reports of internal auditors

A temporary copy of this recommendation will be held at I:13656-01.ext4 surveillance raf internal audit.doc for a short period.

CC: Division of Regulatory Compliance (Welch)
Commission Clerk's Office (Cole, McLean)