

# ORIGINAL

State of Florida



Public Service Commission | AM 9:59

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

**DATE:** October 30, 2003  
**TO:** Office of General Counsel (Holley) *F W*  
**FROM:** Division of Auditing and Safety (Freeman, Vandiver)  
**RE:** Docket 030002-EG, Recommendation concerning Florida Power & Light Company's (FPL's) request for 2nd extension of confidential classification for a portion of the staff's working papers obtained or prepared during audit numbered 98-173-4-1, FPL Energy Conservation Cost Recovery (ECCR) Audit for the 6 months ended March 31, 1998, Documents numbered 11948-98 and 12622-98

On October 20, 1998, when copies of certain portions of staff's working papers obtained or prepared during the FPL energy conservation cost recovery audit for the 6 months ended March 31, 1998, were delivered to FPL at the audit exit conference, the utility requested that these materials be temporary excepted from public access in accordance with the provisions of Rule 25-22.006(3)(a)(2), Florida Administrative Code (FAC).

On October 26, 1998, staff filed document 11948-98 consisting of those specified portions of the staff working papers.

On November 10, 1998, the utility filed a request pursuant to Rule 25-22.006, FAC, and Section 366.093, Florida Statutes (F.S.), that selected portions of the working papers prepared by staff during the audit receive confidential classification. The utility's request included redacted copies for public inspection (document 12621-98) and highlighted copies (document 12622-98).

On January 26, 2000, Commission Order PSC-00-0194-CFO-EG, granted 18 months confidential classification for the indicated portions of documents 11948-98 and 12622-98.

On November 16, 2001, FPL's request was granted an 18 month extension of this confidential classification period by Order PSC-01-2249-CFO-EG.

On October 1, 2001, staff requested that 36 audit working papers (known as the Working Paper (WP) 43-9 series) be returned to FPL because these working papers reported the social security number of individuals. The social security numbers were no longer needed by the staff to support the audit conclusions and have been returned to FPL.

On May 15, 2003, FPL requested a second extension of confidential classification for some, but not all, of these audit materials.

AUS  
CAF  
CMP  
COM  
CTR  
ECR  
GCL  
OPC  
MMS  
SEC  
OTH

*Marquardt*

DOCUMENT 11948-98  
10811 OCT 31 2003  
REC'D-CONFIDENTIAL

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On September 5, 2003, after discussions with the staff, FPL filed a revision of their request; clarifying which information was subject to the request for 2nd extension of confidential classification, recognizing that Working Paper 43-9 series had been returned to FPL, and indicating FPL's intention to maintain an extended confidential status for the names of non governmental customers and account numbers of customers associated with electric usage.

Documents 11948-98 and 12622-98 are held by the Commission's Bureau of Records and Hearing Services as confidential pending the outcome of FPL's 2nd 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. Subsection 366.093(3)(e) provides the following exemption:

"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:....

(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 FPL's May 15, 2003 filing as revised on September 5, 2003, exhibits A and B from the utility's November 10, 1998 original filing, Commission Order PSC-00-0194-CFO-EG, and Commission Order PSC 01-2249-CFO-EG reveal the sensitive material consists of customer-specific account information provided alongside electric usage.

Long-standing Commission policy has allowed non governmental customer-specific information to be granted a confidential classification. (See Order 22851, dated April 23, 1990, Order 96-1478, dated December 4, 1996; Order 98-0421, dated March 24, 1998, and Order 00-1569, dated August 31, 2000, Order 00-0194, dated January 26, 2000, and Order 01-2249, dated November 16, 2001).

Dennis Brandt, FPL Director, Product Development and Management, reaffirms his 2001 affidavit and identifies the sensitive customer account information. In the pleading, FPL reports this information is not stale or public and remains sensitive. Mr. Brandt and FPL also indicate FPL's intention to maintain this information as confidential.

### **Duration of the Confidential Classification Period**

FPL witness Brandt explains the nature of this continuing sensitivity as due to the fact that "....Customer usage patterns may not vary significantly from year to year. Thus disclosure of a prior year's data may afford competitors an unfair advantage insofar as they may be able to deduce certain characteristics of the customer's operations, demand, or business cycle based upon electric usage or consumption patterns with respect to future operations. The fact that an individual account may have become inactive does not necessarily render the information non-competitively sensitive. Often businesses have multiple accounts one or more of which may become inactive as businesses locations change. Nevertheless, information from an inactive account could still be used to infer competitive data regarding the customer's other locations. FPL does not release the information of a single inactive account because it does not track and cannot say whether the account is part of a multi-site operation or business. Further, the fact that an account number shows up as inactive in FPL's records does not mean that the business has ceased operations. A business that has relocated or come under new ownership will receive a new account number and will continue to have an interest in continued confidentiality of the information pertaining to the prior account number. FPL believes that its customers have a continued right and expectation regarding the privacy of their information. FPL has maintained the confidentiality of this information and does not disclose such information to third parties unless required by law or unless the customer or vendor consents to such disclosure....FPL believes the Commission should support this policy by continuing to maintain the information as confidential for as long as the Commission retains the information...."

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According to the provisions of Section 366.093(4), F.S., absent good cause shown, confidential classification is limited to 18 months. In this instance, we recommend the Commission find that FPL has shown the need for a longer period of confidential classification for this 1998 information concerning customer-specific account information associated with electric usage. FPL has demonstrated its intent to protect this information by repeatedly filing for an extension of confidential classification when this type of information is held by the Commission. FPL has also provided a reasonable explanation as to why this information remains sensitive after 5 years, and why it will remain so for a reasonable time in the future.

In the past, the Commission has considered how long confidential classification should last for commercial business information that remains sensitive for an extended period. Commission Order PSC-94-1224-CFO-EI allowed a five year period as a reasonable period of time to grant a confidential classification for material which remains sensitive for an extended period. Order 94-1224-CFO-EG also provided that material granted a 5 year classification period could be reexamined for any additional extensions upon request. We recommend that this 1998 material has and will remain sensitive over an extended period of time and therefore should be granted an extension of confidential classification for an additional 5 year period.

### **Staff Recommendation**

For the reasons presented above, we recommend the utility's request for extension of confidential classification be granted and that the identified material be granted a confidential classification for an additional 5 years.

A detailed recommendation regarding the material follows:

### **Detailed Recommendation**

| Staff Work Paper Number         | Page(s) | Line(s) | Recommend 5-year Classification Extension | Type of Information Classified Confidential        |
|---------------------------------|---------|---------|---|--|
| Documents 11948-98 and 12622-98 |         |         |   |  |
| 44-1/1-1/3                      | 1       | 1-19    | Grant                                     | Customer account information associated with usage |
| 44-1/1-1/3                      | 2       | 1-21    | Grant                                     | Customer account information associated with usage |
| 44-1/1-1/3                      | 3       | 1-19    | Grant                                     | Customer account information associated with usage |

| Staff<br>Work<br>Paper<br>Number | Page(s) | Line(s) | Recommend<br>5-year<br>Classification<br>Extension | Type of Information<br>Classified Confidential     |
|----------------------------------|---------|---------|--|--|
| Documents 11948-98 and 12622-98  |         |         |  |  |
| 44-1/1-1/3                       | 4       | 1-24    | Grant  | Customer account information associated with usage |
| 44-1/1-1/3                       | 5       | 1-22    | Grant  | Customer account information associated with usage |
| 44-1/1-1/3                       | 6       | 1-20    | Grant  | Customer account information associated with usage |
| 44-1/1-1/3                       | 7       | 1-20    | Grant  | Customer account information associated with usage |
| 44-1/1-1/3                       | 8       | 1-25    | Grant  | Customer account information associated with usage |
| 44-1/1-1/3                       | 9       | 1-22    | Grant  | Customer account information associated with usage |
| 44-1/1-1/3                       | 10      | 1-22    | Grant  | Customer account information associated with usage |
| 44-1/1-1/3                       | 11      | 1-20    | Grant  | Customer account information associated with usage |
| 44-1/1-1/3                       | 12      | 1-20    | Grant  | Customer account information associated with usage |
| 44-1/1-1/3                       | 13      | 1-22    | Grant  | Customer account information associated with usage |
| 44-1/1-1/3                       | 14      | 1-23    | Grant  | Customer account information associated with usage |
| 44-1/1-1/3                       | 15      | 1-22    | Grant  | Customer account information associated with usage |
| 44-1/1-1/3                       | 16      | 1-18    | Grant  | Customer account information associated with usage |
| 44-1/1-1/3                       | 17      | 1-18    | Grant  | Customer account information associated with usage |
| 44-1/1-1/3                       | 18      | 1-18    | Grant  | Customer account information associated with usage |

| Staff<br>Work<br>Paper<br>Number | Page(s) | Line(s) | Recommend<br>5-year<br>Classification<br>Extension | Type of Information<br>Classified Confidential     |
|----------------------------------|---------|---------|--|--|
| Documents 11948-98 and 12622-98  |         |         |  |  |
| 44-1/1-1/3                       | 19      | 1-20    | Grant  | Customer account information associated with usage |
| 44-1/1-1/3                       | 20      | 1-24    | Grant  | Customer account information associated with usage |
| 44-1/1-1/3                       | 21      | 1-25    | Grant  | Customer account information associated with usage |
| 44-1/1-1/3                       | 22      | 1-22    | Grant  | Customer account information associated with usage |
| 44-1/1-1/3                       | 23      | 1-20    | Grant  | Customer account information associated with usage |
| 44-1/1-1/3                       | 24      | 1-21    | Grant  | Customer account information associated with usage |
| 44-1/1-1/3                       | 25      | 1-26    | Grant  | Customer account information associated with usage |
| 44-1/1-1/3                       | 26      | 1-27    | Grant  | Customer account information associated with usage |
| 44-1/1-1/3                       | 27      | 1-27    | Grant  | Customer account information associated with usage |
| 44-1/1-1/3                       | 28      | 1-30    | Grant  | Customer account information associated with usage |
| 44-1/1-1/3                       | 29      | 1-30    | Grant  | Customer account information associated with usage |
| 44-1/1-1/3                       | 30      | 1-28    | Grant  | Customer account information associated with usage |
| 44-1/1-1/3                       | 31      | 1-24    | Grant  | Customer account information associated with usage |
| 44-1/1-1/3                       | 32      | 1-26    | Grant  | Customer account information associated with usage |
| 44-1/1-1/3                       | 33      | 1-26    | Grant  | Customer account information associated with usage |

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| Staff<br>Work<br>Paper<br>Number | Page(s) | Line(s) | Recommend<br>5-year<br>Classification<br>Extension | Type of Information<br>Classified Confidential        |
|----------------------------------|---------|---------|--|---|
| Documents 11948-98 and 12622-98  |         |         |  |   |
| 44-1/1-1/3                       | 34      | 1-10    | Grant  | Customer account information<br>associated with usage |

A temporary copy of this recommendation will be held at I:12622-01.extend2.raf.wpd for a short period.

CC: Division of Auditing and Safety (Welch)  
Division of Commission Clerk and Administrative Services (Flynn)