

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased Power ) DOCKET NO. 940001-EI  
Cost Recovery Clause and ) ORDER NO. PSC-94-0954-CFO-EI  
Generating Performance Incentive ) ISSUED: August 8, 1994  
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ORDER GRANTING IN PART AND DENYING IN PART REQUEST FOR  
CONFIDENTIAL CLASSIFICATION

During the 1993 fuel audit of Florida Power & Light Company (FPL), Commission Staff requested access to various FPL records. FPL asserts that certain confidential material was obtained by Staff through notetaking and the copying of portions of FPL's fuel, transportation, terminaling, and inspection service contracts. FPL argues that portions of this information should be classified as proprietary confidential business information pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. Accordingly, on June 28, 1993, Florida Power and Light Company (FPL) filed a Request for Confidential Classification of Certain Materials Obtained by the Staff as Part of its June 1993 Fuel Audit. Said documents were assigned document numbers 06966-93 and 06967-93. Corresponding staff audit workpapers were assigned document numbers 06500-93 and 06051-93.

Florida law provides, in Section 119.01, Florida Statutes, that documents submitted to governmental agencies shall be public records. The only exceptions to this law are specific statutory exemptions, and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. This law derives from the concept that government should operate in the "sunshine."

Pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, FPL has the burden to show that the material submitted is qualified for confidential classification. Rule 25-22.006, Florida Statutes, provides that the Company may fulfill its burden by demonstrating that the information falls under one of the statutory examples set out in Section 366.093, Florida Statutes, or by demonstrating that the information is proprietary confidential business information, the disclosure of which will cause the Company or its ratepayers harm.

Section 366.093(3), Florida Statutes, provides several examples of proprietary confidential business information. Included in this list is "[i]nformation concerning bids or other contractual data, the disclosure of which would impair the efforts

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of the public utility or its affiliates to contract for goods or services on favorable terms." To establish that material is proprietary confidential business information under Section 366.093 (3) (d), Florida Statutes, a utility must demonstrate (1) that the information is contractual data, and (2) that the disclosure of the data would impair the efforts of the utility to contract for goods or services on favorable terms. This Commission has previously recognized that this latter requirement does not necessitate the showing of actual impairment, or the more demanding standard of actual adverse results; instead, it must simply be shown that disclosure is "reasonably likely" to impair the company's contracting for goods or services on favorable terms.

On audit report page number 10, line 39 and work paper number 9-1/1-1 P.2 line 39, FPL claims that the name of this No. 6 fuel oil supplier has been kept confidential so that the specific type of quality adjustment can not be associated with this particular supplier. Because the cargo-by-cargo quality adjustment is a negotiated contractual provision with certain No. 6 fuel oil suppliers, disclosure of the name of the supplier may result in that supplier withdrawing favorable concessions in future contracts. FPL requested a declassification date of March 31, 1994, which has since passed. Therefore, because the time for declassification has passed, without making a determination on the substance of FPL's request for confidential classification as it relates to line 39 on audit report page number 10 and work paper number 9-1/1-1 P.2, the request is denied.

Likewise, FPL has requested confidential classification for information on audit report page number 13, line 19, lines 17-28, 22-25 and work paper numbers 9-1/1-1 P. 5, lines 17-18, 19, and 22-23. The date requested by FPL for declassification of this information is July 8, 1993. Accordingly, since that date too has passed, without making a determination on the substance of FPL's request, FPL's request for confidential classification as it relates to these pages and lines is denied.

Similarly, FPL has requested confidential classification for information on work paper 9-1/1-2 P.1, lines 13-14. The date requested by FPL for declassification of this information is July 5, 1993. Accordingly, since that date has also passed, without making a determination on the substance of FPL's request, FPL's request for confidential classification as it relates to work paper 9-1/1-2 P.1 is denied.

FPL argues that Attachment A, pages 4-7, all lines, (Document No. 06501-93) and corresponding work papers numbers 9-1 P.1-4 and 9-2 (Document No. 06966-93) to FPL's request for confidential

classification is derived from an internal audit. The material in Attachment A was obtained from FPL in response to Commission Staff's document request. The work papers were compiled by Commission Staff from reports of FPL's internal auditors and the auditors supporting work papers. The information in Attachment A is intended to be and is treated by FPL as confidential, that this information has not been publicly disclosed, and that it has been circulated to a select few FPL employees on a need to know basis only. All of the material in Attachment A and the corresponding work papers was extracted from an internal audit, and accordingly, it meets the definition of proprietary confidential information, pursuant to Section 366.093(3)(b), Florida Statutes, therefore, confidential status is granted.

FPL contends that the data on work paper number 9-3/1, lines 16 and 32 is contractual information, which if made public, would impair FPL's efforts to contract for goods and services on favorable terms. This information delineates the price or algebraic formula for deriving the price of No. 6 fuel oil per barrel for specific shipments from specific suppliers. The No. 6 fuel oil market is an oligopolistic market. Disclosure of a supplier's No. 6 fuel oil price is reasonably likely to cause suppliers to converge on a target price, or follow a price leader, thereby effectively eliminating any opportunity for a major buyer, like FPL, to use its market presence to gain price concessions from any one supplier. We agree that the disclosure of the price of No. 6 fuel oil or the algebraic formulation of that price paid by FPL to specific fuel suppliers is reasonably likely to impair FPL's ability to negotiate favorable price concessions in future No. 6 fuel oil contracts. Therefore, this information is proprietary confidential business information and it is granted confidential status.

On work paper 9-3/2 P. 1, FPL argues that lines 5, 12-13, and 20, is contractual information, which if publicly disclosed would impair FPL's efforts to contract for goods and services on favorable terms. An examination of the material reveals that this information delineates the price or algebraic formula for deriving the price of No. 6 fuel oil per barrel for specific shipments from specific suppliers, as discussed above. This work paper also contains provisions for quantity and quality adjustments. FPL contends that negotiated No. 6 fuel oil contractual concessions are, in effect, pricing terms, and are as important as the price itself. Public disclosure of these terms, or even the existence of these terms, could result in these terms being withdrawn in future contracts. In an oligopolistic market, once the suppliers learn of a concession, the conceding supplier will be forced to withdraw from future concessions. In addition, FPL asserts that it is

obligated under the contract not to disclose specific negotiated terms. Thus, this information is found to be proprietary confidential business information and is granted confidential status.

On work paper 9-3/2 P. 2, FPL asserts that lines 1-11, 15, 18-19, is contractual information which, if made public, would impair the efforts of FPL to contract for goods or services on favorable terms. The lines delineate the price or the algebraic formula for deriving the price of No. 6 fuel oil per barrel for specific shipments from specific suppliers. Again, for the reasons discussed previously, the disclosure of this information would allow suppliers to compare an individual supplier's price with the market quote for that date of delivery and thus determine the contract pricing formula between FPL and that supplier. Disclosure of this information would effectively decrease FPL's ability to negotiate favorable price concessions in the future, which may result in higher electric rates. Accordingly, this information is found to be proprietary confidential business information and is granted confidential status.

FPL states that the data on work paper 9-3/5 P. 1, lines 11-13, and 21 are negotiated contractual concessions for transportation and terminaling services, and are, in effect, pricing terms which are as important as the price itself. Disclosure of negotiated contractual concessions would be detrimental to FPL's customers since suppliers would be reluctant or unwilling to grant concessions that other potential purchasers would then expect. Moreover, FPL is contractually obligated not to disclose negotiated contractual provisions of the terminaling and transportation agreements. This data is found to be proprietary business information and is granted confidential status.

Concerning the information on work papers 9-3/5 P. 1, lines 26-27, 31-32, and 37-39, and 9-3/5 P. 2, lines 1-4, FPL contends that terminaling and transportation services in Florida tend to have the same, if not more severe, oligopolistic attributes of No. 6 fuel oil suppliers. Due to the small demand in Florida for terminaling and transportation services, market entry is difficult. Disclosure of the price of these services is reasonably likely to result in increased prices for terminaling and transportation services which would ultimately adversely affect FPL's customers. This type of information is similar to the terminaling and transportation service information which the Commission routinely keeps confidential when FPL files its monthly fuel reports, Form 423, with the Commission. In addition, FPL is contractually obligated to keep this price information confidential.

Accordingly, this is found to be proprietary business information and is granted confidential status.

DECLASSIFICATION

Specifically, as to Attachment A, pages 4-7, and the corresponding audit work papers, FPL requests that they not be declassified for a period of 18 months from the date of this Order and should be returned to FPL as soon as the information is no longer necessary for the Commission to conduct its business, in accordance with Section 366.093(4), Florida Statutes. It is appropriate that the information in Attachment A, as described herein, shall remain confidential for a period of 18 months from the date of this Order and shall be returned pursuant to Section 366.093(4), Florida Statutes.

FPL requests that for the remaining information for which the company has requested confidential classification, as identified above, said information not be disclosed until the identified dates of declassification. The company has requested that the dates of declassification be determined by adding six (6) months to the last day of the contract period under which the goods or services identified were purchased. FPL argues that disclosure of pricing information during the contract period or prior to the negotiation of a new contract is reasonably likely to impair FPL's ability to negotiate future contracts as described above.

FPL maintains that it typically renegotiates its No. 6 fuel oil contracts and terminaling and transportation service contracts prior to the end of such contracts. However, on occasion some contracts are not renegotiated, until after the end of the current contract period. In those instances, the contracts are typically renegotiated within six (6) months. Consequently, it is necessary to maintain the confidentiality of the information identified as confidential for six (6) months after the end of the individual contract period to which the information relates.

In prior instances this Commission has approved similar declassification dates in regard to FPL's monthly filing of its fuel reports, Form 423.

Therefore, the following declassification dates for the confidential information as it relates to the appropriate contract subject matter on the Commissions Staff's work papers is approved. In these instances FPL has requested confidential treatment for a period of time up to the contract term, which did not exceed 18 months, plus an additional 6 month period at the end of the

contract period to permit time for renegotiation. Its request comports with Rule 25-22.006(8)(a), Florida Administrative Code.

<u>Work Paper</u>	<u>Lines</u>	<u>Declassification Date</u>
9-3/1	16, 32	10-30-1994
9-3/2 P.1	5, 12-13, 20	10-30-1994
9-3/2 P.2	1-11, 15, 18-19	10-30-1994

However, in regards to information shown on workpapers 9-3/5 Page 1 and Page 2, FPL requests that the confidential information regarding the following items not be declassified for a period of 28 months from the date of this Order. Section 366.093(4), Florida Statutes, states that "[a]ny finding by the commission that records contain proprietary confidential business information is effective for a period set by the commission not to exceed 18 months, unless the commission finds, for good cause shown, that the protection from disclosure shall be for a specified longer period." As to this information, good cause has not been shown to hold this contractual information confidential for such a lengthy period. Instead, this contractual data shall be confidential for a period of 18 months as shown below. Before the end of this time period, FPL may resubmit a petition to extend the confidential period.

<u>Work Paper</u>	<u>Lines</u>	<u>Date Requested</u>	<u>Date Granted</u>
9-3/5 P.1	11-13, 21	09-30-96	12-30-95
9-3/5 P.1	26-27, 31-32,		
	37-39	09-30-96	12-30-95
9-3/5 P.2	1-4	09-30-96	12-30-95

In consideration of the foregoing, it is

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that the request for confidential classification of document numbers 06967-93 and 06966-93, and the corresponding staff audit workpapers document numbers 06500-93 and 06501-93, filed by Florida Power and Light Company is granted in part and denied in part as set forth in the body of this Order. It is further

ORDERED that this information shall be classified as proprietary confidential business information for the periods discussed in the body of this Order. It is further

ORDERED that this Order will be the only notification by the Commission to the parties concerning the expiration of the confidentiality period.

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By ORDER of Susan F. Clark, as Prehearing Officer, this 8th  
day of August, 1994.

  
SUSAN F. CLARK, Commissioner and  
Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.