

Steel Hector & Davis
Tallahassee, Florida

December 11, 1990

HAND-DELIVERED

Mr. Steve Tribble
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, FL 32399

RE: DOCKET NO. 900796-EI

Dear Mr. Tribble:

Enclosed for filing please find the original and fifteen (15) copies of Florida Power & Light Company's Motion for Protective Order and Request for Confidential Classification in this docket. I am also enclosing Attachments A and B which contain one copy of all the documents (7 documents in total) for which confidential classification is being sought either (1) with a highlighted cover page and label indicating that the entire document is confidential, or (2) with the confidential information highlighted if the entire document is not confidential.

For document nos. 6 and 7 of Attachment B, which are not confidential in their entireties, I have enclosed two (2) additional copies of the documents with the confidential information deleted from the documents. These copies of document nos. 6 and 7 are available for public inspection as required by Rule 25.22.006(4)(a), F.A.C.

Finally, I am enclosing a 3.5 inch diskette that contains the Motion for Protective Order and Request for Confidential Classification. I would appreciate it if you would please return the diskette to Steel Hector & Davis once you have copied the document onto your system.

If you have any questions concerning these documents, please do not hesitate to call me.

Respectfully submitted,

Greg Anderson
Greg N. Anderson

*filed
in
10936
(Tallahassee)*

RECEIVED & FILED

Law
FPSC BUREAU OF RECORDS

FPSC-RECORDS/REPORTING
10937 DEC 11 1990
DOCUMENT NUMBER-DATE

All Parties of Record

Tallahassee Office
215 South Monroe
Suite 801
Tallahassee, FL 32301-1504
(904) 222-2300
Fax: (904) 222-8410

4000 Southeast Financial Center
Miami, FL 33131-2398
(305) 577-2800
Fax: (305) 358-1418

515 North Flagler Drive
1200 Northbridge Centre 1
West Palm Beach, FL 33401-4307
(407) 850-7200
Fax: (407) 855-1509

440 Royal Palm
Palm Beach, FL 33480
(407) 850-7200

motion
DOCUMENT NUMBER-DATE
10935 DEC 11 1990
FPSC-RECORDS/REPORTING

DOCUMENT NUMBER-DATE
10936 DEC 11 1990
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Florida Power &
Light Company for Inclusion of
the Scherer Unit 4 Purchase in
Rate Base.

Docket No. 900796-EI
Filed: 12/11/90

**FLORIDA POWER & LIGHT COMPANY'S
MOTION FOR PROTECTIVE ORDER AND
REQUEST FOR CONFIDENTIAL CLASSIFICATION**

Pursuant to Rule 25-22.006, Fla. Admin. Code, § 366.093, Fla. Stat. (1989), and Fla.R.Civ.P. 1.280(c), Florida Power & Light Company ("the Company") moves for a protective order stating that the following documents are confidential and exempt from § 119.07(1), Fla. Stat. (1989), and that they are to receive confidential classification in both this proceeding and any appeal taken from this proceeding:

(1) Agreement for the Sale and Purchase of Coal, dated March 31, 1977, between Georgia Power Company, A.T. Massey Coal Company, Inc. and Marrowbone Development Company (including amendments) (Attachment A, No. 1).

(2) Agreement dated December 1, 1987, between Georgia Power Company, Delta Coals Equity Company, Inc., Humphreys Enterprises, Inc., Greater Wise, Inc., Red River Coal Company, Pardee Coal Company and Delta Coals, Inc. (including notices related thereto) (Attachment A, No. 2).

(3) Agreement dated July 1, 1989, between Georgia Power Company and Mingo Logan Coal Company (including amendment) (Attachment A, No. 3).

(4) Agreement dated May 21, 1981, between Georgia Power Company and Central of Georgia Railroad Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, and Southern Railway Company (including amendments) (Attachment A, No. 4).

(5) Contract dated December 29, 1983, between Georgia Power Company and Norfolk & Western Railway Company and Southern Railway Company (including amendments) (Attachment A, No. 5).

DOCUMENT NUMBER-DATE

10935 DEC 11 1990

FPSC-RECORDS/REPORTING

(6) FPL's Capacity RFP Evaluation Process, dated January, 1990 (Attachment B, No. 6).

(7) Table of Criteria and Weighting Factors used in FPL's RFP Evaluation Process (Attachment B, No. 7).

The attachments contain copies of the documents listed above either (1) with a highlighted cover page and label indicating that the entire document is confidential, or (2) with the confidential information highlighted if the entire document is not confidential. In addition, FPL is simultaneously submitting to the Commission two (2) copies of each document for which confidential classification is being sought with the confidential information deleted from the documents. The two copies of the documents with the confidential information deleted are available for public inspection as required by Rule 25.22.006(4)(a), F.A.C.

In support of its motion for a protective order and request for confidential classification, FPL states as follows:

I. DOCUMENTS COMPRISING ATTACHMENT A

A. The Documents were provided to FPL subject to a Confidentiality Agreement with the Georgia Power Company

1. Document Nos. 1-5 of Attachment A are all contracts between Georgia Power Company ("GPC") and other companies, none of which companies are parties to this docket. The documents are copies of either fuel contracts or fuel transportation contracts that directly involve Scherer Unit No. 4.

2. Document Nos. 1-5, in their entireties, are intended to be and are treated by GPC and the other parties to those contracts as confidential and private because disclosure of the information would, in their opinion, cause harm to GPC's ratepayers or the other contracting parties' business operations. Specifically, Document Nos. 1-5 contain contractual data, the disclosure of which would impair the contracting parties' efforts to contract for goods and services on favorable terms in the future.

3. As a result of their confidential nature, Document Nos. 1-5 were provided to FPL subject to the Confidentiality and Nondisclosure Agreement between FPL and GPC, dated July 31, 1990 (the "Confidentiality Agreement") and attached as Exhibit "A". Moreover, Document Nos. 1-5 were sent to FPL with an attached cover letter from GPC's attorneys reiterating that these contracts are confidential and not for public disclosure.

4. While the Confidentiality Agreement anticipated that FPL may be required to produce confidential documents to the Staff or other parties in this docket in order for FPL to get Commission approval to purchase Scherer Unit No. 4 from GPC, the Confidentiality Agreement requires FPL to use its best efforts to ensure that no confidential documents become publicly disclosed. Consistent with this provision of the Confidentiality Agreement, FPL provided Doc. Nos. 1-5 to the Staff in response to Staff's Interrogatory Nos. 1 and 3 but only after first filing a Notice of Intent to Request Confidential Classification for these documents. Similarly, FPL filed a

Notice of Intent to Request Confidential Classification before it provided Public Counsel with a copy of Document No. 3 of Attachment A pursuant to Public Counsel's request for a copy of this contract as Late-Filed Exhibit No. 4 to Mr. Cepero's deposition in this proceeding.

5. FPL is contractually required to, intends to and does treat all of Document Nos. 1-5 as confidential and private, and FPL has not provided these documents to any person or entity other than as described in paragraph 4 above.

B. The Documents Comprising Attachment A Contain Proprietary Confidential Business Information as Defined in Section. 366.093, Fla. Stat.

6. For the reasons set forth above, the documents comprising Attachment A contain proprietary business information as defined by § 366.093(3), Fla. Stat., and must be kept confidential and exempt from § 119.07(1), Fla. Stat.

7. Section 366.093(3) states that proprietary confidential business information is "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 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 . . . private agreement that the information will not be released to the public." Section 366.093(1) states that "proprietary confidential business

information shall be kept confidential and shall be exempt from § 199.07(1)."

8. As explained above, the information contained in Document Nos. 1-5 was provided to FPL by GPC pursuant to the Confidentiality Agreement. The information contained in those documents is now within FPL's control, and disclosure of the confidential information would harm FPL. Specifically, disclosure would impair FPL's efforts to contract with GPC and the Southern Company, longstanding business partners, in the future. Consequently, the information contained in the documents comprising Attachment A is proprietary confidential business information and FPL requests that it be kept confidential as required by § 366.093(1), Fla. Stat.

III. DOCUMENTS COMPRISING ATTACHMENT B

A. The Documents Contain Confidential Information Used By FPL In Its Closed-Bid Capacity RFP Process

9. Document Nos. 6 and 7 of Attachment B are documents which were used by FPL in evaluating the proposals submitted in response to its Capacity RFP in early 1990. The documents both contain the percentages or weights attributed to each criteria used to evaluate the proposals. The weights or percentages appear on pages 13 (of 89), 14, 21, 23, 24, 27-29, 31-34, 36-46, 48-58, 60, 62-70 and 72-89 of Document No. 6 of Attachment B. They also appear on Document No. 7 alongside the criteria used in evaluating the proposals.

10. The percentages or weights associated with each of the eighteen criteria was not disclosed to potential bidders in an effort to elicit bids which could be evaluated in an unbiased manner. It is critical to FPL that the bidders submit their proposals in response to future RFP's based on FPL's criteria description, not based on the weights assigned to the criteria. This "criteria weighting factor" system was developed at significant expense to FPL and involved a great deal of effort on the part of FPL management.

11. FPL provided a copy of Document No. 7 of Attachment B to the Staff in response to Staff's Interrogatory No. 8, but only after first filing a Notice of Intent to Request Confidential Classification. FPL provided a copy of Document No. 6 to Public Counsel in response to Public Counsel's Request to Produce No. 9, but again only after having filed a Notice of Intent to Request Confidential Classification.

12. Disclosure of these percentages or weights would taint future RFP's used by FPL in a competitive bidding process to the extent that bidders would now prepare their bids with knowledge of the weights that FPL would assign to each criteria. In other words, the bidders would know which criteria are more important and they may not prepare their proposals with the entire project in mind. Moreover, FPL intends to use the same "criteria weighting factor" methodology in evaluating the large co-generation QF bids that will be submitted to FPL in the near future. Disclosure would obviously taint that process as well.

13. It is clear that disclosing the confidential information highlighted in the documents comprising Attachment B will impair FPL's efforts to contract for goods and services on favorable terms in the future; it will impair FPL's efforts to use competitive RFP processes; and disclosure will thereby cause harm to FPL's ratepayers. It is equally well established that FPL intends the "criteria weighting" information to be and itself treats this information as private and confidential. The Company has not disclosed this information to any other person or entity.

B. The Documents Comprising Attachment B Contain Proprietary Confidential Business Information as Defined in Section. 366.093, Fla. Stat.

14. For the reasons set forth above, the documents comprising Attachment B contain proprietary business information as defined by § 366.093(3), Fla. Stat., and must be kept confidential and exempt from § 119.07(1), Fla. Stat.

15. The information contained in the documents falls directly within the description of confidential business information set forth in §366.093(3)(d) and (e), Fla. Stat. The information is also within FPL's control, it is intended to be and is treated by FPL as confidential, it has not been disclosed to any other person or entity, and disclosure would harm its ratepayers.

16. Consequently, the information contained in the documents comprising Attachment B is proprietary confidential

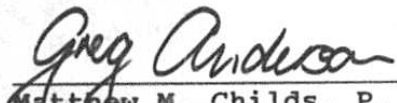
business information, and FPL requests that it be kept confidential as required by § 366.093(1), Fla. Stat.

WHEREAS, FPL requests that the Commission enter an order that the documents comprising Attachments A and B are confidential and exempt from §119.07(1), Fla. Stat. Moreover, FPL requests that the Commission order the Staff and Public Counsel to return to FPL all copies of the confidential documents not entered into the record in accordance with the times set forth in §366.093(2), Fla. Stat. If any of the confidential documents are entered into the record in this proceeding, FPL requests that the Commission order that those documents shall remain confidential for 18 months from the date of the order, with FPL having the right to renew its request for confidential classification at the end of that period.

Respectfully submitted,

STEEL HECTOR & DAVIS
215 South Monroe Street
Suite 601
Tallahassee, Florida 32301
Attorneys for Florida Power
& Light Company

By:


Matthew M. Childs, P. A.
John T. Butler
Greg N. Anderson

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Florida Power &
Light Company for Inclusion of
the Scherer Unit 4 Purchase in
Rate Base.

Docket No. 900796-EI

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Florida Power & Light Company's Motion for Protective Order and Request for Confidential Classification (excluding the attachments) has been hand-delivered or served by U.S. Mail this 11th day of December, 1990 on the following:

Frederick J. Murrell, Esquire
Schroder & Murrell
The Barnett Center Suite 375
1001 Third Avenue West
Bradenton, Florida 34205

Frederick M. Bryant, Esquire
Moore, Williams, Bryant,
Peebles & Gautier, P.A.
Post Office Box 1169
Tallahassee, Florida 32302

Robert C. Williams
Director of Engineering
7201 Lake Ellenor Drive
Orlando, Florida 32809

Joseph A. McGlothlin
522 East Park Avenue
Suite 200
Tallahassee, Florida 32301
(courtesy copy)

Jack Shreve, Esquire
Office of Public Counsel
111 West Madison Street
Suite 801
Tallahassee, Florida 32399-1400

Edward A. Tellechea, Esquire
Staff Counsel
Florida Public Service Commission
101 East Gaines Street
Fletcher Building - Room 226
Tallahassee, Florida 32399-0850

H. G. Wells
Director, Coalition of Local Governments
P.O. Box 4748
Clearwater, Florida 34618-4748



Greg N. Anderson

**CONFIDENTIALITY
AND NONDISCLOSURE AGREEMENT**

THIS CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT (this "Agreement") is made and entered into, effective as of July 31, 1990, by and between Florida Power & Light Company, a corporation ("FPL"), and Georgia Power Company, a corporation ("Georgia Power"), and is a confidentiality and nondisclosure agreement pertaining to data and information requested by FPL in connection with an examination by FPL of, and certain negotiations between FPL and Georgia Power concerning, the intended purchase by FPL from Georgia Power of certain ownership interests in Plant Scherer Unit No. 4 (and appropriate common facilities).

W I T N E S S E T H:

WHEREAS, FPL is examining, and FPL and Georgia Power are engaged in negotiations concerning, the intended purchase by FPL from Georgia Power of undivided ownership interests in Plant Scherer Unit No. 4 (and appropriate common facilities) as set forth in that certain Letter of Intent dated July 30, 1990 among FPL, Georgia Power, Southern Company Services, Inc., as agent for the "Southern Companies" described therein ("SCSI"), and Jacksonville Electric Authority (the "Letter of Intent");

WHEREAS, FPL desires access to confidential and proprietary data and information of Georgia Power in connection therewith; and

WHEREAS, the parties are willing to enter into this Agreement as a means of protecting Georgia Power's interests in, and avoiding unnecessary controversy regarding, such data and information;

EXHIBIT "A"

NOW, THEREFORE, in consideration of these premises, the parties hereby agree as follows:

1. (a) All data and information furnished to FPL by or on behalf of Georgia Power, SCSJ or any of the other Southern Companies (and any information, data, notes or analyses extracted, derived, compiled or prepared from any or all of the above) concerning any environmental, contractual, financial, fuel, accounting, capital budgeting, operation and maintenance budgeting or salary issues, agreements, commitments or undertakings, and marked by Georgia Power, SCSJ, or any of the other Southern Companies as confidential or proprietary (or with a similar designation), are subject to the provisions of this Agreement. These data, information, studies and reports (and any and all information, data, notes or analyses extracted, derived, compiled or prepared from any or all of them) are hereinafter referred to as "Protected Materials." The term Protected Materials shall also include, without limitation, all of the data, information, studies and reports delivered to FPL in connection with the discussions and negotiations leading up to execution of the Letter of Intent, to the extent such data, information, studies and reports concern any of the above-described issues, agreements, commitments and undertakings, notwithstanding the fact that such data, information, studies and reports were not marked confidential or proprietary (or with a similar designation). Notwithstanding the foregoing, Protected Materials shall not include any information which is presently a matter of public knowledge or

which is hereafter published in or otherwise ascertainable from any source available to the public without breach of this Agreement.

(b) FPL shall not disclose, and shall ensure that no "Reviewing Party" (as defined below) discloses, any Protected Materials to any person, party, entity, agency, employee, consultant, attorney or representative, unless such person, party, entity, agency, employee, consultant, attorney or representative is a Reviewing Party. FPL shall further ensure that all Reviewing Parties prevent Protected Materials from being viewed or taken by any such unauthorized persons, parties, entities, agencies, employees, consultants, attorneys or representatives. The term "Reviewing Party", includes (in addition to FPL) only such persons, entities, agencies, employees, attorneys and representatives who or which need to have access to Protected Materials in connection with FPL's examination or negotiation of the intended purchase from Georgia Power of ownership interests in Plant Scherer Unit No. 4 (and appropriate common facilities).

2. No Reviewing Party may use any Protected Materials for any purpose other than directly in connection with FPL's examination or negotiation of the intended purchase from Georgia Power of ownership interests in Plant Scherer Unit No. 4 (and appropriate common facilities).

3. A Reviewing Party may take handwritten notes or derive other information from the Protected Materials provided hereunder, which notes and information shall likewise be deemed Protected Materials subject to the terms of this Agreement. FPL shall ensure

that each Reviewing Party makes copies of the Protected Materials solely for use as allowed in this Agreement. FPL shall ensure that all Protected Materials (and all copies thereof) are returned to Georgia Power or destroyed by FPL and each Reviewing Party immediately following the expiration or termination of the Letter of Intent.

4. Protected Materials obtained pursuant to, or furnished in reliance upon, this Agreement may not be used in any litigation or administrative proceeding in which Georgia Power is a party or could become a party.

5. This Agreement shall remain in full force and effect from the date hereof until the second (2nd) anniversary of the expiration or termination of the Letter of Intent.

6. In the event of a breach of any portion of this Agreement, Georgia Power will not have an adequate remedy at law and accordingly shall, in addition to any other available legal or equitable remedies, be entitled to an injunction against such breach.

7. Nothing in this Agreement shall be construed as precluding Georgia Power or any other person or entity or their respective counsel from objecting on any legal grounds to the relevance or admissibility of any Protected Materials in any legal or administrative proceeding in which the Protected Materials may be tendered.

8. Georgia Power acknowledges that FPL will seek Florida Public Service Commission approval of certain of the transactions

contemplated by the Letter of Intent. Notwithstanding anything contained in this Agreement to the contrary, FPL may, with Georgia Power's prior consent, which will not be unreasonably withheld or delayed, provide Protected Materials to the Florida Public Service Commission as necessary to obtain such approvals. FPL agrees to promptly notify Georgia Power of any other legal or administrative proceeding, in which it is participating or of which it is aware, in which an issue to be determined includes the potential disclosure of any or all of the contents of any Protected Materials, and FPL shall use its best efforts to ensure that no Protected Materials become publicly disclosed or available in connection with any such legal or administrative proceedings. FPL agrees to promptly notify Georgia Power when it has reasonable evidence that any Reviewing Party may be engaging in any activity that is contrary to the terms of this Agreement.

9. (a) In the event any provision of this Agreement shall be found to be illegal or unenforceable, then, notwithstanding such illegality or unenforceability, this Agreement shall continue in full force and effect and there shall be substituted for such illegal or unenforceable provision a like but legal and enforceable provision which most clearly carries into effect the intention of the original provision. In the event a like but legal and enforceable provision cannot be substituted, the illegal or unenforceable provision shall be deemed to be deleted and the remaining provisions of this Agreement shall continue in full force and effect.

(b) No provision of this Agreement shall be deemed waived and no breach shall be deemed excused unless such waiver or consent shall be in writing and signed by a duly authorized representative of Georgia Power. No consent by Georgia Power to, or waiver of, a breach hereof, whether express or implied, shall constitute a consent to, waiver of, or excuse for any different or subsequent breach.

(c) This Agreement may be modified only by an amendment executed in writing by each party.

(d) This Agreement may not be assigned or delegated by FPL.

(e) This Agreement shall be governed by and construed in all respects in accordance with the laws of the State of Georgia.

(f) This Agreement shall be binding upon the legal representatives and successors of Georgia Power and FPL.

(g) Duplicate originals of this Agreement may be executed, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Stipulation and Agreement to be executed effective as of the date first shown above.

"Georgia Power":

GEORGIA POWER COMPANY
333 Piedmont Avenue, N.E.
Atlanta, Georgia 30308

TITLE: _____

Date: _____

[Signatures Continued on Page 7]

"EPL":

FLORIDA POWER & LIGHT COMPANY
9250 West Flagler Street
Miami, Florida 33174

C. C. Anderson
TITLE:

Executive Vice President

Date:

8-3-90

M E M O R A N D U M

12-11-90

TO : DIVISION OF AUDITING AND FINANCIAL ANALYSIS
 DIVISION OF COMMUNICATIONS
 ~~xxx~~ DIVISION OF ELECTRIC AND GAS
 DIVISION OF RESEARCH
 DIVISION OF WATER AND SEWER
 DIVISION OF LEGAL SERVICES

FROM: DIVISION OF RECORDS AND REPORTING (FLYNN)

RE : CONFIDENTIALITY OF CERTAIN INFORMATION

DOCUMENT NO.: 10936-90 10935 + 10937-90 attached

DESCRIPTION: Contracts between Georgia Power Company and other companies (Attachment A to Request, Documents 1-5), and documents used by FPL in evaluating proposals submitted in response to its Capacity RFP in early 1990 (Attachment B, Documents 6-7)
SOURCE: Florida Power and Light Company

DOCKET NO.: 900796-EI

The above material has been received with a request for confidential treatment (attached). Please prepare a recommendation for the attorney assigned to the case by completing the section below and forwarding a copy of this memorandum, together with a brief memorandum supporting your recommendation, to the attorney. You must prepare and forward a recommendation within 10 working days from the date of this memorandum. Copies of your recommendation should also be provided to the Division of Records and Reporting and to the Division of Appeals.

Please read each of the following and mark the appropriate boxes.

The document(s) is (are), in fact, what the utility
Yes No asserts it (them) to be.

The utility has provided enough details to perform a
Yes No reasoned analysis of its request.

The material has been received incident to an inquiry.
Yes No