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John T. Butler
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October 29, 2003

- VIA FEDERAL EXPRESS -

Blanca S. Bayó
Director, Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

RECEIVED FSC
OCT 30 AM 10:50
COMMISSION
CLERK

Re: Docket No. 030001-EI

Dear Ms. Bayó:

I am enclosing for filing in the above docket the original and seven (7) copies of Florida Power & Light Company's Request for Confidential Classification of Certain Information From Staff Audit Report Contained in Exhibit K LW-1 to Prefiled Direct Testimony of Kathy L. Welch, together with a diskette containing the electronic version of same. The enclosed diskette is HD density, the operating system is Windows 2000, and the word processing software in which the documents appear is Word 2000. Pursuant to Rule 25-22.006, F.A.C., I am also enclosing one highlighted and two redacted copies of the confidential document that is the subject of this request.

If there are any questions regarding this transmittal, please contact me at 305-577-2939.

Sincerely,

John T. Butler
John T. Butler *for JT B*

Enclosure

cc: Counsel for Parties of Record (w/copy of confidentiality request only)

- AUS
- CAF
- CMP
- COM
- CTR
- ECR
- GCL
- OPC
- MMS
- SEC
- OTH

cc: Conf records

MIA2001 245233v1

Miami West Palm Beach Tallahassee Naples Key West London Caracas São Paulo

DOCUMENT NUMBER DATE
10739 OCT 30 8
FSC-00

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power)
cost recovery clause with)
generating performance incentive)
factor.)
_____)

Docket No. 030001-EI
Filed: October 30, 2003

**FLORIDA POWER AND LIGHT COMPANY'S REQUEST FOR
CONFIDENTIAL CLASSIFICATION OF CERTAIN INFORMATION
FROM STAFF AUDIT REPORT CONTAINED IN EXHIBIT K LW-1
TO PREFILED DIRECT TESTIMONY OF KATHY L. WELCH**

Florida Power & Light Company ("FPL"), pursuant to Rule 25-22.006, F.A.C., and Section 366.093, Florida Statutes, requests confidential classification of certain information in the Staff audit report entitled "Florida Power & Light Company, Security and Hedging Base Costs, Year Ended December 31, 2002, Docket No. 020001-EI, Audit Control No. 02-340-4-1" (the "Audit Report"), which report is attached as Exhibit K LW-1 to the prefiled direct testimony of Kathy L. Welch, filed in this docket on October 9, 2003 and modifies its prior requests for confidential treatment of the Audit Report and FPL's response thereto. In support of its Request, FPL states as follows:

1. The Audit Report was filed with the Commission Clerk on July 1, 2003 and was made part of the record of this docket as Document No. 05849-03. Consistent with FPL's request to the Staff at the end of the audit, Document No. 05849-03 has the entire text of the six audit disclosures redacted. On August 15, 2003, FPL filed a response to the Audit Report (the "FPL Audit Response") and contemporaneously requested confidential treatment of same. See Document Nos. 07527-03 and 07528-03. On October 9, 2003, the Staff filed the Direct Testimony of Kathy L. Welch, to which the Audit Report (with the six audit disclosures redacted) is attached as Exhibit K LW-1. Consistent with the earlier treatment of the Audit

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Report, the six audit disclosures in Exhibit K LW-1 are redacted. *See* Document No. 09877-03. Staff also filed on October 9 a confidential version of Ms. Welch's testimony, in which the audit disclosures are highlighted, and directed the Clerk's Office to protect the confidential version from disclosure "in order to allow [FPL] an opportunity to request confidential classification for this information. *See* Document No. 09890-03. This Request is being filed within 21 days of Document No. 09890-03, and is intended to request confidential classification of the confidential portions of the Audit Report consistent with Rule 25-22.006.

2. Although FPL initially requested that the entire text of the six audit disclosures in the Audit Report be designated as confidential, it has subsequently determined that most of the information in the audit disclosures does not need to be so designated. FPL has concluded that the only information requiring confidential treatment consists of certain dollar amounts for payroll and employee-related expenses in the Statement of Facts to Audit Disclosure No. 4 (the "Confidential Personnel Information"). Accordingly, FPL is hereby requesting confidentiality only for the Confidential Personnel Information in Exhibit K LW-1. FPL also hereby modifies its earlier confidentiality request for the Audit Report so that it applies only to the Confidential Personnel Information. Because the FPL Audit Response does not contain the Confidential Personnel Information, FPL hereby withdraws its request for confidentiality with respect to the FPL Audit Response.

3. The following exhibits are included with this Request:

a. Composite Exhibit A consists of a copy of Exhibit K LW-1, in which the Confidential Personnel Information has been highlighted. Composite Exhibit A is submitted separately in a sealed folder marked "CONFIDENTIAL."

b. Composite Exhibit B consists of two copies of Exhibit K LW-1 in which the Confidential Personnel Information has been redacted.

c. Exhibit C is a table containing a line-by-line and page-by-page identification of the Confidential Personnel Information, together with references to the specific statutory basis for the claim of confidentiality and to the affidavit in support of the requested classification.

d. Exhibit D consists of the affidavit of Gerard J. Yupp, Manager of Regulated Wholesale Power Trading in FPL's Energy Marketing and Trading Division ("EMT"). The affidavit attests to the asserted basis for confidential classification.

4. FPL seeks confidential protection for the information highlighted in Exhibit A. The highlighted information is confidential because it indirectly reveals details about the compensation for particular EMT positions, the disclosure of which would impair the competitive business interests of FPL and FPL's ability to attract and retain personnel for those positions on favorable terms. *See* §§ 366.093(3)(d) and (e), Fla. Stat (2002). Disclosure of this information also would be an unwarranted intrusion into the privacy interests of FPL personnel.

5. FPL submits that the highlighted Confidential Personnel Information is proprietary confidential business information within the meaning of Section 366.093(3). Pursuant to Section 366.093, such information is entitled to confidential treatment and is exempt from the disclosure provisions of the public records law.

6. The Confidential Personnel Information is intended to be and is treated by FPL as private, and its confidentiality has been maintained.

7. Upon a finding by the Commission that the Confidential Personnel Information is proprietary confidential business information within the meaning of Section 366.093(3), pursuant to Section 366.093(4) the Exhibit KLW-1 should not be declassified for at least eighteen (18) months and should be returned to FPL as soon as the information is no longer necessary for the Commission to conduct its business.

WHEREFORE, FPL respectfully requests that this request for confidential classification of the Confidential Personnel Information in Exhibit KLW-1 be granted, that its earlier request for confidential classification of the Audit Report be limited to the Confidential Personnel Information, and that its earlier request for confidential classification of the FPL Audit Response be withdrawn.

Respectfully submitted,

R. Wade Litchfield, Esq.
Senior Attorney
Florida Power & Light Company
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Juno Beach, Florida 33408-0420
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Attorneys for Florida Power & Light
Company
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By: Kouel M. Butsi
John T. Butler *for JTB*
Fla. Bar No. 283479

CERTIFICATE OF SERVICE

Docket No. 030001-EI

I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Request for Confidential Classification of Certain Information From Staff Audit Report Contained in Exhibit KLW-1 to Prefiled Direct Testimony of Kathy L. Welch, without exhibits to the Request (*), has been furnished by Federal Express (**) or United States Mail on the 29th day of October, 2003, to the following:

Wm. Cochran Keating, IV, Esq.(**)
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Robert Vandiver, Esq.
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
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Ausley & McMullen
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Tallahassee, Florida 32302

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Progress Energy Florida, Inc.
P.O. Box 14042
St. Petersburg, Florida 33733

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Jeffrey A. Stone, Esq.
Russell A. Badders, Esq.
Beggs & Lane
Attorneys for Gulf Power
P.O. Box 12950
Pensacola, Florida 32576-2950

* Redacted copies of exhibits furnished upon request

By: *John T. Butler*
John T. Butler *for JTB*

EXHIBIT A

**CONFIDENTIAL
DOCUMENTS**

EXHIBIT C

JUSTIFICATION TABLE

EXHIBIT C

COMPANY: Florida Power & Light Company
TITLE: List of Confidential Workpaper
AUDIT: FPL, Base Year Costs of Security and Hedging Costs
AUDIT CONTROL NO: 02-340-4-1

FLORIDA
STATUTE
366.093(3)
Subsection: AFFIANT

| <u>DOCUMENT</u> | <u>DESCRIPTION</u> | <u>NO. OF PAGES</u> | <u>CONF. Y/N</u> | <u>LINE NO./ COL. NO.</u> | | |
|--|------------------------------|---------------------|------------------|---------------------------|-----|------------|
| Dkt 030001-EI Exhibit KLW-1 (Page 11 of 18) Audit of Base Year Costs | Audit Disclosure No. 4 | 1 | Y | P1, lines 17-18 | (e) | G. J. Yupp |

EXHIBIT D

AFFIDAVIT

EXHIBIT D

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Audit Base Year Costs for Security and Hedging Costs to be Allowed in Fuel Cost Recovery) Docket No. 020001-EI
)
)
) Filed October 30, 2003

STATE OF FLORIDA)
) AFFIDAVIT OF GERARD J. YUPP
PALM BEACH COUNTY)

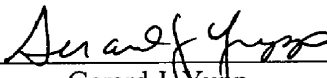
BEFORE ME, the undersigned authority, personally appeared Gerard J. Yupp, who, being first duly sworn, deposes and says:

1. My name is Gerard J. Yupp. I am currently employed by Florida Power & Light Company (FPL), Energy Marketing and Trading (EMT) Division, as Manager of Regulated Wholesale Power Trading. I have personal knowledge of the matters stated in this affidavit.

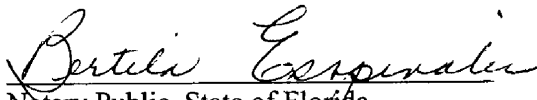
2. With respect to Exhibit C, I have reviewed the documents and information for which I am listed as Affiant and which are included in Exhibit A to FPL's Request for Confidential Classification of Materials Provided Pursuant to Audit No. 02-340-4-1. Documents or materials that I have reviewed and which are asserted by FPL to be proprietary confidential business information contain or constitute FPL budgeting and compensation information, the disclosure of which may impair FPL's competitive interests and/or its ability to contract on favorable terms.

3. Consistent with the Florida Administrative Code, such materials should remain confidential for a period of not less than 18 months. In addition, they should be returned to FPL as soon as the information is no longer necessary for the Commission to conduct its business so that FPL can maintain the confidentiality of these documents.

4. Affiant says nothing further.


Gerard J. Yupp

SWORN TO AND SUBSCRIBED before me this 29 day of October 2003, by Gerard J. Yupp, who is personally known to me or who has produced _____ (type of identification) as identification.


Notary Public, State of Florida
BERTILA ESTOPINALES
Print Name of Notary

My Commission Expires:

