

State of Florida



ORIGINAL

Public Service Commission  
-M-E-M-O-R-A-N-D-U-M-

RECEIVED-FPSC  
03 NOV -5 AM 11 27  
COMMISSION  
CLERK

**DATE:** November 5, 2003  
**TO:** Cochran Keating  
**FROM:** Roland Floyd *RF*  
**RE:** Recommendation on Request for Confidential Classification – Document No. 10740-03

On October 29, 2003, Florida Power and Light Company (FPL) requested confidential classification of certain information contained in Exhibit KLW-1 to the prefiled Direct Testimony of Kathy L. Welch. 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. Therefore, FPL has modified its initial request. Staff agrees with the request for the reasons stated in the justification provided in the request and the attached affidavit of Gerard J. Yupp.

**Attachment**

cc: Kay Flynn/Records and Hearing Services  
Harold McLean/General Counsel

- AUS \_\_\_\_\_
- CAF \_\_\_\_\_
- CMP \_\_\_\_\_
- COM \_\_\_\_\_
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- OPC \_\_\_\_\_
- MMS \_\_\_\_\_
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- OTH *Marguente*

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11016 NOV-5 03  
FPSC-COMMISSION CLERK

STATE OF FLORIDA

COMMISSIONERS:  
LILA A. JABER, CHAIRMAN  
J. TERRY DEASON  
BRAULIO L. BAEZ  
RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON



DIVISION OF THE COMMISSION CLERK &  
ADMINISTRATIVE SERVICES  
BLANCA S. BAYÓ  
DIRECTOR  
(850) 413-6770 (CLERK)  
(850) 413-6330 (ADMIN)

Public Service Commission

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

03 NOV -3 AM 10:37  
DIVISION OF  
ECONOMIC REGULATION

RECEIVED  
FLORIDA PUBLIC SERVICE  
COMMISSION

DATE: October 31, 2003

TO: OFFICE OF THE GENERAL COUNSEL  
DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT  
XX DIVISION OF ECONOMIC REGULATION  
DIVISION OF AUDITING AND SAFETY

FROM: DIVISION OF THE COMMISSION CLERK AND ADMINISTRATIVE SERVICES

RE: CONFIDENTIALITY OF CERTAIN INFORMATION

DOCUMENT NO(s): 10740-03

DESCRIPTION: FPL/Butler - (Confidential) Exhibit KLW-1 to prefiled  
Testimony of Kathy L. Welch (certain info in staff audit  
report (#02-0340-4-1). [x-ref. DN 09881-03]

SOURCE: Florida Power & Light Company

DOCKET NO(S): 030001-EI

The above material was received with a later filing of a request for confidential classification. 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. Copies of your recommendation should also be provided to the Division of the Commission Clerk and Administrative Services, Bureau of Records and Hearing Services, and to the Office of General Counsel.

- The document(s) is (are), in fact, what the utility asserts it (them) to be.
- The utility has provided enough details to perform a reasoned analysis of its request.
- The material has been received incident to an inquiry.
- The material is confidential business information because it includes:
  - (a) Trade secrets;
  - (b) Internal auditing controls and reports of internal auditors;
  - (c) Security measures, systems, or procedures;
  - (d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the company to contract for services on favorable terms;
  - (e) Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities;
  - (f) Tax returns or tax-related information;
  - (g) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of information.
- The material appears to be confidential in nature and harm to the company or its ratepayers will result from public disclosure.
- The material appears not to be confidential in nature.
- The material is a periodic or recurring filing and each filing contains confidential information.

Response prepared by: Roland F. [Signature]

Date: 11/05/03

cc:  GCL       EXT  
 CMP       CCA  
 ECR       AUS  
 MMS

PSC/CCA 15 (Rev 11/02)

ORIGINAL

STEEL ■  
HECTOR  
■ DAVIS  
INTERNATIONAL™

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305.577.7001 Fax  
www.steelhector.com

John T. Butler  
305.577.2939  
jbutler@steelhector.com

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 FPSC  
03 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 KLV-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 M. Rubin*  
John T. Butler *for JTB*

AUS \_\_\_\_\_  
CAF \_\_\_\_\_  
CMP \_\_\_\_\_  
COM \_\_\_\_\_  
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GCL 1 \_\_\_\_\_  
OPC \_\_\_\_\_  
MMS \_\_\_\_\_  
SEC 1 \_\_\_\_\_  
OTH 1 cc: Conf records \_\_\_\_\_

Enclosure

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

DOCUMENT NUMBER-DATE

10739 OCT 30 03

FPSC-COMMISSION CLERK

MIA2001 245233v1  
Miami West Palm Beach Tallahassee Naples Key West London Caracas São Paulo

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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

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) **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 KLW-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 KLW-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 KLW-1. Consistent with the earlier treatment of the Audit

DOCUMENT NUMBER-DATE

10739 OCT 30 03

FPSO-COMMISSION CLERK

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  
700 Universe Boulevard  
Juno Beach, Florida 33408-0420  
Telephone: 561-691-7101

Steel Hector & Davis LLP  
Attorneys for Florida Power & Light  
Company  
200 South Biscayne Boulevard  
Suite 4000  
Miami, Florida 33131-2398  
Telephone: 305-577-2939

By: John T. Butler  
John T. Butler  
Fla. Bar No. 283479 *for JTB*



**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 29<sup>th</sup> 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  
Tallahassee, Florida 32399

Lee L. Willis, Esq.  
James D. Beasley, Esq.  
Ausley & McMullen  
Attorneys for Tampa Electric  
P.O. Box 391  
Tallahassee, Florida 32302

James A. McGee, Esq.  
Progress Energy Florida, Inc.  
P.O. Box 14042  
St. Petersburg, Florida 33733

Joseph A. McGlothlin, Esq.  
Vicki Gordon Kaufman, Esq.  
McWhirter, Reeves, McGlothlin,  
Davidson, et al.  
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117 South Gadsden Street  
Tallahassee, Florida 32301

Norman H. Horton, Esq.  
Floyd R. Self, Esq.  
Messer, Caparello & Self  
Attorneys for FPUC  
215 South Monroe Street, Suite 701  
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John W. McWhirter, Jr., Esq.  
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Davidson, et al.  
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P.O. Box 3350  
Tampa, Florida 33602

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: Kouel M. Dubini  
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>	<u>Subsection:</u>	<u>AFFIANT</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*  
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.

*Bertila Estopinales*  
Notary Public, State of Florida  
BERTILA ESTOPINALES  
Print Name of Notary

My Commission Expires:

