

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for Confidential) DOCKET NO. 930712-EI
Classification of Certain) ORDER NO. PSC-93-1632-CFO-EI
Material Requested as Part of) ISSUED: November 8, 1993
FPSC Audit of Construction)
Contracts by Florida Power and)
Light Company.)
_____)

ORDER GRANTING IN PART AND DENYING
IN PART FLORIDA POWER AND LIGHT COMPANY'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION

By request filed July 19, 1993, Florida Power and Light Company (FPL) has asked that certain material obtained during staff's construction contract audit of certain FPL contracts be treated as confidential.

Florida law provides, in Section 119.07, Florida Statutes, the process by which records kept by government agencies are made public. Paragraph 119.07(3)(a) provides exemptions from disclosure for records which are presently provided by law to be confidential. In the instant matter the exemptions are provided in Section 366.093, Florida Statutes.

Section 366.093(3) provides a list of categories which would be included in the term "proprietary confidential business information". Included on that list is information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms.

Document Nos. 07692-93 and 07329-93 are, respectively, the FPL documents and staff audit workpapers. FPL has argued that both the bid amounts and identities of the bidders should be kept confidential in order to allow the company to contract on the most favorable terms. As to the bid amounts, FPL stated that "[w]ithout confidential classification of the various bidders" prices and cost breakdowns, FPL will experience a narrowing of the bid proposals. As a result of this narrowing, the range of bids would most likely converge on the last reported public price, thereby eliminating the probability that one bidder will substantially underbid the other bidders. This is identified on Attachment I as utility rationale "1".

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As to identities of the bidders, FPL stated that "[m]ost of the construction projects are highly specialized and there are a limited number of qualified vendors who can undertake these projects. The names of the vendors are kept confidential to prevent any form of tacit agreement among the vendors as to price". This is utility rationale "2". FPL's arguments on both of these points implicate the statutory standard, which affords confidential treatment when disclosure would "impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms". §366.093(3)(d), Florida Statutes.

This material, with three exceptions noted on Attachment I, is covered by §366.093(3)(d) as it consists of bid contract data. Therefore, it will be classified as confidential pursuant to this statutory provision. The three exceptions consist of numbers appearing as footnotes to the audit workpapers which were not previously identified as confidential. Because these numbers have been treated as public information in the redacted copies since July, 1993, they do not meet the definition in §366.093(1) of information that "has not been disclosed". Accordingly, they cannot be treated as confidential pursuant to that statute.

In view of the above, it is


ORDERED that the contract bid data, with the three exceptions noted, be treated as confidential. It is further

ORDERED that pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, any confidentiality granted to the documents specified herein shall expire eighteen (18) months from the date of issuance of this Order in the absence of a renewed request for confidentiality pursuant to Section 366.093. It is further

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

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BY ORDER of Commissioner Susan F. Clark, as Prehearing
Officer, this 8th day of November, 1993.


SUSAN F. CLARK, Commissioner
and Prehearing Officer

RCB
OR930712.MRD

(S E A L)

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,

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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.

ATTACHMENT I

Workpaper No.	Rows	Columns	Utility Rationale	Staff Recommendation
10-3/2 P.1-7	all unnumbered rows	B	1	Grant, this information is a list of the dollars paid to each vendor.
10-3/2 P.3	1, and unnumbered rows in Column E	B E	1	Deny, these amounts were not previously identified as confidential and have been maintained as public records.
10-9 P.2	all unnumbered rows	C	1	Grant, this information is a list of the actual cost of the projects.
15-2 P.1,2	all unnumbered rows	E	2	Grant, this information is a list of the names of the bidders.
15-2 P.1,2	all unnumbered rows	I	1	Grant, this information is a list of the bid amounts.
15-2 P.1,2	all unnumbered rows	K	1	Grant, this information is a list of the actual cost of the projects.
16	6,8	B	1	Grant, this information is a total of the actual costs paid to a contractor.
16-2	all unnumbered rows	E	2	Grant, this information is a list of the names of the bidders.
16-2	all unnumbered rows	I	1	Grant, this information is a list of the bid amounts.
16-2	all unnumbered rows	K	1	Grant, this information is a list of the actual cost of the projects.
17 P.1	5,6,7,8	B	1	Deny, these amounts were not previously identified as confidential and have been maintained as public records.

17 P.1	5,6,7,8	C	1	Grant, this information is a total of the yearly actual cost for one contractor.
17-2 P.1-16	all unnumbered rows	E	2	Grant, this information is a list of the names of the bidders.
17-2 P.1-16	all unnumbered rows	I	1	Grant, this information is a list of the bid amounts.
17-2 P.1-16	all unnumbered rows	L,N	1	Grant, this information is a list of the actual cost of the projects.
17-4/2 P.1-9	all unnumbered rows	E	2	Grant, this information is a list of the names of the bidders.
17-4/2 P.1-9	all unnumbered rows	I	1	Grant, this information is a list of the bid amounts.
17-4/2 P.1-9	all unnumbered rows	L,N	1	Grant, this information is a list of the actual cost of the projects.
17-4/2 P.1	1,4		1	Grant, this information includes details on the bid amount.
17-4/2 P.2	1,3		1	Grant, this information includes details on the bid amount.
17-4/2 P.3	1,4		1	Grant, this information includes details on the bid amount.
17-4/2 P.4	1		1	Grant, this information includes details on the bid amount.
17-4/2 P.5	1		1	Deny, this amount was not previously identified as confidential and has been maintained as a public record.
17-4/2 P.6	1,2,4		1	Grant, this information includes details on the bid amount.
17-4/2 P.8	1		1	Grant, this information includes details on the bid amount.
17-4/2 P.9	1		1	Grant, this information includes details on the bid amount.

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18-3	all unnumbered rows	A	2	Grant, this information is a variation of the names of the bidders as it is a list of the most common competing bidders.
25-1 P.2-4	all unnumbered rows	C,D,E,F	1	Grant, this information is the yearly total of actual dollars invoiced to various vendors.
25-2 P.2	all unnumbered rows	C,D,E,F	1	Grant, this information is the yearly total of actual dollars invoiced to various vendors.