

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased Power) DOCKET NO. 940001-EI
Cost Recovery Factor and) ORDER NO. PSC-94-0132-CFO-EI
Generating Performance Incentive) ISSUED: February 3, 1994
Factor.)
_____)

ORDER ON CONFIDENTIALITY

On June 18, 1993, Florida Power & Light Company (FPL) filed a request to extend the declassification date for staff's workpapers relating to FPL's Orimulsion fuel supply contract and to treat as confidential certain staff workpapers that were previously denied confidential treatment. The information can be found in Document Nos. 6568-93, 6569-93, 6357-91 and 6959-91.

The Commission granted confidential treatment to staff workpapers pertaining to FPL's Orimulsion fuel supply contract and approved a declassification date of July 31, 1993. (Order No. 24953, issued August 21, 1991) FPL had originally requested a disclosure date of December 31, 2015. However, we did "not find good cause to hold the Orimulsion contractual information confidential for a period of 24 years." Instead, FPL was permitted to resubmit a petition to extend the period of confidentiality.

In its new petition, FPL seeks an extension of the declassification date "for the same reasons found by the Commission for granting confidential treatment in the first place." FPL asserts that the rationale it originally requested holds true today that disclosure of this contractual information for two years is reasonably likely to impair FPL's ability to negotiate future contracts. FPL states that it is currently in the process of renegotiating several crucial provisions of the Orimulsion supply contract and that disclosure of the staff workpapers at this time might jeopardize the renegotiation process and could result in the withdrawal of renegotiated concessions favorable to FPL and its customers.

In addition, FPL states that the terms of the Orimulsion contract provide that the contract is not to be publicly disclosed while the contract is in effect. The contract is a long term contract with long term price savings for FPL's customers. Also, FPL asserts that disclosure of the contract could give other purchasers of Orimulsion an unfair competitive advantage by publicly revealing sensitive pricing arrangements and other financial information regarding the Orimulsion supplier. FPL requests that the Commission recognize the long term nature of the Orimulsion fuel supply contract and maintain confidential treatment of staff's workpapers until the expiration of the contract period

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plus six months (until December 31, 2015). In the alternative, FPL requests that the information remain confidential for an additional two years subject to FPL repetitioning the Commission for an extension of the confidentiality period.

Section 366.093, Florida Statutes, provides 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, that the protection from disclosure shall be for a specified longer period." The rationale submitted by FPL for the extension is essentially the same rationale it originally submitted. I do not find good cause to hold this Orimulsion contractual information for a period of over twenty years, because many factors can change during that time period. In fact, a contract could be amended, suspended or breached during such a long period. Instead, I find that this contractual data relating to the Orimulsion fuel supply shall be confidential until July 31, 1995. FPL may resubmit a petition to extend this period of confidentiality near the end of the classification date.

FPL also seeks reconsideration for information that was denied confidential status in Order No. 24953 (Staff Workpaper No. 8-2/2, lines 20-26 and line 27; and Staff Workpaper 8-2/2 Attachment V, lines 30-31). Order No. 24953 was issued on August 21, 1991. As set forth on pages 10-11 of that order, FPL had 10 days in which it could have requested reconsideration. FPL states that "through inadvertent administrative oversight, FPL did not become aware of the Commission's denial when the Order was first issued." FPL failed to request reconsideration within the time specified by the Notice of Further Proceedings or Judicial Review and Rule 25-22.038, Florida Administrative Code. The information that was denied confidential treatment has been in the public domain for approximately 2 1/2 years. Accordingly, I deny FPL's request for confidential treatment of the information specified above.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power & Light Company's request for a two year extension of the declassification date of the specified information regarding the Orimulsion fuel supply contract that was originally granted in Order No. 24953, issued August 21, 1991, is hereby extended until July 31, 1995. It is further

ORDERED that FPL's request to have the Commission reconsider specified information that was denied in Order No. 24953 is hereby denied for the reasons set forth in the body of this Order.

By ORDER of Chairman J. Terry Deason, as Prehearing Officer,
this 3rd day of February, 1994.



J. TERRY DEASON, Chairman and
Prehearing Officer

(S E A L)
DLC:bmi

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.