

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased Power) DOCKET NO. 940001-EI
Cost Recovery Clause and) ORDER NO. PSC-94-1224-CFO-EI
Generating Performance Incentive) ISSUED: October 6, 1994
Factor.)
_____)

ORDER GRANTING IN PART AND DENYING IN PART
CONFIDENTIAL CLASSIFICATION

On June 14, 1993, Florida Power and Light Company (FPL or the utility) filed a request for confidential classification of certain materials obtained as part of the qualified facility component of the Commission fuel audit in Docket No. 930001-EI. This request was given Document No. 06407-93 and included six attachments. Two of the Attachments (A & C) were the utility's highlighted version of the confidential information. Attachment A was given Document No. 06408-93 and Attachment C was given Document No. 06409-93. Document Nos. 06540-93 through 06544-93 are the staff audit workpapers which correspond to the request. By letter dated April 15, 1994, the utility was advised of certain deficiencies in its original filing. Subsequently, on May 9, 1994, FPL filed a revised request for confidentiality. The utility's highlighted version of the confidential pages attached to the request were given Document No. 04407-94. FPL argues that the highlighted portions of these documents should be classified as proprietary confidential business information pursuant to Rule 25-22.006, Florida Administrative Code, and Section 366.093, Florida Statutes.

Florida law provides, in Section 119.01, Florida Statutes, that documents submitted to governmental agencies shall be public records. The only exceptions to this law are specific statutory exemptions, and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. This law derives from the concept that government should operate in the "sunshine."

Pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, FPL has the burden to show that the material submitted is qualified for confidential classification. Rule 25-22.006, Florida Statutes, provides that the utility may fulfill its burden by demonstrating that the information falls under one of the statutory examples set out in Section 366.093, Florida Statutes, or by demonstrating that the information is proprietary confidential business information, the disclosure of which will cause the utility or its ratepayers harm.

DOCUMENT NUMBER-DATE

10256 OCT-6 94

FPSC-RECORDS/REPORTING

Section 366.093(3)(d), Florida Statutes, provides several examples of proprietary confidential business information. Included in this list is "[i]nformation 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." To establish that material is proprietary confidential business information under Section 366.093(d), Florida Statutes, a utility must demonstrate (1) that the information is contractual data, and (2) that the disclosure of the data would impair the efforts of the utility to contract for goods or services on favorable terms. We have previously recognized that this latter requirement does not necessitate the showing of actual impairment, or the more demanding standard of actual adverse results; instead, it must simply be shown that disclosure is "reasonably likely" to impair the company's contracting for goods or services on favorable terms.

Workpaper 9-8, all lines, consists of notes on internal audits and as such is entitled to be considered proprietary confidential business information in accordance with §366.093 (3) (b), Florida Statutes.

FPL states that the Commission should maintain the confidentiality of interchange arrangements in accordance with Section 366.093 (3) (d) and (e), Florida Statutes. As to workpapers 46-3/2-1, Pages 1-4 (also shown by FPL as workpapers 46 A,B,C and 46 D), FPL asserts that the information relates to power interchange data between FPL and various other entities with which FPL interchanges power. Revealing data regarding daily pricing of power supplies could hinder negotiations for future contracts. FPL maintains that it keeps this power interchange information confidential and that this data is not for public disclosure. Further, FPL claims that the data is irrelevant to the Staff's audit. Commission staff's review of the documents reveal that they provide detailed data regarding daily pricing of power supplies based on contracts which have been afforded confidential status. Therefore, FPL's request for confidential classification is granted.

The balance of the workpapers for which FPL seeks confidential status are related to qualified facility purchase agreements for firm capacity and energy between FPL and Royster Company (Royster) and between FPL and Florida Crushed Stone Company (FCS). Mr. David Camardese, as Supervisor of Purchase Power Administration for FPL, filed an affidavit in support of FPL's request for confidential

treatment of the material and said affidavit is incorporated into the utility's rationale.

The affiant asserts that the Commission had previously issued a Protective Order on December 4, 1985, in Docket No. 850924-EU which treats the Royster QF Agreement as confidential and precludes public disclosure. At the time the protective order was issued in 1985 there was no statutory time-limit for the period of confidential classification. Since then, the legislature amended Section 366.093, Florida Statutes, to limit confidential status to a time-period not to exceed eighteen months, except for special circumstances approved by the Commission. By so doing, the legislature made clear that it did not anticipate that confidential classification would last ad infinitum. Now, 9 years later, it appears that the time is right to re-examine the need for continuing the protective order on the Royster contract. Because FPL, in its supplemental filing to address deficiencies, withdrew its request for confidential classification for numerous pages of the Royster contract and the corresponding workpapers, it is evident that such a re-examination is a prudent course of action. Apparently, the utility itself does not presently believe that the entire contract needs be held confidential. The request for confidential classification has been withdrawn for workpapers nos. 43-2/2-4, page 1; 43-3/2-4, pages 1 and 3; 45-2, pages 1-29, 31-33, 35 and 36 (actual contract pages); 45-2/1, 7 pages; and 45-3, pages 1-24 and 26. Therefore, this order shall supersede the Protective Order issued by the Prehearing Officer on December 4, 1985, in docket number 850924-EU, and only those pages of the Royster QF contract granted confidential status in this order shall be protected for the time-period so designated.

The utility and its affiant also present numerous other rationales as to why portions of the Royster and Florida Crushed Stone contracts and corresponding workpapers should be kept confidential. In summary, FPL maintains that pursuant to Section 366.093(3)(d), Florida Statutes, the material is contractual information. In addition, pursuant to Section 366.093(3)(e), Florida Statutes, the information relates to competitive interests, the disclosure of which would impair the competitive business of the qualified facility (QF) provider of the information. The Royster QF agreement and the FCS QF agreement contain terms and conditions other than those in FPL's standard contract and these terms are the result of negotiations solely between FPL and the respective QF. The revelation of these terms and conditions may

jeopardize FPL's ability to negotiate similar contracts with other QF's.

Further, FPL asserts that the Staff's workpapers contain information which delineates the price FPL has paid for QF power and discloses negotiated contractual provisions which are as important as the price itself. Disclosure of the invoice price for QF power purchased by FPL is reasonably likely to impair FPL's ability to negotiate price concessions in future QF contracts and could give their competitors an unfair competitive advantage.

Also, disclosure of financial terms in the contract to its cogeneration competitors would be to the QF's disadvantage. Public disclosure of favorable pricing concessions could result in the QF provider withdrawing these favorable price concessions in the future. Thus, the net result could be that FPL's customers may pay higher rates than they otherwise would for other QF power. Non-disclosure is essential if FPL is to maintain favorable negotiated provisions and to prevent the withdrawal of favorable negotiated provisions from future contracts to the detriment of FPL's ratepayers. Moreover, the QF providers have been assured that the terms of the contract will not be publicly disclosed.

In addition, FPL argues that the Staff's workpapers contain MWH production figures, capacity factor, financial information and other specific contractual provisions which are, in effect, pricing terms which are as important as the price itself. These provisions were specifically negotiated between the parties. Public disclosure of these terms, or even the existence of these terms, could result in these favorable terms being withdrawn in future contracts. Finally, FPL asserts that the Staff's workpapers contain financial information and contractual data regarding a QF's energy consumption which could lead a competitor to ascertain the production efficiency of a QF provider.

FPL claims that it maintains the confidential nature of these QF contracts and that the utility has not previously publicly disclosed the Royster or FCS contracts. FPL has internally circulated the Agreements only to a select few employees of FPL on a need to know basis.

Based on the foregoing, it is appropriate to grant confidential status to the contractual or competitive information related to the Royster and FCS contracts as detailed in the workpapers. A schedule consolidating and specifying the workpapers

for which confidential classification has been granted is attached hereto and made a part hereof, marked ATTACHMENT A.

However, confidential classification is denied, for the reasons stated herein, for the data included on each of the workpapers denoted hereafter. As to the first number in line 1 of workpaper 43-2, p.3, and line 1 of workpaper 43-3, p.3 of 3, these numbers have been disclosed in workpaper 43-2/2-2 and workpaper 43-3/2-2, respectively. In addition, these numbers and line 2 of workpaper 43-2/1 are total monthly MWH numbers which do not appear to provide daily or hourly detail. Without associated dollars, the information by itself does not indicate any of the sensitive contract terms.

As to line 1, workpaper 43-2/1, lines 1-2 of workpaper 43-2/2-4, p.3, line 1 of workpaper 43-3/1, lines 1-2 of workpaper 43-3/2, and lines 1-5 of workpaper 43-3/2-2 these numbers reflect committed capacity. However, these numbers are public information. They can be found in the Florida Coordinating Group 10-year plan, the FPL Integrated Resource Plan, as well as the monthly filings with the Commission on Schedule A8a.

Lines 2 and 3 of workpaper 43/1 contain no information. Line 4 of workpaper 43/1 and the first number in Line 1, workpaper 43/4/2, p.1 again represents the monthly MWH number and are not confidential for the reason discussed above.

FPL requests confidential status for workpaper 46, p.4, lines 1-5. This data is committed capacity charge numbers. However, because this data shows the beginning and maximum numbers included in the contract, all but the current level could be considered sensitive negotiated terms and has been granted confidential status, as noted above. The second number on line 4, however, is the current capacity charge level and that number is publicly disclosed information. Therefore, the second number on line 4 is denied confidential status.

On workpaper 46-1, lines 1-10, FPL's request for unmarked column A is denied because these numbers once again represent total monthly MWH. In some instances, the company has not asked for these numbers to be confidential on other workpapers (lines 1-5). In other instances, as discussed above, the numbers represent total monthly MWH numbers which are not confidential data (lines 6-10). However, all of unmarked column B on this workpaper is granted confidential status.

The first number in line 1 of workpaper 46-1/2, p.1, workpaper 46-1/2, p.2, and workpaper 46-1/1, p.3 are also denied because they are a total monthly MWH number. Similarly, lines 1 and 3, on workpaper 46-2/2-1 are denied confidential status because these numbers represent either committed capacity or total monthly MWH.

As to lines 1 and 2 on workpaper 46-4/1-1/2, confidential status is denied because this is part of Schedule A8a of the utility's monthly filing with the Commission and is maintained as a public document.

The first number of line 1 and 5, workpaper 47-1/1, p.1, and 47-1/1, p.2, once again represents a total monthly MWH which does not appear to provide daily or hourly detail. Without the associated dollars, this information does not indicate any of the sensitive contract terms. Lines 1 and 2, workpaper 47-1/1-1, represent either committed capacity or total monthly MWH.

ATTACHMENT B, attached hereto and made a part hereof, is a compilation of the workpapers denied confidential status or withdrawn by the utility.

DECLASSIFICATION

FPL presents the following rationales for lengthening the statutory declassification date of 18 months. Said rationales directly correspond to column marked "Rationale for Declassification Period" on ATTACHMENT A; the appropriate rationale is designated for each workpaper listed on the Attachment.

(A) The Florida Crushed Stone Contract is a long term QF contract. The contract should remain confidential for the length of the contract period. Early disclosure could impair FPL's ability to negotiate favorable concessions in future QF contracts. This contract should remain confidential until October 31, 2005. See Camardese Affidavit.

(B) The Royster Contract is a long term QF contract. The contract should remain confidential for the length of the contract period. Early disclosure could impair FPL's ability to negotiate favorable concessions in future QF contracts. This contract should remain confidential until March 31, 2002. See Camardese Affidavit.

In support of these rationales, Mr. Camardese reiterates that these QF contracts are long term power supply agreements and that the confidential nature of these agreements should be maintained for the entire length of the contract period because it would be inappropriate to publicly disclose the terms of the contract prior to its expiration date. FPL requests that contracts be kept confidential until the expiration of the initial term of the agreement; for the Royster contract that date is March 31, 2002, for the FCS the date is October 31, 2005. Further, FPL states that once the Commission has concluded that there is no further business need for these documents, they should be returned together with the associated confidential staff workpapers.

Without question these are long-term contracts. However, often long-term contracts are modified throughout their duration; and, consequently, terms and conditions which are relevant today may not be so in the future. It is more appropriate to give a reasonably extended time-period rather than the actual dates upon which the contracts terminate. Therefore, the specific contract pages from the Royster and FCS agreements and corresponding audit workpapers which show terms, prices, or calculations relative to these contracts which have been granted confidential status shall be declassified five years from the date of this Order. At that time, if need be, FPL can petition this Commission to extend the time-period for confidential status.

As to the power interchange information, FPL proposes the following rationale for its declassification date:

(C) The power interchange information should remain confidential for 18 months. The Commission should return the confidential information if no longer needed for the Commission to conduct its business after the expiration of the 18 month period.

Based on the foregoing, it is appropriate to retain confidential classification for workpapers 46-3/2-1, Pages 1-4 (also shown by FPL as workpapers 46 A,B,C and 46 D) for a period of 18 months from the date of this Order.

In consideration of the foregoing, it is

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that the request for confidential classification of document numbers 6408-93, 6409-93 and 4407-94, which encompass audit

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workpapers document numbers 6540-93 thru 6544-93, filed by Florida Power & Light Company is granted in part and denied in part as set forth in the body of this Order. It is further

ORDERED that this information shall be classified as proprietary confidential business information for the periods discussed in the body of this Order. It is further

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

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 6th day of October, 1994.



SUSAN F. CLARK, Commissioner and
Prehearing Officer

(S E A L)

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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,

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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.

ATTACHMENT A

FPL used full line designation in its request for confidential classification even where only a portion of the line was actually highlighted. In those instances, an alphabetical columnar designation has been given to the highlighted portions, and confidential classification is granted for only those portions of the lines which have been so designated and highlighted and where such information has been redacted in the edited copy.

<u>WORKPAPER DESIGNATION</u>	<u>LINE(S)</u>	<u>CONFIDENTIAL STATUS</u>	<u>RATIONALE FOR DECLASSIFICATION PERIOD</u>
9-8	ALL	GRANTED	
43-2, p. 1	1-6	GRANTED	A
43-2, p. 2	1-5	GRANTED	A
43-2, p. 3	Balance line 1 and lines 2-9	GRANTED	A
43-2, p. 4	1-4	GRANTED	A
43-2/1	3-11	GRANTED	A
43-2/2-1	1-26, Column B, D, and E p. 1-30 and Line 27	GRANTED	A
43-2/2-3	Columns C, D, E, G, H, I and Lines 11-16	GRANTED	A
43-2/2-4, p. 2	Columns B,C lines 1-19	GRANTED	A
43-3, pg. 1 of 3	1-3	GRANTED	B
43-3, pg. 2 of 3	1-3	GRANTED	B

<u>WORKPAPER DESIGNATION</u>	<u>LINE(S)</u>	<u>CONFIDENTIAL STATUS</u>	<u>RATIONALE FOR DECLASSIFICATION PERIOD</u>
43-3, pg 3 of 3	1-4	GRANTED (except first number line 1)	B
43-3/1	5-13	GRANTED	B
43-3/2-1 pg. 1-30	1-27	GRANTED	B
43-3/2-3	Columns C, D, E, G, H, I and Lines 11-16	GRANTED	B
432-3/2-4, p. 2	Columns B, C 1-16	GRANTED	B
43-4/2, P.1	Balance Line 1 and Lines 2-10	GRANTED	A
43-4/2, p. 2	1-9	GRANTED	A
43-4/2, p. 3	1-9	GRANTED	A
43-4/2, p. 4	1-7	GRANTED	A
43-4/2, p. 5	1-7	GRANTED	A
43-4/2, p. 6	1-7	GRANTED	A
45-2, p. 30 & 34	Columns B & C of lines 1-19	GRANTED	A
45-3, p.25	Columns B & C Lines 1-16	GRANTED	B
46, p.4	Lines 1-5	GRANTED (except second number, line 4)	A
46, p. 5	1	GRANTED	A

<u>WORKPAPER DESIGNATION</u>	<u>LINE(S)</u>	<u>CONFIDENTIAL STATUS</u>	<u>RATIONALE FOR DECLASSIFICATION PERIOD</u>
46, p. 6	1	GRANTED	A
46-1	1-5 Column B 6-10 Column B	GRANTED GRANTED	B
46-1/2. p.1	Balance line 1, and lines 2-23	GRANTED	A
46-1/2, p.2	Balance line 1, and lines 2-10	GRANTED	A
46-1/1, p. 3	Balance line 1, and lines 2-11	GRANTED	A
46-2/2-1	Lines 2, 4-12	GRANTED	A
46-2/2-1/1	1-6	GRANTED	A
46-2/2-1/1-1	1-5	GRANTED	A
46-2/2-1/2	1-5	GRANTED	A
46-3, p. 1-31	Columns B, D, E and Line 27	GRANTED	A
46-3/1, p. 1-31	Columns E, F of Lines 1-26	GRANTED	A
46-3/2	Columns B, D	GRANTED	A
46-3/2-1	All	GRANTED	C
Pages 1-4 (also shown by FPL as workpapers 46 A, B, C and D)			
46-4/1-2, DCP-p. 1	1-7	GRANTED	A
46-4/1-2, p. 1A	1-33	GRANTED	A

<u>WORKPAPER DESIGNATION</u>	<u>LINE(S)</u>	<u>CONFIDENTIAL STATUS</u>	<u>RATIONALE FOR DECLASSIFICATION PERIOD</u>
46-4/1-2, p. 2	1-3	GRANTED	A
46-4/1-2, p.3	1-3	GRANTED	A
47-1/1, p. 1	Balance of 1-7	GRANTED	B
47-1/1, p. 2	Balance of 1-9	GRANTED	B
47/1/1-1	3-12	GRANTED	B
47-1/1-1/1	1-3	GRANTED	B
47-1/1-1/2	1-3	GRANTED	B
47-1/1-2, p. 1-31	Columns B,D,E and line 27	GRANTED	B
47-1/1-2/1 p. 1-31	Columns D,E,F and line 26	GRANTED	B
47-1/1-2/2	1-32	GRANTED	B
47, p. 1	1-5	GRANTED	B
47, p. 2	1-2	GRANTED	B

ATTACHMENT B

<u>WORKPAPER DESIGNATION</u>	<u>LINE(S)</u>	<u>CONFIDENTIAL STATUS</u>
43-2, p. 3	First Number, line 1	DENIED
43-2/1	1, 2	DENIED
43-2/2-4, p. 1	All	WITHDRAWN
43-2/2-4, p. 3	1-2	DENIED
43-3, pg. 3 of 3	First number, line 1	DENIED
43-3/1	1-4	DENIED
43-3/2	1-2	DENIED
43-3/2-2	1-5	DENIED
43-3/2-4, p. 1	All	WITHDRAWN
47-1/1, p. 1	First number, lines 1 and 5	DENIED
43-3/2-4, p.3	All	WITHDRAWN
43-4/2, p. 1	First Number, Line 1	DENIED
45-2, p. 1-29, 31-33, 35, 36	All	WITHDRAWN
45-2/1, 7 pages	All	WITHDRAWN
45-3, p. 1-24 p. 26	All	WITHDRAWN
46, P.4	Second number, Line 4	DENIED

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<u>WORKPAPER DESIGNATION</u>	<u>LINE(S)</u>	<u>CONFIDENTIAL STATUS</u>
46-1	1-5, Column A 6-10, Column A	DENIED DENIED
46-1/2, p. 1	First number, Line 1	DENIED
46-1/2, p.2	First number, Line 1	DENIED
46-1/1, p. 3	First number, Line 1	DENIED
46-2/2-1	Lines 1, 3	DENIED
46-4/1-1/2	1,2	DENIED
47-1/1 p. 2	First number lines 1 and 5	DENIED
47-1/1-1	1, 2	DENIED