

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased Power) DOCKET NO. 940001-EI
Cost Recovery Clause and) ORDER NO. PSC-94-1258-CFO-EI
Generating Performance Incentive) ISSUED: October 11, 1994
Factor.)
_____)

ORDER GRANTING CONFIDENTIAL CLASSIFICATION

During the 1994 fuel audit of Florida Power & Light Company (FPL), Commission Staff requested access to information relating to the purchase and transportation of fuel oil and FPL contracts for nuclear fuel fabrication services. FPL asserts that certain confidential material obtained through staff notetaking and embodied in staff's workpapers should be classified as proprietary confidential business information pursuant to Section 366.093(3)(d) and (e), Florida Statutes and Rule 25-22,006, Florida Administrative Code. Accordingly, on July 1, 1994, FPL filed a Request for Confidential Classification of Certain Materials Obtained by the Staff as Part of its Fuel Audit. The request was assigned document number 06504-94 and Attachments A and C were assigned document number 06505-94. Corresponding staff audit workpapers were assigned Document No. 06018-94.

FPL declares that the material contained in DN-06505-94 is intended to be and is treated by FPL as confidential, and has not otherwise been publicly disclosed to the best of FPL's knowledge and belief.

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 25-22.0006, Florida Administrative Code, FPL has the burden to show that the material submitted is qualified for confidential classification. Rule 25-22.0006, Florida Statutes, provides that the Company 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 Company or its ratepayers harm.

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Section 366.093(3), Florida Statutes, provides several examples of proprietary confidential business information. Included in this 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" and "information relating to competitive interest, the disclosure of which would impair the competitive business of the provider of the information." To establish that material is proprietary confidential business information under Section 366.093(3)(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. This Commission has 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 the disclosure is "reasonably likely" to impair the company's contracting for goods or services on favorable terms.

FPL argues that the information in Attachment A on workpaper pages 43-1/2, lines 1-25; 43-1/2-1 (by scrivener's error shown as 43-2/1-1 in utility's matrix), lines 1-9; 43-1/2-1, p.3, lines 1-7; 43-1/2, p.5, line 1; 43-1/3, p.1, lines 1-34; and 43-1/3, p.2, lines 1-21, is contractual data because the price that FPL pays for fuel oil is established by contract. In support of its position, FPL attached the Affidavit of Eugene Ungar, an FPL forecasting specialist. The affidavit explains that the fuel oil market for FPL's service area is characterized by a limited number of sellers and buyers. This limited availability of suppliers coupled with FPL's presence as a significant buyer creates a unique market wherein the disclosure of the price for which FPL purchases fuel could impair FPL's ability to contract for fuel oil on terms most favorable to its ratepayers. Disclosure would make it more likely that FPL will not be able to gain concessions in the future. Further, disclosure could disadvantage the fuel oil vendors by revealing to their competitors information on the nature of their business operation and production cost of fuel. In addition, the fuel oil contracts provide that the terms of the contract will be kept confidential. Moreover, the Commission has routinely granted confidential treatment for this same type of fuel oil information in FPL's monthly fuel reports (FERC Form 423).

FPL asserts also that Staff's workpapers contain information which could impair the competitive business of the provider of the information. The Staff's workpapers contain fuel oil pricing

information which could lead a competitor to ascertain the financial and business operation of the fuel oil provider. Based on the foregoing, the workpapers delineated above are found to be proprietary business information and are granted confidential classification.

FPL argues that the above delineated workpapers reflecting fuel oil pricing information should not be declassified for at least a period of eighteen months. This period will allow FPL a reasonable opportunity to negotiate new fuel oil contracts without public disclosure of the pricing information. Disclosure of pricing information during this contract period or prior to the negotiation of a new contract is reasonably likely to impair FPL's ability to negotiate future contracts. This 18 month period is determined by adding six months to the last day of the contract period under which the fuel oil was purchased. This affords FPL the opportunity to obtain the best price for fuel oil by obtaining price concessions from the various fuel oil vendors. The declassification date requested by FPL is in conformance with the provisions of Section 366.093(4); therefore, the above noted workpapers shall be declassified 18 months from the date of this Order.

As to workpapers 43-3/4-2/2, lines 1-10; 43-3/4-2/2-1, lines 1-6; 43-3/4-2/3, p. 1, lines 1-7; 43-3/4-2/3, p. 2, lines 1-3; 43-3/4-2/3, p. 3, lines 1-6; 43-3/4-2/3, p. 4, lines 1-4; 43-3/4-2/3, p. 5, lines 1-3; 43-3/4-2/3, p. 6, lines 1-3; 43-3/4-2/3, p. 7, lines 1-2; 43-3/4-2/3, p. 8, lines 1-11; 43-3/4-2/3-1, lines 1-17; 43-3/4-2/4, p. 4, lines 1-40; and 43-3/4-2/4, p. 5, lines 1-29, FPL argues that the nuclear fuel fabrication information found in these workpapers came from FPL contracts. The Affidavit of Daniel C. Poteralski, FPL's Manager of Nuclear Fuel was offered by FPL in support of FPL's position that Staff's workpapers contain information which delineates the price FPL has paid for nuclear fuel fabrication and fabrication related services. The nuclear fuel fabrications services market, which includes poison rod and engineering services, is characterized by a limited number of service providers. This limited availability of service providers creates a market wherein the confidentiality of the price, terms, and conditions of the services offered is necessary to gain the most favorable nuclear fuel fabrication services contract on behalf of FPL's ratepayers. Public disclosure of the invoice price for fabrication services purchased by FPL and of favorable pricing concessions is reasonably likely to impair FPL's ability to negotiate price concessions in future fabrication contracts. Moreover, the fabrication contract provides that the terms of the fabrication contract will not be publicly disclosed.

FPL maintains also that Staff's workpapers contain rates and pricing provisions which are, in effect, pricing terms that are as important as the price itself. Moreover, this is information about a fabrication provider's business operation which could lead a competitor to ascertain the production efficiency of the fabrication provider. Besides, these provisions were individually negotiated between the parties. Public disclosure of these terms could result in these favorable terms being withdrawn in future contracts. Based on the foregoing, the workpapers delineated above are found to be proprietary business information pursuant to Section 366.093(3) (d) and (e), Florida Statutes and are granted confidential classification.

It is FPL's contention that the nuclear fuel fabrication information should not be declassified until December 31, 2009. Disclosure of this pricing information during this confidential period is reasonably likely to impair FPL's ability to negotiate future nuclear fuel fabrication service contracts on terms most favorable to FPL's ratepayers. Section 366.093(4), Florida Statutes, states 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 shown, that the protection from disclosure shall be for a specified longer period." It has been the Commission's experience that often long-term contracts are renegotiated before the expiration period and the terms and conditions in existence presently may not be of future consequence. A declassification date fifteen years out is excessive. Therefore, the appropriate length of time for confidential classification for the nuclear fuel fabrication services material is until December 31, 1999. At that time, FPL can request an extension of the time period.

In consideration of the foregoing, it is

ORDERED by Chairman J. Terry Deason, as Prehearing Officer, that the request for confidential classification of Document No. 6505-94 and the corresponding staff audit workpapers Document No. 06018-94 filed by Florida Power and Light Company is granted. 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

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Commission to the parties concerning the expiration of the confidentiality period.

By ORDER of Chairman J. Terry Deason, as Prehearing Officer, this 11th day of October, 1994.


J. TERRY DEASON, Chairman and
Prehearing Officer

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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, 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.