

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased Power) DOCKET NO. 960001-EI
Cost Recovery Clause and) ORDER NO. PSC-96-0997-CFO-EI
Generating Performance Incentive) ISSUED: August 5, 1996
Factor.)
_____)

ORDER DENYING FLORIDA POWER & LIGHT COMPANY'S
REQUEST FOR CONFIDENTIAL TREATMENT OF
A SCHEDULES FOR APRIL 1996
(DOCUMENT NUMBER 05563-96)

Pursuant to Rule 25-22.006(4), Florida Administrative Code, Florida Power & Light Company (FPL) has requested specified confidential treatment of the following A Schedules:

| MONTH/YEAR | FORMS | DOCUMENT NO. |
|-------------|-----------------|--------------|
| April, 1996 | A4, A6, A6a, A9 | 05563-96 |

Florida law presumes that documents submitted to governmental agencies shall be public records. The only exceptions to this presumption are the specific statutory exemptions provided in the law and the exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. The presumption is based on the concept that government should operate in the "sunshine." It is the Company's burden to demonstrate that the documents fall into one of the statutory examples set out in Section 366.093, Florida Statutes, or to demonstrate that the information is proprietary confidential information, the disclosure of which will cause the Company or its ratepayers harm.

The Florida Legislature has determined that "[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" is proprietary confidential business information. Section 266.093(3)(d), Florida Statutes.

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. The Commission has previously recognized that this latter requirement does not necessitate the showing of actual

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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.

FPL argues that the information pertaining to wholesale power market transactions and fuel cost information for each of its generating plants/units is confidential. This information is provided on Commission Schedules A4, A6, A6a, and A9.

FPL asserts its concern for disclosure of operational information stems from what it views as an increasingly competitive wholesale power market. FPL states that wholesale power competitors are able to determine the economics of FPL's generating facilities by using the unit specific cost information detailed on Schedule A4. FPL contends that this information can be used in conjunction with the laundry list of customers, quantity, and transaction costs shown on Schedules A6, A6a, and A9 to "undercut FPL's pricing or out bid FPL for energy sources." FPL states that it anticipates increasing competition in other aspects of its business, especially the retail market with respect to commercial and industrial customers.

FPL states that a McGraw-Hill publication recently reported detailed information on FPL's wholesale power transactions for the month of July, 1995. This publication reports names of customers, total amounts purchased, average price, and total price. The publication also reported extensive information regarding FPL's power purchases for the same period. FPL asserts that the reported information can only be found on the A Schedules which are the subject of this request. FPL alleges that release of this information will cause substantial competitive harm, because its non-regulated competitors will have an unfair advantage by knowing FPL's cost; and, FPL will not know the non-regulated competitors' cost.

FPL states that the recent loss of a long term contract with the City of New Smyrna Beach for the sale of wholesale power is justification for its request for confidentiality. FPL states, "New Smyrna Beach has replaced FPL with Enron Power Marketing. New Smyrna Beach reported that 'the prices were better' and 'the fuel charges from Enron are lower' as justification for canceling the contract with FPL." FPL believes that loss of sales will occur more frequently as competition in the wholesale market increases.

FPL has not stated any specific set of circumstances that justifies classification of A Schedule information as confidential. Power interchange information between FPL and another Florida

investor-owned utility, a cooperative, or a municipal is readily attainable and/or is subject to the provisions of the following Statutes:

Section 119.01(1), Florida Statutes, "It is the policy of this state that all state, county, and municipal records shall be open for personal inspection by any person"

Section 425.045(1), Florida Statutes, "All meetings of any board of trustees of a cooperative organized pursuant to this chapter... are declared to be meetings open to the membership of such cooperative at all times, and...The minutes of a meeting of any such cooperative board or board of any affiliated company or subsidiary thereof shall be promptly recorded, and such records shall be open to inspection."

FPL routinely files projected plant/unit specific cost and operation information in conjunction with the fuel cost recovery clause. This is the first time a utility has requested that Schedules A4, A6, A6a, and A9 contain confidential information. This projected data represents what costs FPL expects to incur as opposed to costs previously incurred. Also, plant specific information and wholesale transactions are available from the Federal Energy Regulatory Commission (FERC) using the FERC Form 1, which contains annual data for the preceding year, or by using the power marketer's quarterly reports filed with FERC. As will be discussed below, FPL's unit-specific cost information can be arithmetically determined, provides no competitive advantage, or is irrelevant to competition in the wholesale power market; and therefore, is not confidential.

Schedule A4

FPL requested confidential treatment for page 1, lines 1-28, page 2, lines 1-25, and page 3, lines 1-6 and 11-16 of Columns (l), (m), and (n) of Schedule A4. FPL asserts that the information relates to FPL's competitive interest in the wholesale market and that disclosure would impair FPL's competitive business. Additionally, FPL states that the fuel cost data concerns bids or other contractual data, the disclosure of which would impair FPL's efforts to contract for goods or services on favorable terms. FPL believes that publication of the plant or unit-specific information enables FPL's competitors to determine FPL's unit generating efficiencies and marginal cost with extreme precision. FPL believes that this gives its potential competitors an unfair advantage in pricing their own service and in making decisions as to whether to target FPL's customers. FPL also believes that the

information allows suppliers of energy to predict the point at which it is more economical for FPL to purchase rather than generate power. Therefore, suppliers could price closer to FPL's break-even point, thereby reducing the benefit of purchasing rather than generating power. FPL has requested that the information remain confidential for a period of 18 months.

As recognized by FPL, Columns (m) and (n) are easily determined from the remaining information on the schedule once Column (l) is known. Therefore, FPL's justification for Column (l)'s confidential status is addressed by each fuel type.

Coal

FPL did not request confidentiality for St. Johns River Power Park's (SJRPP) operating costs. The SJRPP generating station is jointly owned by FPL and Jacksonville Electric Authority (JEA), a municipal utility. JEA is subject to the records disclosure requirements of Chapter 119, Florida Statutes. FPL has only one remaining coal unit on its system, Scherer Unit #4. Through process of elimination, Scherer Unit #4's costs can be determined by backing-out the SJRPP costs on Schedule A4 from the total coal cost figures on Schedule A3. Following this methodology, Scherer Unit #4's cost components are easily ascertainable. Accordingly, FPL's coal-fired units' cost information does not warrant confidential classification.

Natural Gas

As is widely known, FPL does not inventory, or store, quantities of natural gas. FPL routinely reports the delivered price and quantity of natural gas purchases on the FERC Form 423 for each plant on its system. The FERC Form 423's are currently filed as public information. Knowing FPL's practice of burning-what-they-buy, the Form 423 weighted average price (firm and interruptible) can be used to reasonably estimate the As-Burned fuel cost for each generating unit. By multiplying the Form 423 weighted average unit price and Column (i), Fuel Burned (Units), on Schedule A4, the value of Column (l), As Burned Fuel Cost, can be calculated with sufficient accuracy to preempt a competitive advantage through concealment. Accordingly, FPL's natural gas-fired units' cost information does not warrant confidential classification.

Oil

FPL's oil-fired units are older, more expensive, and less-efficient units. As such, these units are typically at the bottom of the dispatch hierarchy and would not be as cost competitive in the wholesale power market as compared to coal-fired or natural gas-fired units. Furthermore, oil prices are quite volatile, exhibiting up to 18 percent monthly variation during calendar year 1995. Thus, historical data may not be a clear indication of future operational costs. It should be noted that this volatility is the fundamental reason fuel costs are recovered through a clause and not through base rates. Accordingly, FPL's oil-fired units' cost information does not warrant confidential classification.

Nuclear

Nuclear units are the lowest-cost units on FPL's system. FPL's request clearly states that, "Barring unusual circumstances, FPL dispatches its most economical units first -- initially to satisfy its retail demand and then to sell surplus energy on the wholesale market." Practicing such dispatch, it would be illogical to believe that FPL's load requirements might decrease by more than 75 percent such that excess nuclear generation would be available to sell as wholesale power. Therefore, it is reasonable to assume that nuclear units would not be used for wholesale competition, but would, by FPL's adherence to economic dispatch, only be used to serve retail load. Accordingly, FPL's nuclear power units' cost information does not warrant confidential classification.

Schedule A6

FPL argues that disclosure of Schedule A6 information would impair its competitive business by allowing potential competitors to precisely target FPL's wholesale power customers. The information on this schedule consists of a list of FPL's wholesale power sales customers, sales figures for each such customer, and the pricing of the power sold to each customer. FPL asserts that it limits internal access to this confidential material and has instituted strict controls to ensure that the information remains private. Rene Silva's affidavit states, "Access within the company to this information is restricted," and "This information has not, to the best of my knowledge, been disclosed elsewhere." FPL has requested that the information remain confidential for a period of 18 months.

FPL requests that the Commission classify the information provided in the Month of April 1996, lines 9-12, 14-20 and 24 of Columns (3), (5), (6a), (6b), (7), and (8) of Schedule A6 as

confidential. These columns list information about power sales between FPL and various wholesale customers. The columns providing unique information and the information they provide are as follows: Column (3), the energy amount of the sale; Column (5), the amount of energy provided from FPL's own generation; Column (6a), fuel cost of sale; and Column (6b), total cost of sale. The remaining columns, Columns (7) and (8), are determined by multiplying Columns (5) and (6a), and Columns (5) and (6b), respectively. FPL's request excludes information on wholesale power sales with other investor-owned utilities as well as the aggregated economy energy sales data.

FPL requests that the information regarding power sales to various cooperatives, municipal, private companies, and the Florida Municipal Power Association (FMPPA) be granted confidential treatment. FPL states, "The information on FPL's specific, individual wholesale power sales customers is made available only to FPL's senior management, personnel involved in wholesale power transactions, and personnel involved in the use and preparation of the A Schedules." However, as previously discussed, when the transaction involves a cooperative or a municipal, that transaction is subject to either Chapter 119, F.S., or Chapter 425, F.S. Thus, this type of information is precluded from being classified as confidential. Additionally, three of Southern Company's individual member utilities, Georgia Power Company, Alabama Power Company, and Gulf Power Company, either make available or routinely report wholesale sale and purchase information to their respective public utilities commission as non-confidential material. These three of the five sister companies constitute the bulk of the power transactions between Southern Company and FPL. The combined information would give FPL's competitors comparable knowledge of its wholesale power sales pricing. Therefore, FPL would not preserve a competitive advantage by concealing this information.

As part of FPL's justification of its Schedule A6 request, Rene Silva states, "FPL knows of no other source similar to the A Schedules from which FPL can derive similar information with regard to its competitors." However, wholesale power brokers are required by FERC to file quarterly reports of their interchange transactions. These reports indicate the quantity and price of the transactions for each customer. FPL could use this information much the same as its competitors use the A Schedules to gain a "competitive-edge."

Furthermore, the A6 data, as FPL recognizes, is an aggregated monthly amount sorted by each respective customer. Unless the line item represents a single transaction, the reported cost figures are monthly aggregates of multiple transactions. Accordingly, for

these reasons FPL's Schedule A6 information does not warrant confidential classification.

Schedule A6a

FPL argues that disclosure of the Schedule A6a information would impair FPL's competitive business by allowing potential competitors to precisely target FPL's economy energy customers. The information on this schedule consists of total sales figures for each of FPL's economy sales customers, the prices, and fuel costs. These transactions are made through the Florida Broker System rather than through long-term contracts. FPL limits internal access to this confidential material and has instituted strict controls to ensure that the information remains private. Rene Silva's affidavit states, "Access within the company to this information is restricted," and "This information has not, to the best of my knowledge, been disclosed elsewhere." FPL has requested that the information remain confidential for a period of 18 months.

FPL requests that confidential treatment for the information provided in the Month of April 1996, lines 6, 8-19, and 21 of Columns (4a), (4b), (5a), (5b), and (6) of Schedule A6a. These columns list information about the gain on economy energy sales between FPL and various wholesale customers. Columns (4a) and (4b) provide unique cost information while (5a), (5b), and (6) are mathematical computations derived from Columns (3), (4a), and (4b).

As a result of maintaining adequate reserves, utilities possess excess capacity. To offset the cost of this capacity, utilities offer to sell the energy to the Florida Broker System. This allows the selling utility to support embedded fixed costs and allows the purchasing utility to make use of cheaper electricity. By Order No. 12923, issued January 24, 1984, the Commission instituted the current 80/20 split of the net gain on economy energy sales. The Commission determined that because the ratepayers fully support the fixed cost of a utility's system, they should retain a major portion of the benefits from economy energy sales. Economy energy transactions benefit the retail ratepayer. These transactions are made on the Florida Broker System and are only revealed to the buyer and the seller. However, similar to the power sales listed on Schedule A6, economy energy transactions with either a municipal or a cooperative are subject to Chapter 119, F.S., or Chapter 425, F.S. Thus, this type of information cannot be classified as confidential. Also, three of Southern Company's individual member utilities, Georgia Power Company, Alabama Power Company, and Gulf Power Company, either make available or routinely report wholesale sale and purchase information to their respective public utility commissions as non-confidential material. These

three of the five sister companies constitute the bulk of economy energy sales between Southern Company and FPL. The combined information gives FPL's competitors a comparable knowledge of wholesale economy power sales pricing. Therefore, FPL would gain no competitive advantage from concealment of this information. Finally, power marketer information is available from quarterly reports filed with FERC. Accordingly, FPL's Schedule A6a information does not warrant confidential classification.

Schedule A9

FPL argues that disclosure of the Schedule A9 information would impair its competitive business by allowing potential competitors to precisely target FPL's wholesale power customers. Schedule A9 details the pricing of FPL's purchases of economy energy with individual suppliers. The information on this schedule includes name of the supplier, total volume of purchases, pricing, and fuel savings. FPL insists that suppliers of economy energy could use the Schedule A9 information to determine the point at which it is more economical for FPL to purchase rather than generate power. FPL believes that competitors would price their service nearer this margin, thereby minimizing the benefit realized from purchasing economy energy. FPL limits internal access to this confidential material and has instituted strict controls to ensure that the information remains private. Rene Silva's affidavit states, "Access within the company to this information is restricted," and "This information has not, to the best of my knowledge, been disclosed elsewhere." FPL has requested that the information remain confidential for a period of 18 months.

FPL requests confidential treatment for the information provided in the Month of April, 1996, lines 15-17 of Column (3); lines 7-13 and 15-17 of Columns (4), (5), and (6a); and lines 7-13 and 15-23 of Column (6b) and (7) of Schedule A9. These columns list information about economy energy purchases including long-term purchases between FPL and various wholesale customers.

Similar to the economy energy sales listed on Schedule A6a, economy energy purchases with either a municipal or a cooperative are subject to Chapter 119, F.S., or Chapter 425, F.S. Also, three of Southern Company's individual member utilities, Georgia Power Company, Alabama Power Company, and Gulf Power Company, either make available or routinely report wholesale sale and purchase information to their respective public utilities commission as non-confidential material. These three of the five sister companies constitute the bulk of economy energy purchases between Southern Company and FPL. The combined information would give FPL's competitors a comparable knowledge of wholesale economy power sales

pricing. Therefore, FPL would gain no competitive advantage from concealment of this information. Accordingly, the information on economy energy purchases from Southern Company does not warrant confidential classification. Finally, power marketer information is available from quarterly reports filed with FERC.

On the other hand, Column (6a) information is not available nor can it be determined for transactions with a power marketer. Consequently, FPL's Schedule A9 is the only source of this information and the information in Columns (6b) and (7). Nonetheless, confidential treatment of this information would provide no substantial competitive benefit to FPL because the bulk of its economy energy purchases are from cooperatives, municipals, and IOUs. Accordingly, FPL's Schedule A9 information does not warrant confidential classification.

Conclusion

Florida law states that documents submitted to governmental agencies shall be public records. The only exceptions to this are the specific statutory exemptions provided in the law and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. This is based on the concept that government should operate in the "sunshine." It is the company's burden to demonstrate that the documents fall into one of the statutory examples set out in Section 366.093, F.S., or to demonstrate that the information is proprietary confidential information, the disclosure of which will cause the Company or its ratepayers harm. Apart from the loss of a potential sale of electricity to New Smyrna, FPL has not indicated any harm which it will suffer due to continued disclosure of A Schedule information. FPL has disclosed A Schedule information since 1980 without suffering any undue burden.

The A Schedules do not meet our definition of proprietary confidential business information. According to 366.093(3), F.S., Confidential status is based on the supposition that the material has not been disclosed unless disclosed pursuant to statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public. FPL has not shown that the information which it seeks to keep confidential is not available from other public sources in substantially the same detail or that the information may be derived arithmetically. Therefore, FPL fails to meet the statutory requirement for confidential status.


In so ruling, I feel compelled to note that FPL makes an argument that has merit. I am persuaded that the time will come

when a level playing field will require that all participants in a competitive market place be entitled to treat this information in a proprietary manner. Whether this time has come is an open question. At this time I am reluctant to make a marked change in policy through a prehearing officer's order. Such policy determinations should come from the full commission. It is for this reason that I am following existing Commission policy.

In consideration of the foregoing, it is therefore

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that the request for confidential treatment of the proprietary confidential business information discussed above, as found in Document 05563-96, shall be denied as discussed in the body of this Order.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 5th day of August, 1996.



J. TERRY DEASON, Commissioner 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

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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.