

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and Purchased Power Cost)	DOCKET NO. 900001-EI
Recovery Clause and Generating)	ORDER NO. 23696
Performance Incentive Factor)	ISSUED: 10-29-90
_____)		

ORDER REGARDING CONFIDENTIALITY

Justification Florida Power & Light Company (FPL) requests confidentiality of certain Commission staff workpapers (Commission Document No. 5788-90) containing information obtained from FPL during the fuel audit for the six months ended March 31, 1990. The pertinent information is described as follows:

Attachment A Staff Workpapers pages 1-4 (WP 9 Review of Internal Audit)

Attachment B Review of Contracts (WP 25-1, 25-2, 25-3, 25-3a, 25-3/1)

Attachment C Interoffice Correspondence (WP 25-5)

FPL asserts that the information contained in attachment A is proprietary confidential business information pursuant to Section 366.093(3)(b), Florida Statutes, which makes confidential "[i]nternal auditing controls and reports of internal auditors." FPL asserts a line by line justification for confidentiality of the information contained in attachment A is inappropriate because all of the information in attachment A is taken from reports of internal auditors, thus all of attachment A should be classified confidential.

Staff workpaper 9, pages 1-4, contained in attachment A, contains Commission staff notes taken in the course of reviewing reports of FPL internal auditors or their supporting workpapers. As such it is entitled to specified confidential classification.

FPL asserts that portions of the information contained in attachment B, Review of Contracts, should be classified as specified confidential pursuant to Section 366.093(3)(b), Florida Statutes, which makes confidential "[i]nformation concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility to contract for goods or services on favorable terms." FPL has provided a line by line justification for the portions of attachment B which it asserts should be kept confidential. FPL asserts the information shown on workpaper 25-1

DOCUMENT NUMBER-DATE

09712 OCT 29 1990

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(or page 1), line 17; workpaper 25-2 (or page 2), lines 1, 2, 5, 11-13, 17-24, and 27-31; and workpaper 25-5 (or page 6), lines 6-20 is derived from FPL fuel contracts for the purchase or transportation of natural gas, and that due to

the unique characteristics of the natural gas market for FPL's service area, the disclosure of information regarding terms and conditions that affect or specify price or price related terms and conditions is reasonably likely to impair the efforts of FPL to contract for natural gas on favorable terms in the future.

FPL elaborates on the unique nature of the natural gas market as follows:

[T]he natural gas market for FPL's service area is characterized by a limited number of sellers and buyers. Under open access FPL's needs for natural gas, due to its magnitude, will limit the number of suppliers that can meet FPL's requirements. This limited availability of suppliers coupled with FPL's presence as a significant buyer creates a unique market wherein the confidentiality of the price, terms, and conditions of the supply of natural gas to FPL is necessary to gain the most favorable natural gas supply contracts for FPL's ratepayers. While Florida Gas Transmission Company (FGT) is the only pipeline offering the transportation of natural gas available to the Florida peninsula, alternative substitute fuels such as coal or oil combined with FPL's status as a significant fuel buyer in Florida allows FPL to gain concessions that otherwise would not be available for sales of natural gas and/or transport thereof. Disclosure of contractual data relating to the sale or transportation of natural gas to FPL is reasonably likely to impair FPL's efforts to gain concessions in the future. Firms are presently willing to provide concessions to FPL due to the limited natural gas market in Florida and FPL's presence in that market. However, if contractual data such as the identified material obtained by Staff is made public it is likely that FPL will not be able to gain concessions in the future.

I find that, with the exception of the information found in workpaper 25-2, lines 1, 2, 5 and 17, the material identified above

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is entitled to confidential classification under Section 366.093(3)(b), Florida Statutes. Lines 1, 2, 5 and 17 of workpaper 25-2 do not contain contractual data disclosure of which would impair FPL's efforts to contract for goods or services on favorable terms, however, and are not entitled to confidential classification. Those lines merely show the title of a letter agreement, allude generally to "price paid" and "price offered", and mention the plant to which deliveries will be made.

FPL asserts that the information shown on workpaper 25-3 (or page 3) lines 16-18, 26-28, 36, 39, 40; workpaper 25-3a (or page 4) lines 4-8; and workpaper 25-4 (or page 5) lines 17, 18, 21-23 is derived from an FPL contract for Nuclear Fuel Inspection Services and should be classified pursuant to Section 366.093(3)(d), Florida Statutes. FPL states "[b]ecause of the unique characteristics of the market for nuclear fuel inspection services the disclosure of terms or conditions that affect price or performance requirements is reasonable likely to impair the efforts of FPL to contract for nuclear fuel inspection service on favorable terms in the future." FPL elaborates on the unique nature of the market for nuclear fuel inspection services as follows:

[T]he nuclear fuel inspection services market 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 inspection services contract on behalf of FPL's ratepayers. Nuclear fuel inspection service firms are presently willing to provide concessions to FPL due to the nature of the limited market. However, if contractual data such as the identified material obtained by Staff is made public it is likely that FPL will not be able to gain concessions in the future.

I find that the information contained in workpapers 25-3, 25-3a, and 25-4 as identified above is entitled to specified confidential classification.

FPL asserts that workpaper 25-3/1, lines 33 and 35, contains information derived from a document titled Interoffice Correspondence, dated June 26, 1990 (also identified as attachment c) which should be classified as specified confidential because, like the material discussed in the last paragraph above, the data was

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obtained from an FPL contract for Nuclear Fuel Inspection Services. I find that lines 33 and 35 of the document titled Interoffice Correspondence do contain confidential information under Section 366.093(3)(d), Florida Statutes.

Declassification With regard to attachment A, Review of Internal Audit, FPL asserts the workpaper "should not be declassified for at least a period of 18 months and should be returned to FPL in accordance with § 366.093(4), Florida Statutes, as soon as the information is no longer necessary for the Commission to conduct its business."

With regard to attachments B and C, FPL proposes the following declassification schedule:

Workpaper 25-1 (page 1), line 17 - December 31, 1991

Workpaper 25-2 (page 2), lines 11-13, 18-24, 27-31 - March 31, 1991

Workpaper 25-3 (page 3), lines 16-18, 26-28, 36, 39, 40 - December 31, 1995

Workpaper 25-3a (page 4), lines 4-8 - December 31, 1995

Workpaper 25-4 (page 5), lines 17, 18, 21-23 - December 31, 1995

Workpaper 25-5 (page 6), lines 6-20 - February 1, 2006

Workpaper 25-3/1 (attachment C - Interoffice Correspondence), lines 33, 35 - December 31, 1995

FPL notes that the requested declassification dates associated with WP 25-3, 25-3a, 25-4, 25-5 and 25-3/1 exceed the 18 month limit imposed by Section 366.093(4), Florida Statutes, but asserts it has good cause for requesting extended classification. With regard to 25-3, 25-3a, 25-4, and 25-3/1, FPL asserts confidentiality should be maintained until December 31, 1995 because the terms and conditions of the pertinent contracts will effect future contract negotiations for the same service, and "the next service contract is expected to be in place by December 31, 1995." With regard to 25-5, FPL says a declassification date of February 1, 2006 is justified "because the identified material will

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be in effect during the life of the contract" and "February 1, 2006 is 6 months past the expiration date of the contract." I find FPL has shown good cause for the proposed declassification schedule and hereby approve that schedule.

In consideration of the foregoing it is hereby

ORDERED that specified confidential classification of the portions of staff workpapers 25-1, 25-3, 25-3a, 25-4, 25-5, and 25-3/1 described above is granted. It is further

ORDERED that specified confidential classification of lines 1, 2, 5, and 17 of staff workpaper 25-2 is denied. It is further


ORDERED that FPL shall file a new edited version of workpaper 25-2 which includes lines 1, 2, 5 and 17. It is further

ORDERED that specified confidential classification of lines 11-13, 18-24, and 27-31 of staff workpaper 25-2 is granted. It is further

ORDERED that the declassification schedule set forth in the body of this order is approved. It is further

ORDERED that if pursuant to Rule 25-22.006(3)(b), Florida Administrative Code, a protest is filed within 14 days of the date of this Order, it will be resolved by the appropriate Commission panel pursuant to Rule 25-22.006(3)(c), Florida Administrative Code.

By ORDER of Commissioner Betty Easley, as Prehearing Officer, this 29th day of OCTOBER, 1990.


BETTY EASLEY, 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 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 sewer 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.