

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased Power) DOCKET NO. 940001-EI
Cost Recovery Clause and) ORDER NO. PSC-94-0895-CFO-EI
Generating Performance Incentive) ISSUED: July 25, 1994
Factor.)
_____)

ORDER ON CONFIDENTIALITY

During the 1992 fuel audit of Florida Power & Light Company (FPL), Commission staff requested access to various FPL records. During staff's audit of FPL's fuel related records, FPL asserts that certain confidential material was obtained by staff through note taking and the copying of portions of FPL's fuel, transportation, terminaling, and inspection service contracts. FPL argues that portions of this information should be classified pursuant to Rule 25-22.006, Florida Administrative Code, and Section 366.093, Florida Statutes. Accordingly, FPL filed its original request for confidential classification on July 6, 1992. and filed a subsequent revision on May 6, 1993. The material for which confidential classification has been requested is found in Document Nos. 7185-92 and 7186-92.

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 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.

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

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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. The 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 disclosure is "reasonably likely" to impair the company's contracting for goods or services on favorable terms.

On workpaper number 43-2/3, page 7, FPL argues that the information in items circled 1 is contractual information which if publicly disclosed would impair FPL's efforts to contract for goods or services on favorable terms. This information delineates the price that FPL paid for Orimulsion. Disclosure of the invoice price for Orimulsion paid by FPL to its supplier is reasonably likely to impair FPL's ability to negotiate price concessions in future Orimulsion contracts. In addition, FPL is in the process of renegotiating provisions of the Orimulsion supply contract. Public disclosure of price concessions could result in the supplier withdrawing price concessions in the future. Moreover, the Orimulsion contract contains provisions which require that the terms of the contract not be publicly disclosed. Also, the Orimulsion contract contains quality adjustments, volume and delivery terms, payment arrangements, and other contractual provisions which are, in effect, pricing terms which are as important as the price itself. Public disclosure of these terms, or even the existence of these terms, could result in these favorable terms being withdrawn in future contracts. Thus, this information is found to be proprietary confidential business information.

The rest of the material in FPL's request for confidential classification relates to information for which the dates of declassification have just passed. Accordingly, the remainder of FPL's request is moot. When this Order becomes final, this material is public information.

DECLASSIFICATION

FPL requests that the contractual information regarding Orimulsion which appears on staff's workpapers, and for which confidential classification is sought, should remain confidential for the time period the contract is in effect. Disclosure of pricing information during the contract period or prior to the negotiation of a new contract is reasonably likely to impair FPL's ability to negotiate future contracts.

FPL has requested confidential classification of the confidential information regarding the Orimulsion supply contract until December 31, 2015 or until FPL notifies the Commission that staff workpapers regarding the Orimulsion contract no longer require confidential treatment. This time period covers the contractual term of FPL's current long-term Orimulsion contract with its supplier. In the alternative, FPL requests confidential treatment of this material for an 18-month period, with the opportunity for FPL to revisit the issue and submit a petition each time the confidentiality period expires. FPL asserts that such a procedure would be an unnecessary and inefficient administrative burden on staff and FPL.

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 shown, that the protection from disclosure shall be for a specified longer period." Good cause has not been shown to hold this Orimulsion contractual information confidential for a period 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, this contractual data shall be confidential for a period of 18 months from the date the order is issued. Near the end of this period, FPL may submit a petition to extend this period of confidential classification.

It is therefore,

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that the request by Florida Power & Light Company for confidential treatment regarding the Orimulsion supply contract, which is found in Document Nos. 7185-92 and 7186-92, is hereby granted as discussed within the text of this Order. It is further

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ORDERED that the remainder of Florida Power & Light Company's request is public information when this Order becomes final. It is further

ORDERED that pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, any confidential classification granted to the documents specified herein shall expire eighteen (18) months from the date of issuance of this Order in the absence of a renewed request for confidential classification pursuant to Section 366.093. It is further

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

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 25th day of July, 1994.


SUSAN F. CLARK, 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.

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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.