

December 5, 2001

-VIA FEDERAL EXPRESS-

Blanca S. Bayó, Director
Records and Reporting
Florida Public Service Commission
4075 Esplanade Way, Room 110
Tallahassee, Florida 32399-0850

John T. Butler, P.A.
305.577.2939
jbutler@steelhector.com

**Re: Motion for Protective Order
CONFIDENTIAL INFORMATION
Docket No. 001148-EI**

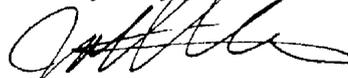
Dear Ms. Bayó:

Enclosed for filing on behalf of Florida Power & Light Company in Docket No. 001148-EI are the original and seven copies of Florida Power & Light Company's Motion For Protective Order Regarding the South Florida Hospital and Healthcare Association's First Set of Interrogatories and Request to Produce, together with a diskette containing the electronic version of same. The enclosed diskette is HD density, the operating system is Windows 98, and the word processing software in which the document appears is Word 97. Please note that the original copy of the motion has an Attachment A which contains **CONFIDENTIAL INFORMATION**. Therefore, FPL is filing the original motion in a separate envelope stamped **CONFIDENTIAL**. The remaining copies of the motion do not contain Attachment A or any other confidential information.

FPL seeks confidential classification of the confidential information in Attachment A, as well as a ruling that FPL need not disclose the confidential information to the South Florida Hospital and Healthcare Association or other parties in this docket and that the Commission will return the confidential information to FPL at the conclusion of this proceeding.

If there are any questions regarding this transmittal, please contact me at 305-577-2939.

Very truly yours,



John T. Butler, P.A.

enc.

cc: Counsel for Parties of Record

DOCUMENT NUMBER-DATE

15254 DEC-6 5

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**In re: Review of the retail rates of
Florida Power & Light
Company.**

) **Docket No. 001148-EI**
) **Dated: December 5, 2001**
)
)

**FLORIDA POWER & LIGHT COMPANY'S SECOND
MOTION FOR PROTECTIVE ORDER REGARDING
SOUTH FLORIDA HOSPITAL AND HEALTHCARE ASSOCIATION'S
FIRST SET OF INTERROGATORIES AND REQUEST FOR DOCUMENTS**

Pursuant to Florida Administrative Code Rule 25-22.006(6) and Section 366.093, Florida Statutes (2000), Florida Power & Light Company ("FPL") moves that the Commission issue a protective order finding that (1) the information requested in the South Florida Hospital and Healthcare Association's First Set of Interrogatories and Request to Produce (the "SFHHA Request") and identified in Appendix A hereto (the "Confidential Information") is proprietary confidential business information exempt from Section 119.07(1), Florida Statutes (2000), (2) the Confidential Information should not be disclosed to third parties, including the SFHHA and other parties in this docket, and (3) all copies of the Confidential Information should be returned by the Commission to FPL at the close of this docket. As grounds for this motion, FPL states:

1. On October 10, 2001, the SFHHA Request was submitted to FPL. FPL responded to the SFHHA Request on November 9, 2001. However, in its objections and request for clarification of the SFHHA Request that FPL served on October 22, 2001, FPL asked the SFHHA for clarification as to whether Request No. 3 seeks documents that relate to comparisons of various cost elements between FPL and other utilities or only comparisons at the total-company level. FPL's November 9 response made documents available that provided total-

company comparisons, but based on clarification that FPL received from the SFHHA, FPL is now also producing documents that make cost-element comparisons.

2. Among the cost-element comparisons in FPL's possession that would be responsive to the SFHHA's Request No. 3 are comparisons that are made available to FPL as a participant in a benchmarking survey conducted by the Edison Electric Institute ("EEI"), a trade association representing the investor-owned utility industry. FPL is a member of EEI. Participants in the EEI's benchmarking survey provide sensitive cost information to EEI for those comparisons based on EEI's commitment to all participants, and each participant's commitment to EEI, that the cost information will be kept confidential and disclosed only to other participants that have also shared their cost information. All participants agree to complete confidentiality and privacy, and to restricted access to the information, as a condition of participating in the survey. In order to enforce this commitment, EEI allows only participants in the survey to access the encrypted survey website where the cost-comparison information appears and requires all participants to comply with confidentiality, privacy and other terms limiting access to and use of the information. EEI's confidentiality policy is further explained and documented in the affidavit of EEI's William H. Mayer, Manager, Customer Operations, which is attached hereto as Exhibit 1 (the "EEI Affidavit").

3. FPL's confidentiality commitment to EEI -- and EEI's confidentiality commitment to all survey participants that have shared sensitive cost information -- can be fulfilled only by withholding the Confidential Information from the SFHHA and other parties to this docket. As explained in the EEI Affidavit, all survey participants that provided cost information for the cost comparisons did so on the express understanding that it would not be disclosed to *any* entity that is not a survey participant, because disclosure of such information to

others would cause competitive harm to the survey participants. This understanding can be honored only by directing FPL not to disclose the Confidential Information to either the SFHHA or other parties in this docket.

4. FPL has asked EEI to permit disclosure of the Confidential Information on the usual basis that it would be used by the SFHHA and other parties in this docket only for the purpose of this proceeding and would be further disclosed only to the parties' employees, consultants and counsel with a "need to know." Because of the commercially sensitive nature of the information, the potential for competitive harm, and EEI's commitment to the survey participants, however, EEI has declined FPL's request. Further, EEI advised FPL that it does not believe this Commission has jurisdiction to require disclosure of data as to survey participants that are not Florida utilities regulated by this Commission.

5. The Confidential Information comprises only a small portion of the total cost-comparison information that is responsive to the SFHHA Request. The remainder of the responsive information is being made available to the SFHHA on either a confidential or non-confidential basis.

6. FPL's request for confidential classification is warranted under Section 366.093(3)(a)), because the cost comparisons comprising the Confidential Information are trade secrets of EEI and its members. Moreover, disclosure of the cost comparisons in the Confidential Information could cause competitive harm to the businesses of the EEI survey participants (*see* Section 366.093(3)(e)). Finally, forcing FPL to violate the express terms of its confidentiality agreement with EEI could harm FPL's own business operations, as well as its customers, by depriving FPL of access to cost-comparison information in the future (*see* Section 366.093(3)).

7. This Motion satisfies the requirements of Rule 25-22.006(4) as follows. The entire substantive contents of the EEI cost comparisons comprising the Confidential Information are confidential. Highlighting the Confidential Information in Appendix A or enclosing copies of the EEI cost comparisons with all of the Confidential Information redacted in Appendix B would serve no purpose. Moreover, the Confidential Information is voluminous, so highlighting and redacting all of it would be burdensome. Accordingly, FPL has instead included a cover note to Appendix A stating that the entire contents are confidential and has included a list of the documents comprising the Confidential Information as Appendix B rather than redacted (and therefore blank) copies of the EEI cost comparisons themselves. FPL has not attached a separate, line-by-line justification of the confidential status for the Confidential Information because the justification set forth in Paragraph 5 above applies to all of the Confidential Information.

8. Classification of the Confidential Information as proprietary confidential business information for eighteen months as contemplated by Rule 25-22.006(9) will not adequately protect the interests of EEI and its members. As explained above, the EEI members provided cost information to EEI with the expectation that it would be disclosed only to other EEI members. That expectation is not time-limited. In view of the fact that the protection for the Confidential Information that FPL seeks in this Motion will mean that the Confidential Information will not be used in this docket, continued possession of the Confidential Information by the Commission past the close of this docket would serve no useful purpose. Therefore, FPL asks the Commission to find that the Confidential Information will remain classified as proprietary confidential business information and exempt from Section 119.07(1) until the close of this docket and then will be returned to FPL by the Commission.

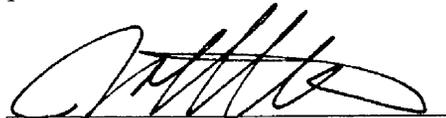
WHEREFORE, FPL respectfully moves the Commission to issue a protective order finding that (1) the Confidential Information is proprietary confidential business information exempt from Section 119.07(1), Florida Statutes (2000), (2) the Confidential Information should not be disclosed to third parties, including the SFHHA and other parties in this docket, and (3) all copies of the Confidential Information should be returned by the Commission to FPL at the close of this docket.

Respectfully submitted,

R. Wade Litchfield, Esq.
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By:



John T. Butler, P.A.
Fla. Bar No. 283479

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Second Motion for Protective Order Regarding the South Florida Hospital and Healthcare Association's First Set of Interrogatories and Request to Produce has been furnished by overnight delivery (*) or United States Mail this 5th day of December, 2001, to the following:

Robert V. Elias, Esq.*
Legal Division
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Florida Industrial Power Users Group
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McWhirter Reeves
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Tallahassee, Florida 32301

By 
John T. Butler, P.A.

EXHIBIT 1

I have been advised that FPL possesses certain documents containing comparative data that were printed out from EEI's encrypted survey website and which have been requested pursuant to a request for production of documents that has been made on FPL by one of the intervenors in Docket No. 001148-EI before the Florida Public Service Commission. FPL's counsel has asked whether EEI will permit it to disclose those documents to the intervenor. I have advised FPL's counsel that EEI cannot consent to disclosure of the documents for the following reasons:

- Disclosure of such confidential information outside of the participants in the survey will cause competitive harm to the other participants,
- Each participant in the survey provides commercially sensitive cost information for the cost comparisons with the express understanding it will not disclose such information to any third party that is not a participant in the survey,
- Each participant agrees to keep such information confidential, private and subject to restricted access limited only to participants in the survey, and
- The Information is only a small portion of the information requested and can be easily obtained through other means.

FURTHER AFFIANT SAYETH NAUGHT.

William H. May

Before me the undersigned authority personally appeared, on this the 29 day of NOV, 2001, _____, who is personally known to me



Marian L. Choate
Notary Public, State of

MARIAN L. CHOATE
Printed Name of Notary



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American Gas Association



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Frequently Asked Questions (FAQs)

Who may use the DataSource?

The DataSource is for the exclusive use of participating AGA and EEI member companies. The questions, answers, and software are strictly limited to the **employees** of participating member companies.

Is it true that you browse privileges will be granted on a section-by-section basis in 2001?

Yes. You must always complete Section 1. Every section which you complete (valid, reasonable data in all the required questions) will be available to you after the scrub team approves the data.

Why are some of the terms in the questions *italicized*?

Information regarding italicized terms may be found in the Glossary.

What are the little red asterisks to the left of some of the questions?

These are required questions. No section is considered to be complete until you have submitted valid data for all of the required questions. The Status area (look at the Entry tab) will give you an excellent recap of your responses to required questions.

What are Data Checkpoints?

These are new in 2001. They are simply calculations which are based on several of your responses. You can use them as a good way to check your data for errors or misunderstandings. They are a tool to look for reasonable, accurate data.

What are the questions marked (calculated)?

These were implemented for browsing results last Fall. They are simply calculations which are based on several of your responses. You may not enter data directly for these questions, but they provide information which you often need when browsing results.

Does it matter when I work on the DataSource?

We try to perform any scheduled maintenance to the system on Sunday mornings. You will experience the best response times if you start your data entry early. Procrastinators will run into a lot of traffic on the server right before the March 31 due date.

Why are all the Not Applicable buttons included?

Not Applicable is supplied on every question. It is appropriate to use if and only if the premise of the question does not apply to you. The Status area will help you and the scrub teams review submissions for appropriate use of Not Applicable.

What's the difference between Not Applicable and Not Available.

Not Applicable means that the premise of the question does not apply to your company. Not Available means that you do not have the data and cannot estimate it, or your company policy prevents you from sharing the data (never valid on required questions!).

I clicked Not Available and then I found the numbers. How do I enter them?

Any response entered into the response area will supersede any Not Available or

any responses entered into the response area will supersede any previously entered responses. Not Applicable that may have been ticked. Data always win!

Why not just enter 0 instead of Not Applicable?

You should only enter a zero when your answer is really zero. Zeroes will be included in averages when you browse the results. Not Applicable and Not Available responses will not.

How should I handle entering percentages?

The first rule is to omit the percent sign. The next rule is that an entry of 100 indicates 100 percent. An entry of 1 indicates 1 percent.

How should dollar amounts be entered?

Data should always be entered in U.S. Dollars. They should NOT be entered in thousands. Canadian dollars should be converted to U.S. Dollars before data are entered. Please use US\$.70/CDN\$ for consistency.

I changed the data on Screen 1-1. I went to another screen and came back to 1-1 and my changes weren't there. What gives?

You always have to use the Submit button at the bottom of each entry screen to register your changes in the database.

What are all the Refresh buttons?

Whenever the system calculates a value or presents you with a Data Checkpoint, a refresh button is supplied. Refresh will update the calculation with whatever changes you have made on the screen. Refresh is just a Submit that leaves you on the same page.

Can two people be working on our company's data at the same time?

Yes. The database is set up so that you can have several people from your company working on data entry simultaneously. Please be careful to share your password only with appropriate employees of your company.

How do I print my whole questionnaire?

Just use the Print tab. Its Entry option will let you print your questionnaire a section at a time. Please be patient as you request a section. If you start to print before the browser has loaded the entire section, you may not print all the questions.

Who may access my company's questionnaire?

Your password gives you access to your company's data only. When the DataSource results are published, you will have access to all participants' data.

What are all the red messages that I sometimes get when I click Submit?

When you click Submit, the DataSource decides if checks your responses against some very basic criteria. If anything doesn't pass muster, you will see a message in red, and you will not proceed to the next subsection.

May I enter decimal positions in my numbers?

Yes. As you enter data, decimal places will always be accepted; however, when browsing data, results may be rounded for viewing all companies consistently.

What should I do when I think we're finished with a section?

The last question in each section lets you indicate whether you're finished with the section. The Status area is also very important. It helps you evaluate the completeness of your data.

What if we find that we need to make changes after we've signalled completion at the end of a section?

So that wasn't really your final answer? Just go ahead and make the change in

your questionnaire. As long as it's before the deadline, we'll get your changes. After the deadline, check the Home Page for information regarding changes.

I bookmarked a page in the questionnaire and now I'm having trouble jumping to it. What should I do?

You should make a simple bookmark for <http://www.datasouce2001.com>. If you ask your browser to bookmark a specific screen within the DataSource, the software may think that you're avoiding the log in process and could get stubborn.

One of our company's consultants needs our password. What should I do?

Just say, "No." One of the terms of use of the DataSource is that you will not share your password with anyone who is not an employee of your company. This is a serious obligation of participants.

Is there a way to get out of the system gracefully if I'm having trouble?

There is a logoff option at the bottom of almost every screen in the system. The logoff is a handy escape route if you ever have difficulty navigating.

When will I receive my survey results?

After the March 31 deadline, the sections completed will be reviewed by scrub teams. Followup and corrections will then take place. We anticipate that you will be able to browse results for those sections you completed around June 1.

What kind of survey report will I receive?

You will receive a password -- a most valuable password. You will be able to browse data online and can generate electronic and hard copy reports yourself. The bar charts introduced at the Nashville conference last year will be back!

How much does the DataSource cost?

The EEI and AGA completely underwrite the expense of the DataSource for their member companies. Members who complete their data with valid, reasonable responses are able to browse results throughout the year without cost.

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D. sending unsolicited e-mail, including promotions or advertising of any products or services, or

E. forging any TCP/IP packet header or any part of the header information in any e-mail sent from within or to the Service.

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17. EXCLUSIONS FROM LIABILITY LIMITATIONS: SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES. THEREFORE, SOME OF THE LIMITATIONS OF SECTIONS 16 AND 17 MAY NOT APPLY TO YOU. FURTHER, IF ANY EXCLUSIONS OR LIMITATIONS ARE HELD INAPPLICABLE OR UNENFORCEABLE FOR ANY REASON, THEN EEI'S MAXIMUM LIABILITY FOR ANY TYPE OF DAMAGES TO ANY ONE PERSON SHALL BE LIMITED TO THE LESSER OF YOUR COST OF THE SERVICE OR U.S. \$100.00.

18. COMPLIANCE AND COOPERATION WITH LAW ENFORCEMENT: You understand and agree that EEI shall comply with and/or otherwise cooperate with international, national, state or local law enforcement officials or authorities relating to your use of the Service or material provided by you using the Service.

You acknowledge and agree that EEI may preserve the Content and may also disclose the Content if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably necessary to (a) comply with legal process; (b) enforce the Terms; (c) respond to claims that any Content violates the rights of third parties; or (d) protect the rights, property or personal safety of EEI, its users or any person.

19. ENTIRE AGREEMENT: The Terms represent the entire agreement between us, and our respective heirs, successors and assigns, and supersede any and all prior understandings, statements, or representations, whether electronic, oral or written, regarding the Service or the Content or Information on the EEI Web Site or the List Server. A printed version of this Agreement and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to this Agreement to the extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

20. MODIFICATIONS OF THE TERMS: EEI shall have the right to modify any one or more of the Terms at any time and from time to time without prior notice. The Terms on the EEI Web Site are the current applicable provisions that govern your use of the Service. By using the Service, you have agreed to and accepted all of the Terms without modification or reservation.

21. TERMINATION: EEI shall have the right to terminate your use of the Service for any reason at any time without prior notice.

22. WAIVER: A waiver of any obligation or right under the Agreement shall not be effective unless in writing executed by the party against whom it is being enforced, and shall not be construed as a waiver of any other obligation or right under the Agreement.

23. ENFORCEMENT: The Terms shall be governed by federal law and the laws of the District of Columbia. You consent to the exclusive jurisdiction and venue for any action or dispute in the local and federal courts located in the District of Columbia, United States of America.

24. EQUITABLE RELIEF: You acknowledge that monetary damages may not be a sufficient remedy for the breach of the Agreement and that EEI shall be entitled without waiving any other rights or remedies, to such injunctive or equitable relief, as may be deemed proper by a court of competent jurisdiction. You hereby agree that in the event of a breach or threatened breach of the Agreement by you, it will not be necessary to prove monetary damages and irreparable harm will be presumed.

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rules and any other requirements (in whatever form) of your jurisdiction.

26. SEVERABILITY: The Terms in the Agreement are severable and shall be construed to the extent of their enforceability in light of the parties' mutual intent if deemed at all unenforceable by a court of competent jurisdiction.

27. SUCCESSORS AND ASSIGNS: You agree that your heirs, successors and assigns shall be bound by the Terms in the Agreement.

[5/14/01]

Find It · Copyright and Policy Statement · Ask EEI

ATTACHMENT A

(only in original)

Confidential Information

ATTACHMENT B

Contents

- 1.) Industry Advertising Spending – 2Q 1999
- 2.) Industry Advertising Spending – 3Q 1999
- 3.) Industry Advertising Spending – 1999
- 4.) DataSource 2000 Survey – Summary Report
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- 6.) DataSource 2000 Survey – data files
- 7.) DataSource 2001 Survey – data files
- 8.) Multiple cost comparisons developed from #6 and #7 (e.g., Customer Care costs per customer call, Billing costs per customer)