

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Conservation Cost)	DOCKET NO. 910002-EG
Recovery Clause.)	ORDER NO. 24913
)	ISSUED: 8/14/91

ORDER ON CONFIDENTIALITY

BY THE COMMISSION:

During our review of Florida Power & Light Company's (FPL) conservation related records for the six months ended March 31, 1991, Commission Staff requested access to various FPL records. FPL argues that certain information obtained by Commission Staff during this conservation audit is confidential pursuant to Rule 25-22.006, Florida Administrative Code, and Section 366.093, Florida Statutes. Accordingly, on June 11, 1991, FPL filed a Request for Confidential Classification of Certain Material Obtained During the Commission's May 1991 Conservation Audit (Document No. 5837-91).

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." In the instant matter, the value that all parties would receive by examining and utilizing the information contained in this document must be weighed against the legitimate concerns of FPL regarding disclosure of business information which it considers proprietary. It is our view that parties must meet a very high burden when requesting confidential classification of documents.

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 information, the disclosure of which will cause the Company or its ratepayers harm.

Section 366.093(3), Florida Statutes, provides several examples of proprietary confidential business information. Included in this list are "[i]nternal auditing controls and reports of internal auditors." Section 366.093(3)(b), Florida Statutes.

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FPL argues that Attachment A (Document No. 15838-91) to FPL's request for confidentiality is derived from an internal audit. The material in Attachment A was obtained from FPL in response to the Commission Staff's Document/Record Request No. 5, dated March 13, 1991. The response was compiled by Commission Staff from the reports of FPL's internal auditors and the internal auditor's supporting work papers associated with the following audits: North Broward District Energy Conservation Sales Audit, St. Johns District Marketing and Sales Audit, Ft. Myers District Energy Conservation Programs Audit, Miami District Energy Conservation Programs Audit, and Treasure Coast District Energy Conservation Programs Audit. We find that the information in Attachment A is intended to be and is treated by FPL as confidential, that this information has not been publicly disclosed, and that it has been circulated to a select few FPL employees on a need to know basis only. We also find that all of the material in Attachment A was extracted from an internal audit, and accordingly, it meets the definition of proprietary confidential information, pursuant to Section 366.093(3)(b), Florida Statutes.

The confidential information in Attachment A to FPL's request for confidentiality shall be returned according to the procedures found in Rule 25-22.006, Florida Administrative Code, and in Section 366.093, Florida Statutes.

Finally, we find that the confidential information discussed in the body of this Order shall be classified as proprietary confidential business information for a period not longer than 18 months, as is specified in Section 366.093(4), Florida Statutes, and in Rule 25-22.006(8), Florida Administrative Code.

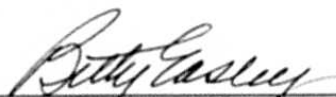
It is, therefore,

ORDERED by the Florida Public Service Commission that the specified information in Attachment A to Florida Power & Light Company's Request for Confidential Classification, as discussed in the body of this Order, is proprietary confidential business information, and that it shall be afforded confidential status pursuant to Section 366.003, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. It is further

ORDERED that this information shall be classified as proprietary confidential business information for a period not longer than 18 months.

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By ORDER of Commissioner Betty Easley, as Prehearing Officer,
this 14th day of AUGUST, 1991.



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.