

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power  
cost recovery clause and  
generating performance incentive  
factor.

DOCKET NO. 010001-EI  
ORDER NO. PSC-01-2528-CFO-EI  
ISSUED: December 28, 2001

ORDER GRANTING REQUEST FOR CONFIDENTIAL STATUS OF PORTIONS OF  
RESPONSES TO STAFF'S SECOND SET OF INTERROGATORIES AND STAFF'S  
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS (DOCUMENT NO. 11738-01)

Pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, Florida Power Corporation (FPC or Company) has requested confidential classification of portions of responses by the Company to Staff's Second Set of Interrogatories and to Staff's First Request for Production of Documents (Responses). This request for confidential classification was filed on October 11, 2001. The confidential information is located in Document No. 11738-01.

FPC has requested information contained in interrogatories 22, 27, 28, 30, 31, 39, 40, 44, 61-65, 86, 93, 94, 107 and 119, and responses to document production requests in Appendices to "Risk Management Guidelines" (Section 13) and "Credit Risk Management Guidelines" (Section 9) and Daily Trading Reports, Version 1 (8 pages) and Version 2 (24 pages) be granted confidential classification.

Subsection 366.093(1) provides that any records "found by the commission to be proprietary confidential business information shall be kept confidential and shall be exempt from s. 119.07(1) [requiring disclosure under the Public Records Act.]" Proprietary confidential business information includes, but is not limited to, "[i]nformation concerning...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." Section 366.093(3)(d). It also includes "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information." Section 366.093(3)(e).

DOCUMENT NUMBER-DATE

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The Company asserts that these interrogatory responses and documents fall within these statutory categories and, thus, constitute proprietary confidential business information entitled to protection under Section 366.093 and Rule 25-22.006, Florida Administrative Code. FPC maintains that the increasingly competitive wholesale power market in which FPC operates has caused certain information contained in the Responses to become commercially sensitive and justifies its protection from disclosure to the Company's competitors. Further, the Company states that disclosure of portions of the information in the Responses would place FPC at a disadvantage against the Company's potential purchasers and suppliers in the wholesale power market by giving them otherwise unavailable knowledge of FPC's trading personnel and its hedging practices, restrictions and limitations. FPC states that many of these purchasers, suppliers and competitors are not subject to similar regulatory review that would disclose comparable information to FPC. Therefore, this one-way flow of knowledge would impair FPC's competitive interests in its power marketing business.

The Company asserts that the designated information for which confidential classification is sought is intended to be and is treated by the Company as private and has not been publicly disclosed.

RESPONSES FOR WHICH CONFIDENTIAL CLASSIFICATION IS SOUGHT

**Interrogatory Responses**

Interrogatories 22 and 119. FPC asserts that the hiring and retention of skilled power marketing personnel are among the most highly competitive functions within FPC's overall operations. The Company maintains that disclosure of the highlighted information in these Responses would place FPC at a disadvantage against competitors for skilled power marketing employees by giving them otherwise unavailable knowledge regarding the names and positions of the Company's traders and factors considered in their compensation. This knowledge, FPC states, would impair FPC's competitive interests in retaining its skilled power marketing personnel and in protecting its investment of time, money and resources for the training of such personnel in the power marketing business.

Interrogatories 27, 28, 30 and 31. FPC asserts that disclosure of the highlighted information in these Responses would place FPC at a disadvantage against the Company's potential suppliers of fuel and wholesale power by giving them otherwise unavailable knowledge of the specific kinds of hedging practices in which FPC is engaged and the specific types of fuel for which those practices are or are not utilized. FPC maintains that this knowledge would enable potential suppliers to tailor their bids accordingly and prevent FPC from receiving their lowest prices. FPC states the effects of disclosure would thus impair the efforts of the Company to contract for goods and services on favorable terms for the benefit of its customers.

Interrogatories 39, 40 and 44. FPC asserts that disclosure of the highlighted information in these Responses would place FPC at a disadvantage against the Company's potential suppliers of fuel and wholesale power by giving them otherwise unavailable knowledge of the specific kinds of hedging practices or transactions used by FPC and the specific types and quantities of fuel for which those contracts and transactions are utilized. FPC maintains that this knowledge would enable potential suppliers to tailor their bids accordingly and prevent FPC from receiving their lowest prices. FPC states the effects of disclosure would thus impair the efforts of the Company to contract for goods and services on favorable terms for the benefit of its customers.

Interrogatories 61 through 65. FPC asserts that disclosure of the highlighted information in these Responses would place FPC at a disadvantage against the Company's potential suppliers of natural gas and residual oil by giving them otherwise unavailable knowledge of detailed contractual terms, including pricing and discount provisions, of all the Company's past and (for natural gas) future supply contracts. FPC maintains that this particularly sensitive knowledge would enable such potential suppliers to tailor their bids accordingly and prevent FPC from receiving their lowest prices. FPC states the effects of disclosure would thus impair the efforts of the Company to contract for goods and services on favorable terms for the benefit of its customers.

Interrogatories 86, 93 and 94. FPC asserts that disclosure of the highlighted information in these Responses would place FPC at a disadvantage against the Company's potential suppliers of fuel and

wholesale power by giving them otherwise unavailable knowledge of the advantages and preferences seen by the Company for specific kinds of hedging practices in different types of transactions, including the associated risks and the Company's strategies to mitigate these risks. FPC maintains that this knowledge would enable potential suppliers to tailor their bids accordingly and prevent FPC from receiving their lowest prices. FPC states the effects of disclosure would thus impair the efforts of the Company to contract for goods and services on favorable terms for the benefit of its customers.

Interrogatory 107. FPC asserts disclosure of the highlighted information in this Response, which provides the times when the Company began to "ramp down" wholesale sales, would place FPC at a disadvantage against its potential suppliers of wholesale power by giving them knowledge, when coupled with other market information available to them, of the market price at which FPC recalled non-firm wholesale sales, thus indicating the price level at which FPC experiences a need to make purchases in the wholesale market. FPC maintains that this knowledge would enable potential suppliers to time and tailor their bids accordingly and prevent FPC from receiving their lowest prices. FPC states the effects of disclosure would thus impair the efforts of the Company to contract for goods and services on favorable terms for the benefit of its customers.

#### **Production of Document Responses**

Appendices to "Risk Management Guidelines" (Section 13) and "Credit Risk Management Guidelines" (Section 9). FPC asserts that disclosure of the highlighted information in these Responses would place FPC at a disadvantage against the Company's potential suppliers of fuel and wholesale power by giving them otherwise unavailable knowledge of the specific risk management and credit risk management coverage criteria and specifications applicable to the individual power marketing transactions made by the Company. FPC maintains that this knowledge would enable potential suppliers to tailor their bids accordingly and prevent FPC from receiving their lowest prices. FPC states the effects of disclosure would thus impair the efforts of the Company to contract for goods and services on favorable terms for the benefit of its customers.

Daily Trading Reports, Version 1 (8 pages) and Version 2 (24 pages). FPC asserts that disclosure of the highlighted information in these Responses would place FPC at a disadvantage against the Company's potential suppliers of fuel and wholesale power by giving them otherwise unavailable knowledge of detailed market data for transactions by individual supplier, as well as the Company's methodology and assessment criteria for the analysis and comparison of this data. FPC maintains that this knowledge would enable potential suppliers to tailor their bids accordingly and prevent FPC from receiving their lowest prices. FPC states the effects of disclosure would thus impair the efforts of the Company to contract for goods and services on favorable terms for the benefit of its customers.

#### CONCLUSION

Upon review, the information described above appears to be proprietary confidential business information within the meaning of Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code as either "[i]nformation concerning...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" (Section 366.093(3)(d)) or "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information" (Section 366.093(3)(e)). Therefore, FPC's request for confidential classification of the above listed interrogatories and responses to request for production of documents is granted.

Section 366.093(4), Florida Statutes, provides that "any finding by the Commission that records contain proprietary confidential business information is effective for a period not to exceed 18 months, unless good cause is shown for a specified longer period." FPC did not specify a time period in its request. Therefore, this information shall be granted confidential classification for a period of 18 months from the date of issuance of this Order.

It is therefore

ORDERED by Commission Lila A. Jaber, as Prehearing Officer, that Florida Power Corporation's Request for Confidential

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Classification is granted as set forth in the body of this Order.  
It is further

ORDERED that pursuant to Section 366.093(4), Florida Statutes, and Rule 25-22.006, Florida Administrative Code, any confidentiality 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 confidentiality pursuant to Section 366.093(4). It is further

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

By ORDER of Commissioner Lila A. Jaber, as Prehearing Officer, this 28th day of December, 2001.

  
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LILA A. JABER  
Commissioner and Prehearing Officer

( S E A L )

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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 25-22.0376, 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 the Commission Clerk and Administrative Services, 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.