

BEFORE THE PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased)	DOCKET NO. 900001-EI
Power Cost Recovery Clause and)	ORDER NO. 23837
Generating Performance)	ISSUED: 12-6-90
Incentive Factor.)	
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ORDER GRANTING FLORIDA POWER & LIGHT'S REQUEST
FOR CONFIDENTIAL CLASSIFICATION OF STAFF
WORK PAPERS FOR THE SIX MONTH FUEL AUDIT
ENDING MARCH 31, 1990

On July 17, 1990 Florida Power & Light Company (FPL) filed a request for confidential classification of certain material obtained during the Florida Public Service Commission's (the Commission) June, 1990 fuel audit. The material in question was provided to Commission staff in response to several written Document/Record requests for fuel related records and through note taking by staff auditors.

The material obtained through note taking by staff auditors is embodied in the below specified Staff Work Papers:

Staff Work Papers - FPL, Review of Internal Audit,
 1/88 - 9/30/89, 10/89 - 3/31/90, pages 1 through 4.
 (Doc. No. 6354-90)

Staff Work Papers - FPL, Review of Contracts, 10/90
 - 3/90, pages 1 through 6. (Doc. No. 6355-90)

An FPL memorandum dated June 26, 1990 from Dave Wasielewski to M.T. Caldwell (Doc. No. 6356-90) was obtained in response to a staff request. FPL has also requested confidential classification for this document.

FPL asserts that all the material contained in Doc. No. 6354-90 is originally the work of FPL internal auditors and was obtained from reports and work papers associated with two internal audit reports of FPL's nuclear fuel lease transactions with the St. Lucie Fuel Company. FPL claims that pursuant to Section 366.093(3) of the Florida Statutes, the material contained in Doc. No. 6354-90 is proprietary confidential business information entitled to confidential classification.

Section 366.093(3) of the Florida Statutes defines proprietary confidential business information as "[i]nternal auditing controls and reports of internal auditors." The material contained in Doc.

DOCUMENT NUMBER-DATE

10815 DEC -6 1990

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No. 6354-90 falls under this definition of proprietary confidential business information, and thus, is entitled to confidential classification.

The specified material contained in Doc. No. 6355-90 came from FPL fuel contracts for the purchase and transportation of natural gas, according to FPL. FPL asserts that the nature of the 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 peninsular, 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 the 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.

Section 366.093(3) of the Florida Statutes defines proprietary confidential business information as "[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 services on favorable terms." To establish that material is proprietary confidential business information under Section 366.093(3)(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

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shown that disclosure is "reasonably likely" to impair the contracting for goods or services on favorable terms. The following materials meet the above mentioned two prong test, and thus, fall under Section 366.093(3)'s definition of proprietary confidential business information. They either reveal unit contract prices, specific contract prices, specific bid prices or specific contract rates.

Page 1, line 17 of Doc. No. 6355-90 - Contain unit contract price per MMBTU for natural gas.

Page 2, lines 11 through 13, 18 through 24, and 27 through 31 of Doc. No. 6355-90 - Contains specific contract price terms.

Page 3a, lines 4 through 8 and page 3/1 lines 17, 18, and 21 through 23 of Doc. No. 6355-90 - Contain specific contract bid prices.

Page 3, lines 16 through 18, 26 through 28, 36, 39, and 40 - Contain both specific contract terms and specific contract bid prices.

Page 4, lines 6 through 20 - Contain contract terms.

Lines 1, 2, 5, and 17 of page 2, however, are not entitled to confidential designation because they do not contain specific contractual pricing data.

FPL also asserts that the specified material in Doc. No. 6356-90, a FPL memorandum from M.T. Caldwell to Dave Wasielewski dated June 26, 1990, should be classified as confidential because it contains contractual data the disclosure of which may impair FPL's efforts to contract for nuclear inspection services on favorable terms in the future. Line 33 of the memo reveals the estimated hourly inspection rate and line 35 reveals the total inspection price. This information reveals specific contract rates, and thus, is entitled to confidential designation pursuant to Section 366.093(3) of the Florida Statutes.

Declassification

For Doc. No. 6354-90, FPL seeks confidential classification for a period of at least 18 months and further requests that the

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document be returned in accordance with Section 366.093(4) of the Florida Statutes, as soon as the information is no longer necessary for the Commission to conduct its business. Pursuant to Section 366.093(4) of the Florida Statutes, any finding by the Commission that records contain proprietary confidential business information is entitled automatically to a period not to exceed 18 months. FPL has requested confidential treatment for 18 months, and thus, their request is granted.

FPL requests a December 31, 1991 declassification date for the specified confidential material contained in page 1 of Doc. No. 6355-90 and a March 3, 1991 declassification date for the specified confidential material contained in page 2 of Doc. No. 6355-90. These declassification dates are not more than 18 months after FPL filed their initial request for confidentiality. Consequently, pursuant to Section 366.093(4) of the Florida Statutes, those declassification dates are granted.

FPL also requests a December 31, 1995 declassification date for the specified confidential material contained in pages 3, 4, and 5 of Doc. No. 6355-90 and for the specified confidential material in Doc. No. 6356-90. This declassification date is more than 18 months after FPL filed their initial request for confidentiality, and thus, pursuant to Section 366.093(4) of the Florida Statutes, FPL must show good cause before the Commission will allow such declassification dates.

FPL asserts that by December 31, 1995 they will have secured a new nuclear fuel inspection services contract but any disclosure of this information before the abovementioned date will inhibit their ability to contract for a new nuclear fuel inspection services contract on favorable terms. I agree with FPL and grant the requested declassification dates.

Finally, FPL has also requested a February 1, 2006 declassification date for the specified confidential material contained in page 6 of Doc. No. 6355-90. The specified confidential material contained in page 6 of Doc. No. 6355-90 will remain in effect during the life of the contract which expires 6 months after the requested declassification date. FPL should be granted their requested declassification dates. Otherwise, disclosure of the designated material prior to the expiration date of the current contract would reveal the current contractual terms and hinder FPL's ability to renegotiate on favorable terms.

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In consideration of the foregoing, it is

ORDERED that Florida Power and Light Company's request for confidential classification for all of Doc. No. 6354-90 is hereby granted. It is further

ORDERED that Florida Power and Light Company's request for confidential classification for page 1, line 17; page 2, lines 11 through 13, 18 through 24, and 27 through 31; page 3a, lines 4 through 8; page 3/1 lines 17, 18, and 21 through 23; page 3, lines 16 through 18, 26 through 28, 36, 39, and 40; and page 4, lines 6 through 20 of Doc. No. 6355-90 is hereby granted. It is further

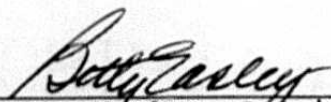
ORDERED that Florida Power and Light Company's request for confidential classification for the designated data on page 1, lines 33 and 35 of Doc. No. 6356-90 is hereby granted. It is further

ORDERED that Florida Power and Light Company's request for confidential classification for page 2, lines 1, 2, 5, and 17 of Doc. No. 6355-90 is hereby denied. It is further

ORDERED that Florida Power and Light Company's request for the declassification dates included in the text of this order is hereby granted. It is further

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

By ORDER of Commissioner Betty Easley, Prehearing Officer, this 6th day of DECEMBER, 1990.



Betty Easley, Commissioner
Prehearing Officer

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