

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased power) DOCKET NO. 960001-EI
Cost Recovery Clause and) ORDER NO. PSC-96-0198-CFO-EI
Generating Performance Incentive) ISSUED: February 13, 1996
Factor.)
_____)

ORDER REGARDING FPL'S REQUEST FOR
CONFIDENTIAL TREATMENT OF AUDIT WORKPAPERS

Pursuant to Rule 25-22.006, Florida Administrative Code, Florida Power & Light Company (FPL) has requested specified confidential treatment of portions of the Commission Staff's Audit Work Papers pertaining to the Commission Staff's Fuel Audit covering the period April 1, 1994, through March 31, 1995, (Document Nos. 05714-95, 05715-95, 06405-95, 06406-95, 06407-95, and 06408-95).

Florida law presumes that documents submitted to governmental agencies shall be public records. The only exceptions to this presumption are the specific statutory exemptions provided in the law and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. This presumption is based on the concept that government should operate in the "sunshine." It is the company's burden to demonstrate that the documents fall into one of the statutory examples set out in Section 366.093, Florida Statutes, or to demonstrate that the information is proprietary confidential information, the disclosure of which will cause the Company or its ratepayers harm.

Section 366.093(3)(b), Florida Statutes, specifies that information found in internal auditing controls and in reports of internal auditors may be given confidential treatment. In addition, Section 366.093(3)(d), Florida Statutes, identifies as confidential information "Information 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."

In order 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

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actual adverse results; instead, it must simply be shown that disclosure is "reasonably likely" to impair the utility's ability to contract for goods or services on favorable terms.

As summarized below, the utility has requested confidential treatment for three types of information received by staff auditors:

(1) FPL has requested confidential treatment of the list of internal audits and notes taken from internal audits. FPL argues that this information has not been publicly disclosed, and only a select few FPL employees have seen these documents. FPL asserts that all of the material and the corresponding workpapers were extracted from an internal audit.

(2) FPL has also requested confidential treatment of the fuel oil, natural gas, coal and rail transportation pricing information. FPL asserts that the prices which FPL pays for fuel oil and natural gas, and for coal and rail transportation are established by contract. Disclosure of the prices at which FPL purchases fuel oil, natural gas, coal and rail transportation could impair FPL's ability to contract in the future and could put its vendors at a disadvantage by revealing business costs. In addition the fuel oil, natural gas, coal, and rail transportation contracts, themselves, provide that the terms of the contracts will be kept confidential.

(3) In addition, FPL seeks confidential treatment of bidding information and other contractual data. FPL argues that revealing sensitive pricing information, bid analyses and cost breakdowns may give an unfair advantage to competitors whose pricing data are not disclosed. Furthermore, disclosure of FPL's methodologies for analyzing, evaluating and awarding bid contracts may put FPL, and ultimately its customers, at a competitive disadvantage. Also, without confidential classification of successful bidders' prices and cost breakdowns, FPL could experience a narrowing of the number of bids and of bid proposals.

Rule 25-22.006(8)(a), Florida Administrative Code, provides that the duration for confidential protection shall be limited to 18 months unless good cause is shown to allow a longer period. FPL seeks four different periods for confidential protection for material in this filing. In addition, the utility seeks to have all confidential material returned to FPL when the Commission no

longer needs the information to conduct its business, in accordance with Section 366.093(4), Florida Statutes and Rule 25-22.006(8)(b), Florida Administrative Code.

- (1) FPL seeks confidential treatment for 24 months for the fuel oil contracts. FPL states that disclosure of these contracts could impair FPL's future ability to negotiate favorable fuel oil contracts, to the detriment of its customers.
- (2) FPL seeks confidential treatment for an 18-month period for material related to internal audits, bidding information and related contractual information.
- (3) FPL seeks confidential classification until August 31, 2010, for its natural gas pricing information. FPL reports its natural gas contract provides that the confidentiality requirement applies during the contract term which runs until February 28, 2010. FPL requests an additional 6 months after contract termination to allow time to renegotiate another contract.
- (4) FPL seeks an indefinite confidential classification period for its coal and rail transportation pricing. FPL states that its Scherer plant ownership contracts, which provide for confidentiality, are in effect during the life of Scherer Unit #4, but to no date certain.

Regarding return of confidential materials, Documents 06405-95, 06406-95, 06407-95, and 06408-95 are copies of existing staff audit workpapers filed by the utility in explanation of its filing. These documents shall be returned to FPL after the assigned confidential period has expired. Document Nos. 05714-95 and 05715-95 are, however, the original Commission staff audit workpapers. These documents shall be retained in accordance with the regular retention of staff audit workpapers. These papers record work performed, record staff observations during fieldwork, and form the basis for subsequent staff audits. Should FPL desire continued confidential treatment of the original workpapers, it must request an extension of the period before the conclusion of the period assigned herein.

Regarding fuel oil pricing, the utility's request for a 24-month confidential classification period in order to allow fuel oil contracts to be renegotiated is reasonable and is, therefore, approved.

Regarding internal audit information and information regarding bidding and other contractual data, the utility's request for an 18-month confidential classification period is reasonable and is, therefore, approved.

Regarding natural gas pricing, FPL asserts that it is under a long-term contract that requires confidential treatment of natural gas price. FPL argues that disclosure of the natural gas pricing information could impair its ability in the future to negotiate natural gas contracts. In Order No. PSC-94-1224-CFO-EI, issued in Docket No. 940001-EI, on October 6, 1994, the Commission addressed a similar instance in which long term contracts were the subject of a confidentiality request. In that order, the Commission stated:

Without question these are long-term contracts. However, often long-term contracts are modified throughout their duration; and consequently, terms and conditions which are relevant today may not be so in the future. It is more appropriate to give a reasonably extended time-period rather than the actual dates upon which the contracts terminate. Therefore, the specific contract pages from the . . . agreements and corresponding audit workpapers which show terms, prices, or calculations relative to these contracts which have been granted confidential status shall be declassified five years from the date of this order. At that time, if need be, FPL can petition this Commission to extend the time-period for confidential status.

Based upon the rationale in Order PSC-94-1224-CFO-EI, the utility's request for confidential treatment of its natural gas pricing shall be granted only for a period of 5 years from the date of this order. If need be, the utility may petition the Commission to extend that period at the end of the term.

FPL has also requested long-term confidential classification for coal and rail transportation pricing associated with its contractual ownership of Scherer Unit #4. FPL states:

Disclosure prior to the expiration of the ownership contract could impair FPL's ability in the future to negotiate (or have its agents negotiate) favorable coal and rail transportation contracts, to the detriment of FPL's customers.

FPL further states that the ownership agreement includes a confidentiality requirement that runs for the life of Scherer Unit #4. Scherer coal and rail transportation costs are separately

accounted for by unit. FPL asserts that this information is not publicly reported. However, the utility has not sufficiently explained why an extended period of confidential treatment is necessary. In Order PSC-93-1311-FOF-TL, issued in Docket No. 920260-TL, on September 9, 1993, the Commission stated:

...Just because materials are acquired subject to non-disclosure agreements does not automatically guarantee that they shall be found to be confidential: the information must also be of a type that would cause harm to the ratepayers or its owner's business operations if disclosed.

In the absence of a precise justification for an extended confidential period, and based upon the above rationale, the coal and rail transportation information shall be given confidential treatment for a period of only 18 months. If need be at the end of this period, the utility may request extension beyond the 18 month confidential period.

The specific audit workpaper numbers and lines relating to the documents that petitioner has requested confidential treatment, along with my findings, are listed in the table which follows:

Staff Work Paper	Page	Lines	Columns	Findings	Duration	Reason
Material found in documents 05714-95 and 06405-95						
9-1 (3 pages)		All	1	Granted	18 months	Contains information taken directly from internal audits
9-1/1 (11 pages)		All		Granted	18 months	Contains information taken directly from internal audits

Material found in documents 05714-95 and 06407-95						
9-2/1	2	All		Granted	18 months	Contains information directly related to contract purchases of coal or rail transportation
9-2/1	3	All		Granted	18 months	Contains information directly related to contract purchases of coal or rail transportation
9-2/1	4	1-13		Granted	18 months	Same rationale as above
9-2/1	5	All		Granted	5 years	Contains information directly related to contract purchases of natural gas
9-2/1	6	All		Granted	5 years	Same rationale as above

Material found in documents 05714-95 and 06406-95						
9-2/1	1	All		Granted	24 months	Contains information related to contract purchases of fuel oil
43-1/1-2	1	20-44 49-53	6,7 or 8 6,7 or 8	Granted	24 months	Same rationale as above
43-1/1-2	2	10 37-51	6-8 4,5,6,7 or 8	Granted	24 months	Same rationale as above
43-1/1-2	3	7-29 43-53	6,7 or 8 4-8	Granted	24 months	Same rationale as above
43-1/1-2	4	7-8 22-47	4-8 4,5,6,7 or 8	Granted	24 months	Same rationale as above
43-1/1-2	5	29-41	6-8	Granted	24 months	Same rationale as above
43-1/1-2	6	25-52	4,5,6,7 or 8	Granted	24 months	Same rationale as above
43-1/1-2	7	7-39	4,5,6,7 or 8	Granted	24 months	Same rationale as above
43-1/1-2	8	10-19	4,5,6,7 or 8	Granted	24 months	Same rationale as above
43-1/1-2	9	39-51	6-8	Granted	24 months	Same rationale as above
43-1/1-2	10	20-32	4,5,6,7 or 8	Granted	24 months	Same rationale as above
43-1/1-2	11	26-51	4,5,6,7 or 8	Granted	24 months	Same rationale as above

43-1/1-2	12	7-20 28-46	4,5,6,7 or 8 4,5,6,7 or 8	Granted	24 months	Contains information related to contract purchases of fuel oil
43-1/1-2	13	8-51	4,5,6,7 or 8	Granted	24 months	Same rationale as above
43-1/1-2	14	7-19 33-45	4-8 6-8	Granted	24 months	Same rationale as above
43-1/1-2	15	16-51	4,5,6,7 or 8	Granted	24 months	Same rationale as above
43-1/1-2	16	20-53	4,5,6,7 or 8	Granted	24 months	Same rationale as above
43-1/1-2	17	7-23 37-49	4,5,6,7 or 8 4-8	Granted	24 months	Same rationale as above
43-1/1-2	19	11-23 37-51	4,5,6,7 or 8 4,5,6,7 or 8	Granted	24 months	Same rationale as above
43-1/1-2	20	7-17 44-52	4-8 4,5,6,7 or 8	Granted	24 months	Same rationale as above
43-1/1-2	21	7-10 24-36 49-52	4-8 4-8 4,5,6,7 or 8	Granted	24 months	Same rationale as above
43-1/1-2	22	7-53	4,5,6,7 or 8	Granted	24 months	Same rationale as above
43-1/1-2	23	20-53	4,5,6,7 or 8	Granted	24 months	Same rationale as above
43-1/1-2	24	7-10 24-36	4,5,6,7 or 8 6-8	Granted	24 months	Same rationale as above
43-1/1-2	25	18-52	6-8	Granted	24 months	Same rationale as above
43-1/1-2	26	7-10 24-36 50-51	4-8 4,5,6,7 or 8 6-8	Granted	24 months	Same rationale as above

43-1/1-2	27	7-17 44-52	6-8 4-8	Granted	24 months	Contains information related to contract purchases of fuel oil
43-1/1-2	28	7-24	4-8	Granted	24 months	Same rationale as above
43-2	1	6-55	7,8	Granted	24 months	Same rationale as above
43-2	2	6-55	7,8	Granted	24 months	Same rationale as above
43-2	3	6-55	7,8	Granted	24 months	Same rationale as above
43-2	4	6-55	7,8	Granted	24 months	Same rationale as above
43-2	5	6-55	7,8	Granted	24 months	Same rationale as above
43-2	6	6-55	7,8	Granted	24 months	Same rationale as above
43-2	7	6-55	7,8	Granted	24 months	Same rationale as above
43-2	8	6-36	7,8	Granted	24 months	Same rationale as above
43-2/1	1	5-25	3,5	Granted	24 months	Same rationale as above
43-2/1	2	5-18	3,5	Granted	24 months	Same rationale as above
43-2/1	3	5-10	3,5	Granted	24 months	Same rationale as above
43-2/1	4	5-24	3,5	Granted	24 months	Same rationale as above
43-2/1	5	5-23	3,5	Granted	24 months	Same rationale as above

43-2/1	6	5-23	3,5	Granted	24 months	Contains information related to contract purchases of fuel oil
43-2/1	7	5-13	3,5	Granted	24 months	Same rationale as above
43-2/1	8	5-13	3,5	Granted	24 months	Same rationale as above
43-3	1	5-30	7 or 8	Granted	24 months	Same rationale as above
43-3/2	1	8-37	3-5	Granted	24 months	Same rationale as above
43-9/1	1	7-38	3-6	Granted	24 months	Same rationale as above
43-9/1-1	1	2 5-40 43-48		Granted	24 months	Same rationale as above
43-9/1-1/1	1	9-30		Granted	24 months	Same rationale as above
Material found in documents 05714-95 and 06407-95						
43-9/2	1	2,3 9-22 23-27	4-7	Granted	5 years	Contains information related to contract purchases of natural gas.
43-9/2-1	1	1-2 4-39		Granted	5 years	Same rationale as above
43-9/2-1	2	1-2 4-6 13-30		Granted	5 years	Same rationale as above

Material found in documents 05714-95 and 06408-95						
44-1	1	13-47	1,4,5 or 8	Granted	18 months	Contains information related to bidding or contractual information
44-1/2	1	2 6-29		Granted	18 months	Same rationale as above
44-1/2	2	All		Granted	18 months	Same rationale as above
44-1/2	3	All		Granted	18 months	Same rationale as above
44-1/2	4	All		Granted	18 months	Same rationale as above
44-1/2	5	All		Granted	18 months	Same rationale as above
44-1/2	6	All		Granted	18 months	Same rationale as above
44-1/2	7	All		Granted	18 months	Same rationale as above
44-1/2	8	All		Granted	18 months	Same rationale as above
44-1/2	9	All		Granted	18 months	Same rationale as above
44-1/2	10	All		Granted	18 months	Same rationale as above
44-1/2	11	All		Granted	18 months	Same rationale as above
44-1/2	12	All		Granted	18 months	Same rationale as above
44-1/2	13	All		Granted	18 months	Contains information related to bidding or contractual information

44-1/2	14	All		Granted	18 months	Same rationale as above
44-1/2	15	All		Granted	18 months	Same rationale as above
44-1/2	16	All		Granted	18 months	Same rationale as above
44-1/2	17	All		Granted	18 months	Same rationale as above
44-1/2	18	All		Granted	18 months	Same rationale as above
44-1/2	19	All		Granted	18 months	Same rationale as above
44-1/2	20	All		Granted	18 months	Same rationale as above
44-1/2	21	All		Granted	18 months	Same rationale as above
44-1/2	22	All		Granted	18 months	Same rationale as above
44-1/2	23	All		Granted	18 months	Same rationale as above
44-1/2	24	All		Granted	18 months	Same rationale as above
44-1/2	25	All		Granted	18 months	Same rationale as above
44-1/2	26	All		Granted	18 months	Same rationale as above
44-1/2	27	All		Granted	18 months	Same rationale as above
44-1/2	28	All		Granted	18 months	Same rationale as above
44-1/2	29	All		Granted	18 months	Same rationale as above
44-1/2	30	All		Granted	18 months	Same rationale as above
44-1/2	31	All		Granted	18 months	Contains information related to bidding or contractual information

44-1/2-1	1	4 6 10 12-14 22-29		Granted	18 months	Same rationale as above
44-1/2-1	2	4 8-11		Granted	18 months	Same rationale as above
44-1/2-1	3	2-49		Granted	18 months	Same rationale as above
44-1/2-1	4	2-18		Granted	18 months	Same rationale as above
44-1/2-1/1	1	2-41		Granted	18 months	Same rationale as above
44-1/2-1/1	2	1-17		Granted	18 months	Same rationale as above
44-1/2-2	1	1-49		Granted	18 months	Same rationale as above
Material found in documents 05715-95 and 06408-95						
44-1/5	1	3 8-24		Granted	18 months	Contains information related to bidding or contractual information
44-2/2	1	4 6-7 11 14 22-30		Granted	18 months	Same rationale as above
44-2/2	2	4 6-7 11-13		Granted	18 months	Same rationale as above
44-2/2	3	4 6 11		Granted	18 months	Contains information related to bidding or contractual information
44-2/2	4	2 5-10		Granted	18 months	Same rationale as above
44-2/2-1	1	1-32		Granted	18 months	Same rationale as above

44-3	1	2 7-32		Granted	18 months	Same rationale as above
44-3/2	1	4 6-41		Granted	18 months	Same rationale as above
44-3/2-1	1	5-6 8-9 21 24		Granted	18 months	Same rationale as above
44-3/2-1	2	4-25		Granted	18 months	Same rationale as above
44-3/2-1	3	2-3 7-16		Granted	18 months	Same rationale as above
44-3/2-1	5	9-21 25-33		Granted	18 months	Same rationale as above
44-3/2-1	6	3-31		Granted	18 months	Same rationale as above
44-3/2-1	7	3-28		Granted	18 months	Same rationale as above
44-3/2-1	9	7, 14, 24		Granted	18 months	Same rationale as above
44-3/3	1	6-7 11-35 55-57		Granted	18 months	Same rationale as above
45-1/1-1/1	1	8-38		Granted	18 months	Same rationale as above
45-1/1-1/1	2	8-25	2, 4	Granted	18 months	Same rationale as above
45-1/2-1/1	1	8-18	3, 5 or 6	Granted	18 months	Same rationale as above

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Based on the foregoing, it is therefore

ORDERED that Florida Power & Light Company's request for confidential treatment of Document Numbers 05714-95, 05715-95, 06405-95, 06406-95, 06407-95, and 06408-95 is granted as set forth in the body of this Order. It is further

ORDERED that this information shall remain confidential for the periods of time set forth within the body of this Order. It is further

ORDERED that if any information contained herein has been granted confidential treatment by previous Orders, that information shall be declassified on the date specified by the respective Order in which confidential treatment was originally granted. 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 J. Terry Deason, as Prehearing Officer, this 13th day of February, 1996.



J. TERRY DEASON, 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 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.