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January 15, 1997

Ms. Blanca S. Bayó, Director  
Division of Records and Reporting  
Florida Public Service Commission  
Betty Easley Conference Center  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Re: Docket No. 970001-EI

Dear Ms. Bayó:

Enclosed for filing with the Commission in recently renumbered Docket No. 970001-EI are the original and fifteen copies of FPL's Request for Confidential Classification and Petition for Waiver of Justification Thereof regarding certain information reported on the Commission's Form 423-1(a) for the month of October 1996. The original is accompanied by Attachments A, B and C. Please note that Attachment A is an unedited Form 423-1(a) and therefore needs to be treated as confidential. The fifteen copies are accompanied by Attachments B and C.

If you have any questions regarding this transmittal or the information filed herewith, you may contact me at (305) 552-3924.

Very truly yours,

David L. Smith  
Senior Attorney

- ACK \_\_\_\_\_
- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU \_\_\_\_\_ DLS:plm
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_ Enclosures
- LEG \_\_\_\_\_
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- OPC \_\_\_\_\_ F:\INDLUDESPLMSMITH\PSORPT96.DEC01-15-97
- RCH \_\_\_\_\_
- SEC \_\_\_\_\_
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- CTI \_\_\_\_\_

DOCUMENT NUMBER-DATE  
00558 JAN 16 5  
FPSC-RECORDS/REPORTING

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and Purchased Power  
Cost Recovery Clause and Generating  
Performance Incentive Factor

Docket No. 970001-EI

**REQUEST FOR CONFIDENTIAL CLASSIFICATION  
CLASSIFICATION AND PETITION  
FOR WAIVER OF JUSTIFICATION THEREOF**

Pursuant to §366.093, F.S. (1995) and Rule 25-22.006, F.A.C., Florida Power & Light Company ("FPL") hereby files with the Florida Public Service Commission ("Commission") this "Request for Confidential Classification and Petition for Waiver of Justification Thereof" ("Request and Petition") regarding certain information reported on FPL's October 1996 423-1(a) Fuel Report as delineated below. In support of this Request and Petition, FPL states:

1. FPL seeks classification of the information specified as proprietary confidential business information pursuant to §366.093, F.S. (1995), which provides in pertinent part, as follows:

(1) \* \* \* Upon request of the public utility or other person, any records received by the commission which are shown and found by the commission to be proprietary confidential business information shall be kept confidential and shall be exempt from s. 119.07(1).

\* \* \*

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FPSC-RECORDS/REPORTING

(3) \* \* \* Proprietary confidential business information includes, but is not limited to:

\* \* \*

(d) 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.

2. In applying the statutory standards delineated above in paragraph 1, the Commission is not required to weigh the merits of public disclosure relative to the interests of utility customers. The issue presented to the Commission, by this FPL Request and Petition, is whether the information sought to be protected fits within the statutory definitions of proprietary confidential business information, as set forth in §366.093, F.S. (1995). If the information is found by the Commission to fit within the statutory definitions, then it should be classified as confidential, be treated in accordance with Rule 25-22.006, F.A.C., and be exempt from §119.07(1), F.S. (1995). To establish that material is proprietary confidential business information under §366.093(3)(d), F.S. (1995), a utility must demonstrate that (i) the information is contractual data, and (ii) the disclosure of the data would impair the efforts of the utility to contract for goods or services on favorable terms.

3. The Commission recently amended Rule 25-22.006, F.A.C., by (among other things) adding a new subsection (4)(h), pursuant to which a utility such as FPL may petition the Commission for a waiver of the specific justification expected by subsection (4)(a) to be proffered in support of confidential classification of material contained in

certain routinized filings. In accordance with that Rule amendment, FPL is seeking such a waiver, and asserts that (i) the fuel-cost-related information being submitted herewith and for which confidential treatment is sought is routine, is filed monthly, and has been filed for many years, (ii) such information has regularly been classified by the Commission as confidential in the past, and (iii) the material identified on a line-by-line basis on Attachment C to this Request and Petition (as noted in paragraph 4 below) has most recently been afforded confidential classification by Orders Nos. PSC-96-0920-CFO-EI, PSC-96-0923-CFO-EI and PSC-96-0926-CFO-EI, all three of which were issued by the Commission in this Docket (then numbered 960001-EI) on July 16, 1996. However, in the event that the Commission decides to not grant FPL's petition for waiver, FPL respectfully reserves the right, for the protection and benefit of its retail electric customers, to submit full justification for confidential classification of the identified information just as FPL has historically done in the past.

4. Attached to this Request and Petition and incorporated herein by reference are the following documents:

- |              |  |
|--------------|--|
| Attachment A | A copy of FPL's October 1996 Form 423-1(a) with the information for which FPL seeks confidential classification highlighted. This document is to be treated as confidential.                                 |
| Attachment B | An edited copy of FPL's October 1996 Form 423-1(a) with the information for which FPL seeks confidential classification edited out. This document may be made public.  |
| Attachment C | A line-by-line justification matrix identifying each item on FPL's Form 423-1(a) for which confidential classification is sought, along with a written explanation demonstrating that (1) the information is |

contractual data, and (2) the disclosure of such data would impair the efforts of FPL to contract for goods or services on favorable terms.

5. FPL requests that the Commission make two findings with respect to the No. 6 fuel oil information identified as confidential on Attachments A and C:

- (a) That the No. 6 fuel oil data identified are contractual data; and
- (b) That FPL's ability to procure No. 6 fuel oil, terminaling and transportation services, and petroleum inspection services is reasonably likely to be impaired by the disclosure of the information identified because:
  - (i) The markets in which FPL, as a buyer, must procure No. 6 fuel oil, terminaling and transportation services, and fuel inspection services are oligopolistic; and
  - (ii) Pursuant to economic theory, a substantial buyer in an oligopolistic market can obtain price concessions not available to other buyers, but the disclosure of such concessions would end them, resulting in higher prices to that purchaser.

6. FPL requests that the Commission make two findings with respect to the No. 2 fuel oil information identified as confidential on Attachments A and C:

- (a) That the No. 2 fuel oil data identified are contractual data; and
- (b) That FPL's ability to procure No. 2 fuel oil is reasonably likely to be impaired by the disclosure of the information identified because the bidding process through which FPL obtains No. 2 fuel oil is not reasonably expected to provide the lowest bids possible if disclosure of the last winning bid is, in effect, made public through disclosure of FPL's Form 423-1(a).

7. FPL requests that the information for which FPL seeks confidential classification not be declassified until the dates specified on Attachment C. The time periods requested are necessary to allow FPL to utilize its market presence in negotiating

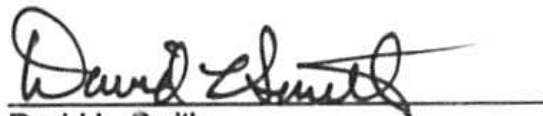
future contracts. Disclosure prior to the identified date of declassification would impair FPL's ability to negotiate future contracts.

8. The material identified as confidential information on Attachments A and C is intended to be and is treated by FPL as private, and has not, to the best of FPL's knowledge and belief, otherwise been publicly disclosed.

WHEREFORE, FPL respectfully requests that the Commission grant FPL's petition for waiver of the justification for confidential classification as now permitted by Rule 25-22.006(4)(h), F.A.C., and classify as confidential the information identified on Attachments A and C. In the event that the Commission declines to grant FPL the waiver being sought, FPL respectfully requests that the Commission afford FPL a reasonable time period, not to exceed thirty days, to submit full justification for confidential classification of the information identified on Attachments A and C just as FPL has historically done in the past.

Respectfully submitted,

Dated January 15, 1997



David L. Smith  
Senior Attorney  
Florida Power & Light Company  
9250 W. Flagler Street, #5514  
Miami, Florida 33174  
(305) 552-3924  
Florida Bar No. 0473499

**Justification for Confidentiality for October, 1996 Report:**

<b>FORM</b>	<b>LINE(S)</b>	<b>COLUMN</b>	<b>RATIONALE</b>
423-1(a)	1 - 8	H	(1)
423-1(a)	1 - 8	I	(2)
423-1(a)	1 - 8	J	(2), (3)
423-1(a)	1 - 8	K	(2)
423-1(a)	1 - 8	L	(2)
423-1(a)	1 - 8	M	(2), (4)
423-1(a)	1 - 8	N	(2), (5)
423-1(a)	1 - 8	P	(6), (7)
423-1(a)	1 - 8	Q	(6), (7)
423-1(a)	9	H, I, K, L, N, R	(8)

**Rationale for confidentiality:**

- (1) This information is contractual information which, if made public, "would impair the efforts of [FPL] to contract for goods or services on favorable terms." Section 366.093 (3) (d), F.S. (1995). The information delineates the price FPL has paid for No. 6 fuel oil per barrel for specific shipments from specific suppliers. This information would allow suppliers to compare an individual supplier's price with the market quote for that date of delivery and thereby determine the contract pricing formula between FPL and that supplier.

Contract pricing formulas generally contain two components, which are: (1) a markup in the market quoted price for that day and (2) a transportation charge for delivery at an FPL chosen port of delivery. Discounts and quality adjustment

components of fuel price contract formulas are discussed in paragraphs 3 and 4. Disclosure of the invoice price would allow suppliers to determine the contract price formula of their competitors. The knowledge of each others' prices (i.e. contract formulas) among No. 6 fuel oil suppliers is reasonably likely to cause the suppliers to converge on a target price, or to follow a price leader, effectively eliminating any opportunity for a major buyer like FPL to use its market presence to gain price concessions from any one supplier. The end result is reasonably likely to be increased No. 6 fuel oil prices and therefore increased electric rates.

- (2) The contract data found in Columns I through N are an algebraic function of Column H. That is, the publication of these Columns together, or independently, could allow a supplier to derive the invoice price of oil.
- (3) Some FPL fuel contracts provide for an early payment incentive in the form of a discount from the invoice price. The existence and amount of such discount is confidential for the reasons stated in paragraph (1) relative to price concessions.
- (4) For fuel that does not meet contract requirements, FPL may reject the shipment, or accept the shipment and apply a quality adjustment. This is, in effect, a pricing term which is as important as the price itself and is therefore confidential for the reasons stated in paragraph (1) relative to price concessions.
- (5) Column N is as important as H from a confidentiality standpoint because of the relatively few times that there are quality or discount adjustments. That is, Column N will equal Column H most of the time. Consequently, Column N needs to be protected for the same reasons as set forth in paragraph (1).
- (6) Column R is used to mask the delivered price of fuel such that the invoice or effective price of fuel cannot be determined. Columns P and Q are algebraic variables of Column R. Consequently, disclosure of Columns P and Q would allow a supplier to calculate the invoice or effective purchase price of oil (Columns H and N) by subtracting these columnar variables from Column R.
- (7) Terminating and transportation services in Florida tend to have the same, if not more severe, oligopolistic attributes of fuel oil suppliers. In 1987, FPL was only able to find eight qualified parties with an interest in bidding either or both of these services. Of these, four responded with transportation proposals and six with terminating proposals. Due to the small demand in Florida for both of these services, market entry is difficult. Consequently, disclosure of these contract data is reasonably likely to result in increased prices for terminating and transportation services.

Petroleum inspection services also have the market characteristics of an oligopoly. Due to the limited number of fuel terminal operations, there are correspondingly



few requirements for fuel inspection services. In FPL's last bidding process for petroleum inspection services, only six qualified bidders were found for FPL's bid solicitations. Consequently, disclosure of these contract data is reasonably likely to result in increased prices for petroleum inspection services.

- (8) This information is contractual information which, if made public, "would impair the efforts of [FPL] to contract for goods or services on favorable terms." Section 366.093 (3) (d), F.S. (1995). The information delineates the price FPL has paid for No. 2 fuel oil per barrel for specific shipments from specific suppliers. No. 2 fuel oil is purchased through a bidding process. At the request of the No. 2 fuel oil suppliers, FPL has agreed to not publicly disclose any supplier's bid. This non-disclosure agreement protects both FPL's ratepayers and the bidding suppliers. As to FPL's ratepayers, the non-public bidding procedure provides FPL with a greater variation in the range of bids that would otherwise not be available if the bids, or the winning bid by itself, were publicly disclosed. With public disclosure of the No. 2 fuel oil prices found on FPL's Form 423-1(a), the bids would narrow to a closer range around the last winning bid, eliminating the possibility that one supplier might, based on his economic situation, come in substantially lower than the other suppliers. Non-disclosure likewise protects the suppliers from divulging any economic advantage that supplier may have which the others have not discovered.

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**Date of Declassification:**

<b>FORM</b>	<b>LINE(S)</b>	<b>COLUMN(S)</b>	<b>DATE</b>
423-1(a)	1 - 4	H - N	06/30/97
423-1(a)	5	H - N	04/30/97
423-1(a)	6 - 8	H - N	04/30/97
423-1(a)	1 - 8	P	03/31/99
423-1(a)	1 - 8	Q	09/30/97
423-1(a)	9	H, I, K, L, N, R	12/31/96

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**Rationale:**

FPL requests that the confidential information identified above not be disclosed until the identified date of declassification. The date of declassification is determined by adding six months to the last day of the contract period under which the goods or services identified on Form 423-1(a) or 423-1(b) were purchased.

Disclosure of pricing information during the contract period or prior to the negotiation of a new contract is reasonably likely to impair FPL's ability to negotiate future contracts as described above.

FPL typically renegotiates its No. 6 fuel oil contracts and fuel-related services contracts prior to the end of such contracts. However, on occasion, some contracts are not renegotiated until after the end of the current contract period. In those instances, the contracts are typically renegotiated within six months. Consequently, it is necessary to maintain the confidentiality of the information identified as confidential on FPL's Form 423-1(a) or 423-1(b) for six months after the end of the individual contract period to which the information relates.

With respect to No. 6 fuel oil price information on the Form 423-1(a) or 423-1(b) for oil that was not purchased pursuant to an already existing contract, and the terms of the agreement under which it is purchased are fulfilled upon delivery, FPL requests the price information identified as confidential be kept confidential for a period of six months after the delivery. A six-month period is the minimum amount of time necessary for

confidentiality of these types of purchases to allow FPL to utilize its market presence in gaining price concessions during seasonal fluctuations in the demand for No. 6 fuel oil. Disclosure of this information any sooner than six months after completion of the transaction is reasonably likely to impair FPL's ability to negotiate such purchases.

The No. 2 fuel oil pricing information appearing on FPL's Form 423-1(a) or 423-1(b), for which confidential classification is sought, should remain confidential for the time period the contract is in effect, plus six months. Disclosure of pricing information during the contract period or prior to the negotiation of a new contract is reasonably likely to impair FPL's ability to negotiate future contracts as described above.

FPL typically negotiates its No. 2 fuel oil contracts prior to the end of such contracts. However, on occasion, some contracts are not negotiated until after the end of the current contract period. In those instances, the contracts are typically renegotiated within six months. Consequently, it is necessary to maintain the confidentiality of the information identified as confidential on FPL's Form 423-1(a) or 423-1(b) for six months after the end of the individual contract period to which the information relates.

## CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of Florida Power & Light Company's "Request for Confidential Classification and Petition for Waiver of Justification Thereof" regarding certain information reported on the Commission's Form 423-1(a) for October 1996 was forwarded to the Florida Public Service Commission via Federal Express, and copies of the Request and Petition without Attachment A were mailed to the individuals listed below, all on this 15th day of January, 1997.

Bob Elias, Chief  
Bureau of Electric & Gas  
Division of Legal Services  
Florida Public Service Commission  
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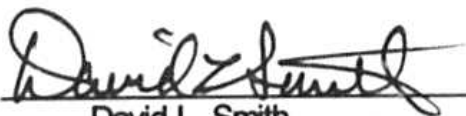
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A handwritten signature in black ink, appearing to read "David L. Smith", is written over a horizontal line.

David L. Smith

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