

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Request for confidential classification of material provided pursuant to Audit Control No. 04-105-4-1, by Florida Power & Light Company.

DOCKET NO. 041142-EI
ORDER NO. PSC-05-0124-CFO-EI
ISSUED: January 31, 2005

ORDER ACCEPTING LATE-FILED CONFIDENTIALITY REQUEST, AND GRANTING CONFIDENTIALITY TO DOCUMENT NOS. 09867-04 AND 10377-04

Florida Power & Light (FPL) requests confidentiality of certain workpapers provided to Commission staff from Audit Control No. 04-105-4-1. Before the issue of confidentiality can be addressed, this order must address the issue of a late-filed confidentiality request.

FPL's request for confidential treatment of this information was filed eight days late. Rule 25-22.006(3)(a)2, Florida Administrative Code, requires that confidentiality be requested within 21 days after the audit exit conference. The audit exit conference was on August 26, 2004, so the last day to timely file the request was September 16. FPL filed on September 24. FPL explains that the filing was late because the employees involved in preparing this request were needed to support restoration efforts following Hurricanes Charley and Frances. Both hurricanes struck FPL's territory in the same month and resulted in over half of FPL's customers losing power.

Rule 25-22.006(3)(a)2, Florida Administrative Code, allows a request for confidentiality of audit workpapers to be filed late for good cause. I find that the demands on FPL's employees during the hurricane recovery effort provide good cause for filing the request late.

The types of information for which confidentiality is sought, and FPL's justifications for confidentiality, are described below.

1. Contractual data such as pricing terms - The disclosure of this information would impair the efforts of FPL to contract for goods and services on favorable terms. The disclosure of some of this information would also adversely affect the ability of FPL's contractors and vendors to compete for non-FPL contracts on favorable terms. FPL does not disclose this information.
2. Customer-specific account information - FPL does not disclose this information except as provided by law, absent the customer's consent.
3. Contractual amounts paid by providers of wireless services that rent space on cellular towers owned by FPL - If this information were disclosed, it could harm FPL's ability to contract on favorable terms with these companies in the future. The disclosure of the

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information may also harm the competitive interests of the companies that rent tower space from FPL. The contracts prohibit the disclosure of this information.

Florida law presumes that documents submitted to governmental agencies are public records, with certain specifically defined exemptions. This presumption is based on the concept that government should operate in the “sunshine.” Rule 25-22.006(4)(c), Florida Administrative Code, provides that it is the Company’s burden to demonstrate that the documents merit confidential treatment.

FPL states that the information qualifies for confidential treatment under Sections 366.093(3)(d) and (e), Florida Statutes. Section 366.093 defines “proprietary confidential business information” as:

[I]nformation, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person’s or company’s business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public. 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.

(e) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

I find that the information is confidential for the reasons provided by FPL. Disclosure of the contractual data such as pricing terms and amounts paid by wireless service providers would affect FPL’s ability to contract for goods and services on favorable terms, and confidentiality is therefore allowed by Section 366.093(3)(d). Disclosure would also harm the competitive interests of the companies that contract with FPL, and confidentiality is allowed by Section 366.093(3)(e).

With respect to customer-specific information, it is routinely deemed confidential by this Commission and the utilities it regulates in order to protect the privacy of customers, and because it may harm the business interests of some customers. For some customers, the cost of electricity is an important component of their production costs, and information on electricity usage could provide competitors of such customers with an unfair advantage. See e.g. Order No. PSC-02-1450-CFO-EI, issued in In re: Environmental cost recovery clause, on October 21, 2002; Order No. PSC-03-0511-CFO-EI, issued in In re: Request for confidential classification of

material provided pursuant to Audit Control No. 02-174-4-1 by Florida Power & Light, on April 17, 2003; Order No. PSC-03-1198-CFO-EG, issued in In re: Energy conservation cost recovery clause, on October 22, 2003.

Pursuant to Section 366.093(4), Florida Statutes, confidential protection may only be granted for a period of 18 months unless the entity requesting confidential classification shows good cause why the period should be extended. FPL did not request confidential status for more than 18 months


Based on the foregoing, it is

ORDERED by Commissioner Charles M. Davidson, as Prehearing Officer, that the Request for Confidential Classification filed by Florida Power & Light on September 24, 2004, is granted. 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 material specified herein shall expire eighteen (18) months from the date of the issuance of this Order in the absence of a renewed request for confidentiality. 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 Charles M. Davidson, as Prehearing Officer, this
31st day of January, 2005.



CHARLES M. DAVIDSON
Commissioner and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(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; or (2) 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.