

BEFORE THE PUBLIC SERVICE COMMISSION

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

DOCKET NO. 060001-EI
ORDER NO. PSC-06-0949-FOF-EI
ISSUED: November 13, 2006

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
J. TERRY DEASON
ISILIO ARRIAGA
MATTHEW M. CARTER II
KATRINA J. TEW

ORDER GRANTING MOTION FOR RECONSIDERATION

BY THE COMMISSION:

By Order No. PSC-06-0568-CFO-EI, issued June 30, 2006, in Docket No. 060001-EU – In re: Fuel and purchased power cost recovery clause with generating performance incentive factor, the Prehearing Officer granted in part and denied in part Florida Power and Light Company's (FPL) November 3, 2005, Request for Confidential Classification of Certain Information Responsive to Staff's First Set of Requests for Production of Documents (Petition). FPL filed a timely motion for reconsideration of certain portions of the Order that denied its request. We have jurisdiction to hear the motion pursuant to Sections 350.01 and 366.093, Florida Statutes.

Standard of Review

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its Order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So.2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So.2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So.2d 96 (Fla. 3rd DCA 1959) citing State ex. rel. Jaytex Realty Co. v. Green, 105 So.2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315, 317 (Fla. 1974).

The Order Under Review

Among other things, Order No. PSC-06-0568-CFO-EI denied confidential treatment to certain information contained in FPL's response to Staff's Request for Production of Documents

DOCUMENT NUMBER-DATE

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(No. 3). In its request for confidential treatment, FPL cited Section 366.093(3)(d) and (e), Florida Statutes, as the statutory justification and argued that this information was entitled to confidential treatment because it was “information concerning bids or other contractual data and information relating to competitive interests. Disclosure of this information would impair the competitive interest of FPL, as well as FPL's ability to contract on favorable terms.” The prehearing officer disagreed and determined that the information was generic information concerning FPL’s pre-hurricane and post-hurricane plans, and found that the information did not “reflect information containing bids or other contractual data or information relating to competitive interests nor [does it] include employee personnel information.” As such, this information was denied confidential treatment.

FPL’s Motion

FPL’s response to Staff’s Documents No. 3 contained its Energy Marketing and Trading Operations – 2005 Hurricane Response Plan (the EMT plan), for which the Commission denied confidential treatment for Tabs 1-6, 9, and 10. The utility agrees that Tabs 3, 6, and 9 do not require confidential treatment, and did not seek reconsideration for this part of the Order. FPL did seek reconsideration for that portion of Order No. PSC-06-0568-CFO-EI that denied confidential treatment for Tabs 1, 2, 4, 5, and 10. In its motion, FPL stated that there were errors in the original petition filed by FPL and the Order. FPL asserts that because of these errors, the Commission did not consider or overlooked important facts or law.

In its motion, FPL argued that Tabs 1, 2, 4, 5, and 10 contain “security-sensitive information” that should be granted confidential treatment under Section 366.093(3)(c), Florida Statutes. FPL acknowledged that its request for confidential treatment failed to mention subsection (3)(c), which provides that proprietary confidential business information includes “security measures, systems, or procedures.” FPL argued that the information is pertinent to the operation of its electric generating system in the wake of hurricanes. Substantial disruptions of the fuel supply could easily result in major shortfalls in available generating output relative to system demand, putting severe strains on the economy, social and governmental services, and individual customers at a time when challenges to recovery efforts already abound, according to FPL. The EMT plan, stated FPL, outlines logistics and procedures FPL intends to use to avoid or at least minimize fuel supply disruptions in the wake of hurricanes. If the EMT Plan were disclosed to the public, FPL alleged that disclosure of Tabs 1, 2, 4, 5 and 10 of the EMT Plan would compromise FPL’s ability to ensure adequate fuel supplies during and following hurricane conditions.

FPL also explained in its motion, for the first time, that certain pages within Tabs 1, 2, 4, 5 and 10 contain employees’ names, home telephone numbers, personal cell phone numbers, and satellite phone numbers. The purpose of the information is to identify key personnel who need to be contacted in hurricane conditions and to provide contact information for those employees. The contact information is needed by FPL to facilitate rapid and reliable communications in connection with hurricane responses. Normally, FPL personnel would not expect the contact information to be publicized and the information would be used solely for hurricane-response purposes. According to FPL, in the event of a hurricane, if the general public had key employee telephone numbers, the communication chain could be disrupted by customers contacting

individual employees versus using the established customer communication channels. Employees receiving calls from the general public following a hurricane could disrupt the performance of their responsibilities for ensuring post-hurricane fuel supply.

Decision

After reviewing FPL's motion and original request, and in light of the new information provided by FPL, we find it appropriate to grant FPL's motion to reconsider that portion of Order No. PSC-06-0568-CFO-EI that denies confidential treatment for Tabs 1, 2, 4, 5 and 10 of FPL's response to Staff's Request for Production of Documents (No. 3). The prehearing officer's order was correct based on the facts in front of him at the time the order was signed; however, there were points of law overlooked and mistakes of fact made based on the new information provided by FPL. The Order failed to consider that Section 366.093(3)(c) provides that proprietary confidential business information includes "security measures, systems, or procedures," in large part because the utility failed to argue this point before the Commission. FPL's request also failed to reference Section 366.093(3)(f), Florida Statutes, which provides that "employee personnel information unrelated to compensation, duties, qualifications, or responsibilities" should be afforded confidential treatment. While the order referenced "employee personnel information," the order incorrectly cited the wrong subsection for this provision of the statute. Normally, telephone numbers and names of employees are granted confidentiality, but in this particular circumstance the telephone numbers were to be used in the performance of the employees duties as part of the hurricane response plan. Accordingly, the Order denied confidential treatment of that personnel information. In its motion for reconsideration, FPL explained, for the first time, that the purpose of this compilation of the employee personnel information is to provide a clear chain of those employees who must be contacted in the event of a hurricane, and that it could be disruptive to hurricane restoration efforts if this information were to be made public.

Based on this new information provided by FPL as described above, the requested portions of the EMT Plan meet the requirements for confidentiality contained in Section 366.093, Florida Statutes. The information found in Tabs 1, 2, 4, 5 and 10 of the EMT Plan, which was produced by FPL in response to Request No. 3 of Staff's Request for Production of Documents, contains information which relates to "[s]ecurity measures, systems, or procedures" or employee information that could be harmful to FPL's storm restoration efforts if it were to be made public. The facts as applied to the correct provisions of Florida Statutes were not before the Commission at the time Order No. PSC-06-0568-CFO-EI was issued, and therefore were overlooked or not considered. Accordingly, this Motion for Reconsideration is granted. Tabs 1, 2, 4, 5, and 10 of the EMT Plan shall be afforded confidential treatment.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that FPL's Motion for Reconsideration is Granted. It is further

ORDERED that Tabs 1,2, 4, 5 and 10 of the EMT Plan shall be afforded confidential treatment.

By ORDER of the Florida Public Service Commission this 13th day of November, 2006.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Marcia Sharma
Marcia Sharma, Assistant Director
Division of the Commission Clerk
and Administrative Services

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NOTICE OF 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.

Any party adversely affected by the Commission's final action in this matter may request 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 by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.