

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 120001-EI
ORDER NO. PSC-12-0364-CFO-EI
ISSUED: July 17, 2012

ORDER GRANTING FLORIDA POWER & LIGHT COMPANY'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION
(DOCUMENT NO. 02578-12)

On April 24, 2012, pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), Florida Power & Light Company (FPL) filed a request for confidential classification of Forms 423-2, 423-2(a) and 423-2(b) for February/January 2012 (Document No. 02578-12). This request was filed in Docket No. 120001-EI.

Section 366.093(1), F.S., provides that "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 Section 119.07(1) [the Public Records Act]." Section 366.093(3), F.S., defines proprietary confidential business information as information that is intended to be and is treated by the company as private, in that disclosure of the information would cause harm to the company's ratepayers or business operations, and has not been voluntarily disclosed to the public. Sections (3)(d) and (e) of Section 366.093 F.S., provide that proprietary confidential business information includes, but is not limited to "[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" and "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information."

FPL contends that the information contained in Forms 423-1(a), 423-2, 423-2(a) and 423-2(b) for February/January 2012, submitted in Docket No. 120001-EI, as more specifically described in the tables in Attachment C to the FPL request, falls within these categories and, thus, constitutes proprietary confidential business information entitled to protection under Section 366.093, F.S., and Rule 25-22.006, F.A.C. FPL states that this information is intended to be and is treated by FPL as private and has not been publicly disclosed.

FPL's justification for asserting that the information is confidential is found in more detail in Attachment C to its request. FPL contends that part of the information involves contractual information which, if made public, "would impair the efforts of FPL to contract for goods or services on favorable terms" pursuant to Section 366.093(3)(d), F.S. FPL contends that disclosure of transportation costs "would impair the efforts of Jacksonville Electric Authority (JEA) acting on its own behalf and as agent for FPL to contract for goods or services on favorable terms" pursuant to Section 366.093(3)(d), F.S. Moreover, FPL states, the service

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provider itself typically designates the transportation costs in the contract as confidential. JEA maintains this information as confidential pursuant to section 163.01(15)(m), F.S.

FPL also contends that disclosure of the effective purchase price “would impair the efforts of JEA, acting on its own behalf and as agent for FPL, to contract for goods or services at the St. Johns River Power Park (SJRPP) on favorable terms” pursuant to Section 366.093(3)(d), F.S. The data informs other potential coal suppliers as to the price SJRPP is paying for coal. FPL asserts that disclosure of this information, which is particularly sensitive given SJFWP’s reliance on long term contracts with fixed price provisions or short term spot transactions, could adversely affect FPL’s interests in subsequent solicitations for coal and/or in negotiating coal supply agreements. Further, FPL contends that JEA maintains this information as confidential pursuant to section 163.01(15)(m), F.S.

Additionally, FPL contends that on April 1, 2010, FPL was contacted by the BNSF Railway concerning FPL’s disclosure of BNSF transportation rate information on FPL’s Form 423 filing. BNSF has asserted that the transportation rate information is confidential pursuant to its Rail Transportation Agreement BNSF-C-12339 with Georgia Power Company (GPC) and that FPL is obligated to maintain the confidentiality of that information. FPL argues that this information is confidential under Sections 366.093(3)(d) and 366.093(3)(e), F.S., because its disclosure would “impair the efforts of GPC, as agent for FPL to contract for goods and services on favorable terms” and would “impair the competitive business of BNSF.”

Time Period For Confidential Classification

FPL requests confidential classification for this information for a period of 18 months. According to Section 366.093(4), F.S., confidential classification may only extend for 18 months from the issuance of an Order granting confidential classification unless “the Commission finds, for good cause, that the protection from disclosure shall be for a specified longer period.”

Ruling

Upon review, it appears the above-referenced information satisfies the criteria set forth in Section 366.093(3), F.S., for classification as proprietary confidential business information. The information constitutes “[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” and “[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.” Thus, the information identified in Document No. 02578-12 shall be granted confidential classification.

Pursuant to Section 366.093(4), F.S., the information for which confidential classification is granted herein shall remain protected from disclosure for a period of 18 months from the date of issuance of this Order. At the conclusion of the 18-month period, the confidential information will no longer be exempt from Section 119.07(1), F.S., unless FPL or another affected person shows, and the Commission finds, that the records continue to contain proprietary confidential business information.

Based on the foregoing, it is

ORDERED by Commissioner Eduardo E. Balbis, as Prehearing Officer, that Florida Power & Light Company's Requests for Confidential Classification of Document No. 02578-12 is granted. It is further

ORDERED that the information in Document No. 02578-12 for which confidential classification has been granted shall remain protected from disclosure for a period of 18 months from the date of issuance of this Order. It is further

ORDERED that this Order shall be the only notification by the Commission to the parties of the date of declassification of the materials discussed herein.

By ORDER of Commissioner Eduardo E. Balbis, as Prehearing Officer, this 17th day of July, 2012.



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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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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 Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, 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.