

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Power and	)	DOCKET NO. 870197-EI
Light Company for approval of non-firm	)	ORDER NO. 20169
load methodology and annual targets.	)	ISSUED: 10-14-88

ORDER ON CONFIDENTIALITY

On September 20, 1988, Florida Power and Light Company (FPL) filed its response to Staff's Second Set of Interrogatories No. 20(b). This interrogatory requests that FPL provide "any market data showing which customers (by rate class and annual maximum demand) are likely to switch to interruptible service and when." At the time of its submittal of this information, FPL filed a request for specified confidential classification for this material. In its request, FPL states that the usage characteristics of FPL's commercial customers and the identification of the rate schedules under which those customers receive service are information which FPL does not disseminate. Electrical usage characteristics are an integral component of these customers' cost of production and is proprietary to these customers. Further, FPL states that this response contains the results of FPL's own marketing studies which are proprietary to FPL. The disclosure of this information, in FPL's opinion, would provide a marketing advantage to alternative power suppliers offering self-generation options to commercial and industrial electric service customers of FPL. Thus, FPL regards the compilation of this information as a trade secret.

For these reasons, FPL is requesting that this Commission issue a protective order which: (1) finds that this material, as well as any copies, notes, internal memoranda or other materials containing any of the information in this interrogatory, is proprietary confidential business information within the meaning of Section 366.093, Florida Statutes; (2) finds that this material, as well as any copies, notes, internal memoranda or other materials containing any of the information in this interrogatory, is specified confidential business information exempt from Section 119.07(1), Florida Statutes; (3) finds that this material shall only be provided to Commission Staff and Commissioners as needed and maintained according to the Commission's rule on confidentiality; (4) orders that no more than three copies of this material be made; (5) orders that FPL's written consent be sought prior to the disclosure of the confidential information to any consultants, which consent shall not be unreasonably withheld; and (6) orders that this material be returned to FPL within thirty days of the effective date of the final order in this proceeding or as otherwise ordered by the Commission.

Pursuant to Section 350.121, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, materials may be classified by this Commission as "specified confidential information." Rule 25-22.006(1)(j), Florida Administrative Code, defines "specified confidential information" as "material that has been determined, pursuant to this rule, to be proprietary confidential business information under Section 350.121, 364.183, 366.093, or 367.156, F.S." "Proprietary confidential business information" is defined in Section 366.093, Florida Statutes, as including, but not limited to: trade secrets; internal auditing controls and reports of internal auditors; security measures, systems or procedures; information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility to contract for services on favorable terms; and

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employee personnel information unrelated to compensation, duties, qualifications, or responsibilities.

Other Florida laws offer further guidance as to what constitutes confidential information. Section 163.01(15)(m), Florida Statutes, defines "proprietary confidential business information" to include the items found in Section 366.093 and "formulas, patterns, devices, combinations of devices, contract costs, or other information the disclosure of which would injure the affected entity in the marketplace." Finally, "trade secret" is defined in Section 442.102(22), Florida Statutes, as "any confidential formula, pattern, process, device, information or compilation of information, including a chemical name or other unique chemical identifier, that is used in an employer's business and that gives the employer an opportunity to obtain an advantage over competitors who do not know or use the formula, pattern, process, device, information, or compilation of information.

Having reviewed the information provided to Staff, we find that this information is both a trade secret as to FPL and confidential business information to both FPL and its customers. It is a compilation of information which could severely impact FPL's ability to retain a significant number of its current industrial and commercial customers by placing a "hit list" of probable cogenerators at FPL's competitors' feet. Further, FPL's customers are entitled to expect that information which they treat confidentially be so treated by the utility and by this Commission. This data is necessary to accurately assess the reasonableness of FPL's proposed annual targets for interruptible load. Composite data will, in this instance, not provide an adequate substitute.

For these reasons, we find that the information found in FPL's response to Staff's Second Set of Interrogatories filed on September 20, 1988, and updated on September 30, 1988, is proprietary confidential business information and specified confidential business information pursuant to 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code.

Therefore, it is

ORDERED by Commissioner Michael McK. Wilson, as Prehearing Officer, that the request for specified confidentiality filed by Florida Power and Light Company is hereby granted as set forth below. It is further

ORDERED that the response to Staff Interrogatory No. 20(b) shall be provided only to Commission Staff and Commissioners unless good cause can be shown by other parties to this docket. Upon a showing of good cause, other parties to this docket shall undertake stringent measures to assure the confidentiality of this material and prevent its public disclosure. It is further

ORDERED that no more than three copies of this material shall be made and that any internal memoranda, notes or documents in the possession of Staff which contain any of the information found to be confidential above also be classified as specified confidential information. It is further

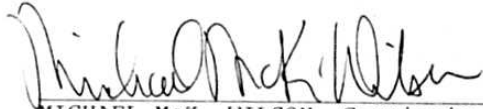
ORDERED that FPL's written consent must be sought prior to the disclosure of this information to a consultant. It is further

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ORDERED that all copies of material classified by this order as specified confidential shall be returned to Florida Power and Light Company, pursuant to authorized procedures, at the conclusion of Docket No. 870197-EI. Conclusion of the docket is defined to mean after the time to file petitions for reconsideration of any order issued in the docket has run, or after the time for the filing of a notice of appeal of any order issued in this docket has run. It is further

ORDERED that if a protest is filed within 14 days of the date of this order, it will be resolved by the appropriate Commission panel pursuant to Rule 25-22.006(3)(d), Florida Administrative Code.

BY ORDER of Commissioner Michael McK. Wilson, as Prehearing Officer, this 14th day of OCTOBER, 1988.



MICHAEL McK. WILSON, Commissioner  
and Prehearing Officer

( S E A L )

SBR