

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Adoption of Numeric) DOCKET NO. 930548-EG
Conservation Goals and) ORDER NO. PSC-94-0670-CFO-EG
Consideration of National Energy) ISSUED: June 2, 1994
Policy Act Standards (Section)
111) by Florida Power and Light)
Company.)
_____)

ORDER DENYING REQUEST FOR
SPECIFIED CONFIDENTIAL CLASSIFICATION

BY THE COMMISSION:

On May 6, 1994, Florida Power & Light Company (FPL or company) filed a Request for Specified Confidential Classification for documents which were assigned Document No. 4380-94. Previously on March 16, 1994, the Legal Environmental Assistance Foundation (LEAF) filed a Motion to Compel Discovery. FPL filed its response to the Motion on March 23, 1994, and requested a temporary protective order be issued by the Commission. A Temporary Protective Order was issued by the Commission on April 8, 1994. Pursuant to this temporary protective order, LEAF reviewed a group of documents which FPL had initially identified as confidential. LEAF requested copies of several of these documents. After FPL reviewed the documents requested, the company determined that the majority of the documents LEAF sought copies of were not confidential. However, FPL requests specified confidential status for four documents and requests also entry of a protective order to govern access to those documents by LEAF and other parties. The documents listed below for which confidential classification is requested are identified as Exhibits, by title and by Bates numbers.

Florida law provides, in Section 119.01, Florida Statutes, that documents submitted to governmental agencies shall be public records. The only exceptions to this law are specific statutory exemptions, and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. This law derives from the concept that government should operate in the "sunshine." It is this Commission's view that the burden to be met by one requesting specified confidential classification of documents submitted during a proceeding before us is very high. Rule 25-22.006, Florida Administrative Code, provides that the Company may fulfill its burden by demonstrating how that information qualifies as one of the statutory examples set out in Section 366.093, Florida Statutes, or by demonstrating that the information is proprietary confidential information, the disclosure of which will cause the company or its ratepayers harm.

DOCUMENT NUMBER-DATE

05388 JUN-28

FPSO-RECORDS/REPORTING

FPL requests confidential classification of Exhibits A - D in accordance with the general requirements of the definition of proprietary confidential business information. In addition, FPL asserts that they are trade secrets as defined in the Uniform Trade Secrets Act, Section 688.02 (4), Florida Statutes and therefore, pursuant to Section 366.093 (3) (a), Florida Statutes, subject to confidentiality as proprietary business information. The company states that this information is intended to be and is treated by FPL as confidential, that it has not been publicly disclosed, and that it has been circulated to a select few FPL employees on a need to know basis only.

DOCUMENT ANALYSIS

"Trade Secret" as defined by Section 688.02 (4), Florida Statutes, means:

... [i]nformation, including a formula, pattern, compilation, program, device, method, technique, or process that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Chapter 812, Florida Statutes addresses Theft, Robbery, and Related Crimes. Section 812.081 (1) (c) states that:

"...a trade secret is considered to be: 1. Secret; 2. Of value; 3. For use or in use by the business; and 4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes."

FPL cites several cases to support its proposition that Florida has long recognized that information that is not itself confidential such as a customer list or product formula, may be a trade secret if it is compiled through the industry of its owner

and held confidential by him. The operative phrase in this analysis is "may be a trade secret."

The Commission has characterized the enumerated items listed at Section 366.903 (3) (a) - (f), Florida Statutes as per se proprietary business information which are entitled to confidential treatment under the Statute. However, merely asserting that the material is an enumerated per se item because the company has expended funds to obtain the information does not relieve FPL of the obligation to demonstrate that the material is indeed as purported. An adequately reasoned pleading asserting that an item is a trade secret and entitled to confidential treatment under the Statute should begin by defining the elements of a trade secret and then demonstrating that the material meets each requirement.

In the instant case, I find that the company's pleadings are more conclusive than demonstrative regarding the concepts of value and advantage under the statutory tests for a trade secret. The same is true of the company's argument that disclosure of the material would cause harm to the ratepayers or the company's business operations. Upon examination of the materials and the applicable law, I have concluded that the confidentiality justifications submitted for the information at issue, except for Exhibit C, does not meet the burdens set forth in the statutes. I find that the disclosures will not harm the ratepayers or the company's business operations, and that FPL's competitors will derive no perceptible economic advantage from such disclosures.

Exhibit A: **FPL DSM results: Fla. Solar Energy Center
Bates No. 00001 - 000024**

This item contains a series of tables which display the results of a study of the impact of DSM on various types of buildings in three areas of FPL's service territory. According to FPL, the computer simulations were performed by the Florida Solar Energy Center at a cost of approximately \$117,000. The information which FPL deems confidential appears on every page and is the actual study results shown in columnar format for each type of building.

Data on energy savings from conservation measures is widely available from various sources such as the Electric Power Research Institute and the American Council for an Energy Efficient Economy. For this particular information to be useful, other inputs such as square footage, orientation of building, window orientation and the saturation of each building type are needed. FPL argues that the building types themselves are confidential, however, these building types are common to all jurisdictions in Florida. Actually the

energy savings data for all types of buildings are frequently submitted to the Commission from other utilities when they request conservation program approval or modification. They file the projected savings along with a detailed explanation of how the savings were estimated. Besides, the HVAC equipment efficiencies used in the instant study are outdated and are therefore of limited value. Upon review, I find that the specific information at issue is not the type ordinarily considered a trade secret and that it does not warrant confidential treatment.

Exhibit B: **1992 Residential DSM Program Baseline Evaluation
Results Report - Bates No. 001208 - 001211**

These are narrative extracts from a report prepared by Quantum Consulting, Inc. for FPL. FPL asserts that the report was obtained by FPL at significant expense in the course of an on-going intensive effort by FPL to evaluate its DSM programs. The overall budget for this review of FPL's programs from the inception of this effort in 1991 through 1994 is approximately \$13,000,000. However, FPL did not disclose the cost of this particular study.

FPL did not explain or justify the value of these specific narrative portions of this Baseline Evaluation Report beyond the claim that FPL paid to obtain the study. These operating factors appear to be percentages of particular appliances that are operating at the time of FPL's seasonal peaks. Without knowing the connected load and duty cycle of the stock of appliances used in the study, the operating factors are themselves useless. FPL also wishes to protect the narrative relative to the results of the Baseline energy impact estimate for the Ceiling Insulation Program. However, FPL has failed to demonstrate why this has value or provides an economic advantage by not being widely known. This information appears to be noteworthy only to FPL and would be the same type of information that FPL would need to supply to the Commission upon a request for modification of its Ceiling Insulation Program. I find that the material at issue is not a "trade secret" and its disclosure will not cause harm to the ratepayers or the company's operation. Therefore, the material is not entitled to confidential treatment.

Exhibit C: **1992 Residential DSM Program Baseline Evaluation
Report - Engineering Analysis
Bates No. 008418 0 008446**

This item is the engineering analysis from the same 1992 report as Exhibit B. FPL asserts that the material contains narrative description and actual mathematical equations that constitute the engineering analysis that was the essential part of

the Baseline Evaluation Report. FPL states that "in this section, FPL's algorithms for calculation the summer and winter demand and annual energy savings are formulated, and their calculated values are depicted." Upon review, it is evident that this is a 29 page document including both formulas and narrative regarding various different energy savings programs, some included within this proceeding and others not. The utility has not provided a line by line justification for this comprehensive document pursuant to Rule 25-22.006(4)(a), Florida Administrative Code. Because the formulas appear to be ones widely used in the industry, may actually be formulas included in computer programs made available by the Department of Energy to the industry, and the narrative is generally non-specific in nature, I find that without a line by line justification the utility has not met its burden of proof.

Exhibit D: **FPL's 1993 Goals Setting Documentation - Case 1 and Case 2 Water Heating Measures**
 Bates No. 008227 - 008235, and 008243

A prior request for specified confidential classification was made for the information on Bates page number 008243 in FPL's April 22, 1993, filing. The request was denied. Therefore, I shall not address this request again.

The information contained in Bates pages number 0008227 through 008235 consists of several pages from the above named study contracted for by FPL from Quantum Consulting, Inc., in 1993. This report examines the impact of 110 DSM measures on energy and demand, purportedly enabling FPL to propose DSM goals. FPL states that the information it deems confidential actually is compiled from three other reports: 1992 Residential DSM Program Evaluation Baseline Results - Conservation Water Heating Program Appendices; Appliance Specific Electricity Consumptions; and 1987 - 88 Residential Water Heating Study Load Shapes. FPL asserts that these reports were obtained by FPL at significant expense in the course of an on-going effort by FPL to evaluate its DSM programs, in order to enable FPL to propose DSM goals. The entire budget from the inception of this DSM evaluation effort in 1991 through 1994 is approximately \$13,000,000. FPL has not indicated how much of this overall budget was expended on these particular studies.

Specifically, FPL is requesting confidentiality for information found on each page and consists of the actual numerical values used to calculate the results and the actual numerical results themselves for solar water heating for the specified building types and specified regions of FPL's service territory for a projected time period from 1993 to 2003. Upon review, I find that this Exhibit is not proprietary confidential business

information. Although, FPL claims that this is trade secret, similar type savings estimates have been filed for solar water heaters in this docket and other investor owned utility goals dockets. In addition, similar information on savings is readily available from the Florida Solar Energy Industries Association.

For the period 1995 to 2003 FPL has proposed a goal of zero, meaning the company does not forecast any new megawatts, for the water heating market segment. In the company's pleading, however, FPL asserts that the purpose of the various studies was to assess the impact of FPL's DSM programs on energy and demand and to learn more about these programs to better market them. With a goal of zero, it would appear, however, that FPL does not plan on marketing water heating programs. Second, the overall commercial value of the information is questionable at best. The resale market for the information may be limited because the data is extremely specific to FPL's service territory, may be valid for Florida utilities only and without further information as to how the study was conducted may be meaningless. Other Florida utilities have been gathering similar information in their efforts to meet the aims outlined in the Florida Energy Efficiency and Conservation Act (FEECA).

The Florida Energy Efficiency and Conservation Act (FEECA), Sections 366.80-366.85 and 403.519, Florida Statutes, mandates the Florida Public Service Commission to "adopt goals and approve plans related to the conservation of electric energy and natural gas usage." The Legislature directed this Commission to require each utility to develop plans and implement programs for increasing energy efficiency and conservation. In so doing, the Legislature intended that the use of new technology and highly efficient energy systems be encouraged. Further, to meet these important goals, the Legislature declared that FEECA was to be "liberally construed" to meet the "complex problems of reducing and controlling the growth rates of electric consumption and reducing the growth rates of weather-sensitive peak demand..." This was necessary to protect the health, prosperity, and general welfare of the state and its citizens.

The major reason that the utilities are required to pursue conservation is that they are uniquely positioned to remove or lessen market barriers and create a competitive energy efficiency market. Because FPL spent money to obtain these reports is not sufficient justification for keeping the results confidential. Therefore, as to Exhibits A, B and D, I have concluded that the information at issue does not meet the burdens set forth in the Section 366.093. I find that this information is not proprietary business information and its disclosure will not cause harm to the ratepayers or the company's business operations. FPL's competitors

ORDER NO. PSC-94-0670-CFO-EG
DOCKET NO. 930548-EG
PAGE 7

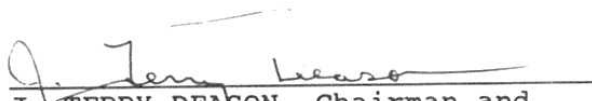
will derive no perceptible economic advantage from such disclosure.

It is therefore

ORDERED by the Chairman J. Terry Deason, as prehearing officer that the Exhibits A, B C and D for which Florida Power and Light Company has requested confidential treatment are held to be not entitled to confidential treatment. It is further

ORDERED that Florida Power and Light Company's request for entry of a protective order is denied.

By ORDER of Chairman J. Terry Deason, as Prehearing Officer, this 2nd day of June, 1994.



J. TERRY DEASON, Chairman and
Prehearing Officer

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SLE:bmi

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(40), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Section 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 this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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

ORDER NO. PSC-94-0670-CFO-EG
DOCKET NO. 930548-EG
PAGE 8

Records and Reporting, 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.