

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint against Florida Power & Light Company regarding placement of power pole and lines by Pablo Acosta.

DOCKET NO. 000678-EI
ORDER NO. PSC-01-0233-CFO-EI
ISSUED: January 25, 2001

ORDER GRANTING REQUEST FOR CONFIDENTIAL CLASSIFICATION

On November 4, 1999, Division of Consumer Affairs (CAF) received correspondence from Mr. Pablo Acosta regarding power poles located on Southwest 27th Terrace, west of 30th Avenue, in Miami, Florida. He requested that Florida Power & Light Company (FPL) remove the power pole in front of his house and another house at 3015 Southwest 27th Terrace. On November 12, 1999, CAF also received correspondence from Mr. & Mrs. Oscar Rodriguez stating that they and a number of other residents, including Mr. Acosta, had tried to resolve the problem with FPL and their city government about the installation of the commercial concrete poles in their residential area.

On November 15, 1999, CAF sent the complaint to FPL. The company responded on December 8, 1999. FPL stated that a new pole line on Southwest 27th Terrace in Miami was needed to accommodate a feeder tie as part of a new feeder out of Coconut Grove Substation. FPL met with a City of Miami representative and some customers to discuss an alternative route, FPL reported that an agreement was reached that the south side would be less intrusive to the neighborhood.

On December 22, 1999, CAF sent Mr. Acosta a letter explaining the outcome of the investigation. Based on the complaint, FPL's response and staff's own investigation, staff concluded that FPL had complied with all applicable rules and its tariffs.

CAF received a letter from the Concerned Residents of Southwest 27th Terrace, Miami, Florida, on December 28, 1999, objecting to the outcome of the investigation and requesting an informal conference. On April 28, 2000, an informal conference was held with the parties, as well as local government officials. The conference concluded without settlement. On July 6, 2000, the Commission issued Order No. PSC-00-1219-PAA-EU finding that FPL had complied with the National Electric Safety Code, and requesting FPL to submit information on proposed options and reasonable

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alternatives to the pole placement along Southwest 27th Terrace with the associated costs.

On December 13, 2000, FPL filed a Settlement Agreement, along with a Request for Confidential Classification of certain information provided within the settlement agreement, pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. The information for which FPL seeks confidential treatment is contained in Document No. 15930.

Pursuant to Section 119.01, Florida Statutes, documents submitted to this Commission are public records. The only exceptions to this law are specific statutory exemptions and exemptions granted by governmental agencies pursuant to the specific terms of statutory provision.

Pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, FPL has the burden of demonstrating that the materials qualify for confidential classification. Rule 25-22.006 requires the utility to meet this burden by demonstrating that the materials fall into one of the statutory examples set forth in Section 366.093, Florida Statutes, or by demonstrating that the information is proprietary confidential business information, the disclosure of which will cause the utility or its ratepayers harm.

FPL seeks confidential treatment for information in its settlement agreement with the Concerned Residents of Southwest 27th Terrace. According to FPL, the information it requests to be confidential is proprietary confidential business information within the meaning of Section 366.093(3), Florida Statutes.

Proprietary confidential business information includes, but is not limited to:

- (a) Trade secrets.
- (b) Internal auditing controls and reports of internal auditors.
- (c) Security measures, systems, or procedures.
- (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.

(f) Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities.

Section 366.093(3), Florida Statutes.

In addition, "even if information asserted to be confidential does not fall within one of the express statutory examples of confidential information, such information may nevertheless be granted confidential treatment if it can be shown that the business operations of the party requesting confidential treatment will be harmed by disclosure." Complaint of Florida Telemessaging Coalition Against Southern Bell Telephone and Telegraph Company for Alleged Unfair Marketing and Technical Practices, Order No. 23920, Docket No. 900687-TL (issued December 21, 1990) ("Southern Bell"). In Southern Bell, the parties in the action came to an agreement, and sought to keep part of that settlement agreement confidential. This Commission found that the business operations of the company requesting confidential treatment would be harmed by disclosure. See id. Furthermore, this Commission found that as a matter of public policy, the Settlement Agreement "should be treated as confidential, proprietary business information exempt from the 'Open Records Act' in order to facilitate the settlement of disputes in an expeditious manner without the need for Commission intervention." Id. at 5.

The highlighted sections of the Agreement of Settlement, for which FPL seeks confidential treatment, do not disclose any information about FPL's business activity or decision making process or any personal information about an FPL employee or any signatory. However, the highlighted portions, if revealed could harm FPL's business operations by impairing FPL's future ability to negotiate settlements involving similar issues. Public disclosure of the Settlement Agreement could harm FPL's business operations, as well as its ratepayers, by increasing the potential costs associated with the resolution of similar situations in the future.


Because the information for which FPL seeks confidential classification falls within the exception to public records disclosure provided by Section 366.093, Florida Statutes, the information is entitled confidential classification. FPL has shown that what it wishes to protect is proprietary confidential business information. Therefore, FPL's request is granted.

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Based on the foregoing, it is

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that the information contained in Document No. 15931-00, Agreement of Settlement and Release, is granted confidential classification.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 25th day of January, 2001.



J. Terry Deason,
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, 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