

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for confidential classification of certain information contained in report entitled Florida Power & Light's Quality Assurance Process for Distribution Construction, by Florida Power & Light Company.

DOCKET NO. 090037-EI
ORDER NO. PSC-09-0161-CFO-EI
ISSUED: March 20, 2009

ORDER GRANTING IN PART AND DENYING IN PART
FLORIDA POWER & LIGHT COMPANY'S AMENDED REQUEST
FOR CONFIDENTIAL CLASSIFICATION OF INFORMATION

On December 19, 2008, Florida Power & Light (FPL) filed its Request for Confidential Classification of Information, pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., concerning certain information provided to Commission staff in connection with staff's review of FPL's Quality Assurance Process for Distribution Construction, contained in Document No. 11716-08.

FPL states that information included in Document No. 11716-08 consists of internal auditing controls and reports of internal auditors and references to confidential audits and underwriting risk assessments and is, therefore, proprietary confidential business information within the meaning of Section 366.093(3)(b), F.S. FPL states that the information is intended to be and has been treated by FPL as confidential.

Florida law presumes that documents submitted to governmental agencies shall be public records. The only exceptions to this presumption are the specific statutory exemptions provided in the law and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. Rule 25-22.006(4)(c), F.A.C., provides that it is the company's burden to demonstrate that the documents fall into one of the statutory examples set out in Section 366.093(3), F.S., or to demonstrate that the information is proprietary confidential information, the disclosure of which will cause the company or its ratepayers harm.

Section 366.093(3), F.S., in pertinent part, provides:

Proprietary confidential business information means information, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public.

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Section 366.093(3)(b), F.S., states that proprietary confidential business information includes “[i]nternal auditing controls and reports of internal auditors.”

Upon review, I find that the information set forth below in Table 1, which is contained in Document No. 11716-08, is proprietary business information pursuant to Section 366.093(3)(b), F.S.

Table 1	
Report Page No.	Line No.
12	Line Nos. 10 - 17
14	A portion of Line No. 9, and Line Nos. 10 - 12, and a portion of Line No. 13, consisting of the third and fourth sentences of the paragraph
18	Line Nos. 9 - 36

Accordingly, FPL’s request for confidential classification is hereby granted for this information. The material listed above shall have confidential protection for 18 months.

The remaining information contained in Document No. 11716-08 for which FPL requests confidential classification, however, should not be treated as confidential. The information contained on Page 14, Line No. 8 and a portion of Line No. 9, describes an operational process and does not reference internal auditing or a specific audit. Similarly, the information on Page 14 consisting of a portion of Line No. 13 through Line No. 16 describes an upcoming change to FPL’s operational procedures. The information contained on Page 16, Line Nos. 33 - 35, and on Page 19, Line Nos. 1 - 37, is currently publicly available within the audit workpapers because FPL provided staff with an unredacted copy of this information in response to Data Request 1, question 7. In addition, FPL provided detailed correspondence between the company and its external auditor concerning the information on Page 19, Line Nos. 1 - 37, in its response to Data Request 4, question 6. FPL did not submit a Notice of Intent for confidential classification on either of these data request responses, nor did FPL file a request for confidential treatment on these responses at the conclusion of the audit as required by Rule 25-22.006(3)(a)(2), F.A.C. Thus, FPL’s request for confidential classification for this information, set forth in Table 2, is denied.

Table 2	
Report Page No.	Line No.
14	Line No. 8 and portion of Line No. 9, consisting of the first two sentences of the paragraph
14	A portion of Line No. 13, and Line Nos. 14 - 16, consisting of the last two sentences of the paragraph
16	Line Nos. 33 - 35
19	Line Nos. 1 - 37

Based on the foregoing, it is

ORDERED by Commissioner Nancy Argenziano, as Prehearing Officer, that Florida Power & Light Company's Amended Request for Confidential Classification is granted in part and denied in part as set for the in the body of this Order. It is further

ORDERED that pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., the confidentiality granted to material specified herein shall expire eighteen (18) months from the date of the issuance of this Order in the absence of a renewed request for confidentiality pursuant to Section 366.093, F.S. It is further

ORDERED that this Order will be the only notification by the Commission to the parties concerning the expiration of the confidentiality time period. It is further

ORDERED that this docket shall be closed.

By ORDER of Commissioner Nancy Argenziano, as Prehearing Officer, this 20th day of March, 2009.



NANCY ARGENZIANO
Commissioner and Prehearing Officer

(S E A L)

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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 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review

ORDER NO. PSC-09-0161-CFO-EI

DOCKET NO. 090037-EI

PAGE 4

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.