

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for confidential classification of certain information contained in the report entitled Review of Customer Property Damage Claims of Florida's Four Major Investor-Owned Electric Utilities and in the auditor work papers, by Florida Power & Light Company.

DOCKET NO. 090043-EI  
ORDER NO. PSC-09-0163-CFO-EI  
ISSUED: March 23, 2009

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

On January 9, 2009, Florida Power & Light (FPL) filed a Request for Confidential Classification pursuant to Rule 25-22.006(3), F.A.C., concerning information contained in the staff document entitled Review of Customer Property Damage Claims of Florida's Four Major Investor-Owned Electric Utilities, dated December 2008 (Document No. 00218-09). On January 14, 2009, FPL filed Florida Power & Light Company's Amended Request for Confidential Classification of Information. FPL seeks confidential classification of information contained in Document No. 00381-09 which FPL states supersedes its prior request and significantly reduces the scope and extent of the information for which it seeks confidential classification and treatment.

FPL states that the information for which it requests confidential classification is "proprietary confidential business information" within the meaning of Section 366.093(3), F.S., specifically including but not limited to Section 366.093(3)(e), F.S., information relating to competitive interests, the disclosure of which would impair the competitive business of FPL. FPL argues that disclosure of this information would cause harm to the ratepayers and FPL's business operations by fostering and encouraging claims and lawsuits against FPL and mitigating or eliminating FPL's ability to assert appropriate defenses, thereby resulting in increased exposure and increased payment of otherwise defensible claims. Finally, FPL states that it relies upon the longstanding principle that a party's work in investigating, adjusting, and resolving or denying a claim that could potentially result in litigation constitutes the type of work product that is generally protected from disclosure under the applicable Florida law. FPL states that the information is intended to be and has been treated as confidential by FPL.

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.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

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.

Section 366.093(3)(e), F.S., states that proprietary confidential business information includes "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information."

Upon review, I find that the information in Table 1 set forth below contained in Document No. 00381-09 is proprietary business information pursuant to Section 366.093(3)(e), F.S.

TABLE 1	
Workpaper Page No.	Line No./Col. No.
18	End of Line No. 15 and the beginning of Line No. 16
20	Line Nos. 23 and 24
22	Line Nos. 3, 5, and 6
27	Line Nos. 29 and 30

Accordingly, FPL's request for confidential classification is hereby granted for this information. The material listed in Table 1 shall have confidential protection for 18 months.

The remaining information contained in Document No. 00381-09 for which FPL requests confidential classification, however, should not be treated as confidential. The information is currently publicly available within the staff audit work papers that were not claimed as confidential. In addition, the information contained in Document No. 00381-09 on page 18, lines 18 and 20, on page 20, Chart "A", on page 76-78, Chart "A", and on page 79 Chart "A" was also provided by FPL to staff through e-mail in response to Data Request 1, question 4, and FPL did not request confidential classification on the response or 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 is denied for the information set forth in Table 2.

TABLE 2	
Workpaper Page No.	Line No./Col. No.
18	Line No. 15, first four words of the requested redaction

18	The last four words of the sentence ending on Line 16
18	Line Nos. 18 and 20
19	Line Nos. 4, 5, 9 and Chart "A"
20	Chart "A"
76-78	Chart "A"
79	Chart "A"

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 forth 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 Nancy Argenziano, as Prehearing Officer, this 23rd day of March, 2009.



NANCY ARGENZIANO  
Commissioner and Prehearing Officer

(SEAL)

KC

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 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.