

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.

DOCKET NO. 120001-EI
ORDER NO. PSC-12-0151-CFO-EI
ISSUED: March 29, 2012

ORDER GRANTING FLORIDA POWER & LIGHT COMPANY'S REQUEST FOR
CONFIDENTIAL CLASSIFICATION OF MATERIALS PROVIDED PURSUANT TO AUDIT
NO. 10-004-4-3 (DOCUMENT NO. 06189-10 X-REF. 05711-10)

On July 29, 2010, pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), Florida Power & Light Company (FPL) filed its Request for Confidential Classification (Request) of certain information submitted by FPL in connection with the Audit Control No. 10-004-4-3 (the Audit). (Document No. 06189-10 x-ref. Document No. 05711-10).

Section 366.093(1), F.S., provides that "any records received by the commission which are shown and found by the commission to be proprietary confidential business information shall be kept confidential and shall be exempt from Section 119.07(1) [the Public Records Act]." Section 366.093(3), F.S., defines proprietary confidential business information as information that is intended to be and is treated by the company as private, in that disclosure of the information would cause harm to the company's ratepayers or business operations, and has not been voluntarily disclosed to the public. Paragraphs (3)(c)(d), and (e) of Section 366.093 F.S., provide that proprietary confidential business information includes, but is not limited to "[s]ecurity measures, systems, or procedures;" "[i]nformation 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;" and "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information."

FPL contends that the designated portions of the information contained in its responses to the Audit, as more specifically described in the line-by-line/field-by-field justification attached as its Exhibit C to the Request, fall within these categories and, thus, constitutes proprietary confidential business information entitled to protection under Section 366.093, F.S., and Rule 25-22.006, F.A.C. FPL states that this information is intended to be and is treated by FPL as private and has not been publicly disclosed.

FPL asserts that portions of the information warrant confidential treatment because it includes data related to security measures, systems, and procedures. FPL states that the documents or materials contain information related to specific security officers and specific security computer systems for certain FPL facilities. FPL concludes that this information is protected from disclosure by Section 366.093(3)(c), F.S.

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FPL contends that certain materials also contain information related to bids or contractual data, such as pricing or other terms. FPL asserts that the public disclosure of this information would violate nondisclosure terms of FPL's contracts with certain vendors. FPL concludes this would impair FPL's ability to contract for goods or services on favorable terms in the future. FPL asserts that this information also competitively sensitive, and could impair the competitive interest of the provider of the information. As evidence of its position, FPL points specifically to the documents which contain vendor invoices, purchase orders, and negotiated contractual terms, or other materials related to legal services, customer-specific information, and energy and capacity procurement. FPL asserts that such information is protected by Section 366.093(d) and (e), F.S.

FPL also asserts that some documents include competitively sensitive information related to certain employees' compensation. FPL states that public disclosure of compensation information would enable competing employers to meet or beat the compensation currently offered, resulting in the loss of talented employees, or conversely, the need to increase the level of compensation already paid in order to retain these employees and attract new talent. According to FPL, the quality of service and the cost of service implications for revealing this information would be detrimental to FPL and its customers. FPL concludes that this information is protected by Section 366.093(e), F.S.

Time Period For Confidential Classification

According to Section 366.093(4), F.S., confidential classification may only extend for 18 months from the issuance of an Order granting confidential classification unless "the Commission finds, for good cause, that the protection from disclosure shall be for a specified longer period." FPL has not requested a period longer than the 18 months.

Ruling

Upon review, it appears the above-referenced information satisfies the criteria set forth in Section 366.093(3), F.S., for classification as proprietary confidential business information. The information constitutes "[s]ecurity measures, systems, or procedures;" "[i]nformation 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;" or "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information." Thus, the information identified in Document No. 06189-10 x-ref. Document No. 05711-10 shall be granted confidential classification..

Pursuant to Section 366.093(4), F.S., the information for which confidential classification is granted herein shall remain protected from disclosure for a period of 18 months from the date of issuance of this Order. At the conclusion of the 18-month period, the confidential information will no longer be exempt from Section 119.07(1), F.S., unless FPL or another affected person shows, and the Commission finds, that the records continue to contain proprietary confidential business information.

Based on the foregoing, it is

ORDERED by Commissioner Eduardo E. Balbis, as Prehearing Officer, that Florida Power and Light Company's Request for Confidential Classification of Document No. 06189-10 x-ref. Document No. 05711-10 is granted. It is further

ORDERED that the information in Document No. 06189-10 x-ref. Document No. 05711-10 for which confidential classification has been granted shall remain protected from disclosure for a period of 18 months from the date of issuance of this Order. 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.

By ORDER of Commissioner Eduardo E. Balbis, as Prehearing Officer, this 29th day of March, 2012.



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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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 25-22.0376, 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.