

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-12-0153-CFO-EI  
ISSUED: March 29, 2012

ORDER GRANTING FLORIDA POWER & LIGHT COMPANY'S REQUEST FOR CONFIDENTIAL CLASSIFICATION OF MATERIALS PROVIDED PURSUANT TO AUDIT NO. 10-130-4-1 (DOCUMENT NO. 08555-10, X-REF. DOCUMENT NOS. 07986-10, 07987-10, AND 07988-10)

On October 13, 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 a request for confidential classification (Request) of certain information submitted by FPL pursuant to Audit Control No. 10-130-4-1 (the Audit). (Document No. 08555-10; x-ref Document Nos. 07986-10, 07987-10, AND 07988-10). These Requests were filed in Docket No. 100001-EI.

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)(a),(b),(d), and (e) of Section 366.093 F.S., provide that proprietary confidential business information includes, but is not limited to "[t]rade secrets;" "[i]nternal auditing controls and reports of internal auditors;" "[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 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 states that certain of the information provided by it contains or constitutes its trade secrets, which allow FPL to hedge its fuel purchases on favorable terms for FPL and its customers. FPL contends that the disclosure of this trade secret information would provide other market participants insight into FPL's marketing and trading practices, as well as internal policy and procedures that would allow them to anticipate FPL's marketing and trading decision, and/or

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impair FPL's ability to negotiate, to the detriment of FPL and its customers. FPL argues that such information is protected by Section 366.093(3)(a), F.S.

FPL asserts that certain materials it provided also contain information related to internal auditing controls and reports of internal auditors. FPL points specifically to the materials containing internal audit controls and reports of internal auditors, or information relating to internal auditing reports issued in 2009. FPL states that the materials also contain auditing controls and reports of external auditors, or related information, which the external auditors consider to be proprietary and confidential. FPL concludes that such information is protected from public disclosure pursuant to Section 366.093(3)(b), F.S.

FPL avers that some of the materials it provided also contain contractual information, the disclosure of which would impair its ability to contract for goods and services on favorable terms in the future. FPL states that much of the information is also competitively sensitive, and could impair the competitive interests of the provider of the information. FPL states that the materials contain information on natural gas prices, including contractual data, the public disclosure of which would violate nondisclosure terms of FPL's contracts with certain vendors. FPL also states that the materials contain information regarding physical and financial details related to FPL's annual hedging program for natural gas and fuel oil, monthly realized values for FPL's hedge positions and the resulting impact on the cost of natural gas and fuel oil. FPL argues that such information is protected pursuant to Section 366.093(3)(d) and (e), F.S.

FPL contends that the materials also contain the names of financial counterparties with which FPL executes heavy fuel oil hedging transactions. FPL asserts that due to the extremely limited population of potential counterparties that participate in this market, the disclosure of the names of certain financial counterparties would reveal transaction frequency and volume between FPL and those financial counterparties. FPL argues that this would harm FPL's efforts to contract with those financial counterparties on favorable terms in the future, to the detriment of FPL and its customers, and would place FPL at a competitive disadvantage when coupled with other information that is publicly available. FPL concludes that this information is protected pursuant to Sections 366.093(3)(d) and (e), F.S.

FPL asserts that portions of the material contain competitively sensitive information related to certain employees' compensation. FPL contends that public disclosure of compensation information would enable competing employers to meet or beat the compensation offered by FPL, 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. FPL asserts that the quality of service and the cost of service implications would be detrimental to FPL and its customers if the information was publicly disclosed. FPL concludes, therefore, that this information is protected by Section 366.093(3)(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 “[t]rade secrets;” “[i]nternal auditing controls and reports of internal auditors;” “[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. 08555-10; x-ref Document Nos. 07986-10, 07987-10, and 07988-10 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 & Light Company’s Request for Confidential Classification of Document No. 08555-10; x-ref Document Nos. 07986-10, 07987-10, AND 07988-10 is granted. It is further

ORDERED that the information in Document No. 08555-10; x-ref Document Nos. 07986-10, 07987-10, AND 07988-10 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.

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By ORDER of Commissioner Eduardo E. Balbis, as Prehearing Officer, this 29<sup>th</sup> 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.

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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 25-22.0376, 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.