

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Energy conservation cost recovery
clause.

DOCKET NO. 170002-EG
ORDER NO. PSC-17-0234-CFO-EG
ISSUED: June 20, 2017

ORDER GRANTING FLORIDA POWER & LIGHT COMPANY'S
THIRD REQUEST FOR EXTENSION OF CONFIDENTIAL CLASSIFICATION OF
MATERIALS PROVIDED PURSUANT TO AUDIT NO. 09-028-4-1
(DN 00516-13 x-ref DNs 07900-09, 08665-09 and 01281-10)

On April 25, 2017, 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 Third Request for Extension of Confidential Classification of Materials Provided Pursuant to Audit No. 09-028-4-1 (Third Request).¹ FPL requests that the Florida Public Service Commission (Commission) extend the period of confidential treatment previously granted to materials FPL provided pursuant to Audit No. 09-028-4-1 (Audit) (Document Nos. 07000-09, 08665-09, 01281-10, and 00516-13).

Request for Confidential Classification

On August 19, 2009, FPL filed a Request for Confidential Classification (Original Request) of materials provided during the Audit, which included Exhibits A, B, C, and D.² On February 25, 2010, FPL filed revised Exhibits A, B, and C to its Original Request in response to a request by Commission audit staff.³ FPL's Original Request was granted by Order No. PSC-11-0317-CFO-EG, issued July 28, 2011. On January 28, 2013, FPL filed a First Request for Extension of Confidential Classification (First Request) of the Audit materials, which included a First Revised Exhibits A, B, C and D.⁴ On March 5, 2013, FPL filed revised First Revised Exhibits B and C to its First Request to correct a scrivener's error.⁵ FPL's First Request was granted by Order No. PSC-13-0479-CFO-EG, issued on October 15, 2013. On March 11, 2015, FPL filed a Second Request for Extension of Confidential Classification (Second Request) of the Audit materials, which included a Second Revised Exhibit D.⁶ FPL's Second Request was granted by Order No. PSC-15-0475-CFO-EG, issued on October 15, 2015.

¹ Document No. 04422-17, filed in Docket No. 170002-EG, In Re: Energy conservation cost recovery clause.

² Document No. 08664-09, filed in Docket No. 090002-EG, In Re: Energy conservation cost recovery clause.

³ Document No. 01280-10, filed in Docket No. 100002-EG, In Re: Energy conservation cost recovery clause.

⁴ Document Nos. 00515-13, 00516-13, 00517-13, 00518-13, and 00519-13, filed in Docket No. 130002-EG, In Re: Energy conservation cost recovery clause.

⁵ Document No. 01163-13, filed in Docket No. 130002-EG, In Re: Energy conservation cost recovery clause.

⁶ Document No. 01398-15, filed in Docket No. 150002-EG, In Re: Energy conservation cost recovery clause.

In its Third Request, FPL incorporates by reference and adopts the statements and findings contained in its Original, First and Second Requests and Order Nos. PSC-11-0317-CFO-EG, PSC-13-0479-CFO-EG and PSC-15-0475-CFO-EG. FPL asserts that the period of confidential treatment granted by Order No. PSC-15-0475-CFO-EG will soon expire and that all of information previously granted confidentiality by PSC-15-0475-CFO-EG, warrants continued confidential treatment as proprietary, confidential business information as defined by Section 366.093(3), F.S. Accordingly, FPL submitted Third Revised Exhibit D in support of its Third Request. FPL contends that all of the information submitted in its Second Request, First Revised Exhibits A, B and C, remains confidential, and thus did not resubmit or reproduce the exhibits with its Third Request.

FPL's First Revised Exhibits A and B are highlighted and redacted copies of the specific Audit work papers in which FPL identifies the portions of the previously designated confidential information it contends warrants continued confidential treatment. FPL's First Revised Exhibit C is a table in which FPL identifies the specific pages, lines, or columns of the previously designated confidential information it contends warrants continued confidential treatment, along with the statutory basis for confidentiality.

FPL's Third Revised Exhibit D contains the Declarations of FPL Internal Audit Manager, Antonio Maceo, FPL Demand Side Management Cost and Performance Manager, Anita Sharma, and FPL Regulatory Affairs Cost Recovery Clause Senior Manager, Demaris Rodriguez, which identify and describe the confidential nature of the information FPL contends warrants continued confidential treatment, to support its Second Request.

FPL asserts in its Third Request that the information for which it seeks continued confidential treatment consists of information relating to: (i) internal auditing controls, reports and notes of FPL internal auditors, the disclosure of which could harm the FPL's business operations; (ii) contractual data or bids, such as negotiated terms with third parties, the disclosure of which could impair the efforts of FPL to contract for goods and/or services on favorable terms; and/or (iii) competitive interests, such as payroll, pension and welfare rates, the disclosure of which would impair FPL's competitive business interests. In addition, FPL contends that some of the competitively sensitive information contains customer-specific account information, which includes customer names, addresses, telephone numbers and account numbers, rates, billing determinants (kW and kWh usage), conservation savings in kW, kWh and bills. FPL states that it is FPL's policy not to disclose customer-specific information, except as required by law, to entities or persons other than the customer absent the customer's consent. FPL contends that its policy is premised upon customers' right to privacy and the potential that disclosure of customer-specific information may harm some customers' competitive interests.

FPL contends that the information identified in its Third Request warrants continued treatment as proprietary and confidential business information within the meaning of Section 366.093(3)(b), (d) and (e), F.S. FPL asserts that the information identified is intended to be, and has been treated by as private, its confidentiality has been maintained, and its disclosure would cause harm not only to FPL, but to FPL customers as well. FPL further contends that nothing has changed since the filing of its Original, First or Second Requests to render the identified information stale or public, such that continued confidential treatment would not be appropriate. Finally, FPL requests that the information not be declassified for at least an additional 12 months, and that the information be returned to FPL upon the expiration of the Commission retention period so that FPL can continue to main the confidentiality of these documents.

Ruling

Section 366.093(1), F.S., provides that records that this Commission finds contain proprietary business information shall be kept confidential and shall be exempt from Chapter 119, F.S. 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. Specifically, Section 366.093(3)(b), (d) and (e), F.S., provide that proprietary confidential business information includes, but is not limited to:

- (b) Internal auditing controls and reports of internal auditors.
- (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.

Upon review, I find the identified by FPL in its Third Request satisfies the criteria set forth in Section 366.093(3)(b), (d) and (e), F.S., for classification as proprietary confidential business information. The information described above is information relating to (i) "internal auditing controls and reports of internal auditors," the disclosure of which could harm the company's business operations; (ii) "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 "competitive interests, the disclosure of which would impair the competitive business of the provider of the information." Thus, the information identified in Document Nos. 00516-13 and 07900-09, shall be granted a continuation of 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 up to 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. With regard to FPL's request that the information be returned to FPL upon the expiration of the Commission retention period so that FPL can continue to main the confidentiality of these documents, since audit materials of the type contained in these documents must be retained by the Commission for 15 years, Document Nos. 00516-13 and 07900-09 cannot be returned to FPL at this time. Because Document No. 00516-13 supersedes FPL's Original Request, however, Document Nos. 08665-09 and 01281-10 may be returned to FPL.

Based on the foregoing, it is hereby

ORDERED by Commissioner Ronald A. Brisé, as Prehearing Officer, that Florida Power & Light Company's Third Request for Extension of Confidential Classification of Materials Provided Pursuant to Audit No. 09-028-4-1, as detailed in Third Revised Exhibit D, is granted. It is further

ORDERED that the information contained in Document Nos. 00516-13 and 07900-09, for which confidential classification has been granted, shall remain protected from disclosure for a period of up to 18 months from the date of the 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 Florida Power & Light Company or another affected person shows, and the Commission finds, that the records continue to contain proprietary confidential business information. It is further

ORDERED that Document No. 00516-13 supersedes Document Nos. 08665-09 and 01281-10, and that Document Nos. 08665-09 and 01281-10 shall be returned to Florida Power & Light Company by the Office of the Commission Clerk. It is further

ORDERED that this Order shall be the only notification by the Commission to the parties concerning the expiration of the confidentiality time period.

By ORDER of Commissioner Ronald A. Brisé, as Prehearing Officer, this 20th day of June, 2017.



RONALD A. BRISÉ

Commissioner and Prehearing Officer
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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.