

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Protest by Florida Power)	DOCKET NO. 881124-EI
and Light Company on Confiden-)	ORDER NO. 20679
tiality Tentative Ruling.)	ISSUED: 2-1-89
)	

PREHEARING OFFICER'S ORDER
ON PROTEST AND REQUEST FOR
SPECIFIED CONFIDENTIAL CLASSIFICATION

On August 26, 1988, Florida Power and Light Company (FPL) filed a protest pursuant to Rule 25-22.006(2)(f), Florida Administrative Code, to the Office of General Counsel's tentative ruling that the Commission report, Review of Transactions Between FPL and FPL, Qualtec, Inc., be classified nonconfidential. That report was initiated after the Commission industry staff requested an audit of transactions between FPL and Qualtec with regard to Qualtec's use of FPL personnel and receipt of profits for products sold by Qualtec.

Simultaneously with its protest, FPL filed a narrower request for confidentiality. This classification would only address the disclosure of the current interim percentage split of license fee revenues set by contract between FPL and Qualtec. The edited version, as requested by FPL, would omit the percentage split on page 1, page 7, and page 8. The rest of the report would be unclassified.

FPL Qualtec, Inc. is a subsidiary of FPL Group, Inc. (Group). FPL is a subsidiary of Group. FPL receives licensing fees from the sales of FPL Quality Improvement Program courses and fees for training services provided to Qualtec customers by FPL.

FPL's protest was presented to the Commission at the November 29, 1988, agenda. At that agenda, the Commission agreed to waive its procedural rule, Rule 22.006(2)(f), Florida Administrative Code, and refer the issue to the prehearing officer.

Disclosure of the information, as stated by FPL, would impair FPL's ability to contract for non-affiliate marketing services for future products or this product. The basic justification offered by FPL is tied to Section 366.093(3)(a) and (3)(d), Florida Statutes. Subsection (3)(a) exempts trade secrets from disclosure while subsection (3)(d) exempts information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility to contract for service on favorable terms.

This Commissioner finds that the information relating to the percentage split of license fee revenues should be unclassified. The source has failed to meet the burden of proof to show that the material contains bona fide confidential information.

This Commissioner finds that the concern is more the protection of Qualtec, the unregulated entity, than it is for FPL, the regulated entity. FPL testified at the January 12, 1989, hearing on the matter, that the service now provided by Qualtec had been put out to several different firms to consider in 1987. None of them submitted bids in providing the marketing service for the quality improvement program. Thus, this Commissioner fails to see the demonstration at this time of a competitive situation; the only supplier is one internal to the holding company.

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FPL has failed to show either that this information fits within the trade secret exemption or the contractual data exemption. There is no competition in existence today. This does not preclude the existence of circumstances in the future where there would in fact be genuine competition and a genuine need to exempt data from disclosure. Currently, based on the facts presented, there is no demonstration that FPL nor its ratepayers would be harmed. Based on Rule 25-22.006(4)(c), Florida Administrative Code, the burden of proof is on the source to show that the material contains bona fide confidential business information.

Also, this does not set a general precedent. Each confidentiality request is dealt with on a case by case basis.

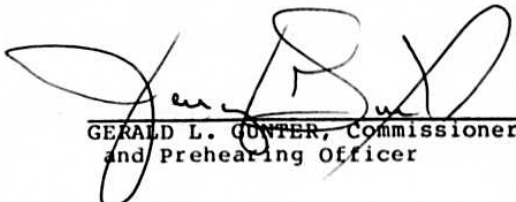
It should be noted this is a singular vote based on the facts presented. This prehearing officer finds there is not a competitive situation in existence today, but sole marketing through an affiliate of FPL through the holding company of FPL Group, Inc. FPL is entitled to bring this matter before the full Commission under a Motion for Reconsideration, Rule 25-22.060, Florida Administrative Code.

Now, THEREFORE, it is

ORDERED that subject to appropriate protest or appeal proceedings, FPL's request for specified confidential classification of information, contained in the Commission report, as stated in FPL's August 26, 1988, protest is denied. It is further

ORDERED that if no Motion for Reconsideration is filed within 15 days of the date of this Order, the ruling will become final.

By ORDER of Commissioner Gerald L. Gunter, as Prehearing Officer, this 1st day of FEBRUARY, 1989.


GERALD L. GUNTER, Commissioner
and Prehearing Officer

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