

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.	DOCKET NO. 090001-EI ORDER NO. PSC-09-0306-CFO-EI ISSUED: May 7, 2009
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ORDER GRANTING FLORIDA POWER & LIGHT COMPANY'S
SECOND REQUEST FOR EXTENSION OF CONFIDENTIAL CLASSIFICATION
GRANTED BY ORDER NO. PSC-05-0507-CFO-EI IN DOCKET NO. 050001-EI
(DOCUMENT NO. 03211-05)

This Order addresses the continuation of confidential treatment for certain information on fuel hedging activities that is contained in Exhibits GJY-1 through GJY-6 to the prefiled direct testimony of Gerard J. Yupp, filed April 1, 2005 in Docket No. 050001-EI. By Order No. PSC-05-0507-CFO-EI, the Commission initially granted confidential classification for the document on May 9, 2005. On November 8, 2006, Florida Power & Light Company (FPL) requested that confidential treatment be extended an additional 18 months for the information contained in Document No. 03211-05. By Order No. PSC-07-0347-CFO-EI, issued on April 25, 2007, the Commission granted FPL's first request for extension of confidential classification for the information contained in Document No. 03211-05. FPL now requests that confidentiality be extended for an additional 18 months. This second request was filed in Docket No. 080001-EI on October 28, 2008.

Request for Confidential Classification

Section 366.093(1), Florida Statutes (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 (a), (d), and (e) of Section 366.093(3) F.S., provide that proprietary confidential business information includes, but is not limited to "[t]rade secrets;" "[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."

In its request, FPL states that the period of confidential classification granted by Order No. PSC-05-0507-CFO-EI, and extended by Order No. PSC-07-0347-CFO-EI, will soon expire. FPL contends that all of the information covered by these Orders warrant continued treatment as proprietary and confidential business information within the meaning of Section 366.093, Florida Statutes.

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FPL contends that this information contains Fuel Hedging Information, which comprises trade secrets of FPL which allow it to purchase and sell fuel and electric power on favorable terms for FPL and its customers. FPL asserts that the disclosure of this information would provide other participants in the fuel and electric power markets insight into FPL's marketing and trading practices that would allow them to anticipate FPL's marketing and trading decisions and/or impair FPL's ability to negotiate, to the detriment of FPL and its customers. FPL further asserts that the Fuel Hedging Information relates to bids and other contractual data, the disclosure of which would impair FPL's ability to contract for fuel and electric power on favorable terms. FPL further states that this information is intended to be and is treated by FPL as private and has not been publicly disclosed. Nothing has changed since the issuance of Order Nos. PSC-05-0507-CFO-EI and PSC-07-0347-CFO-EI to render the information stale or public, such that continued confidential treatment would not be appropriate, according to FPL. As a result, FPL requests that the confidential information identified in Order No. PSC-05-0507-CFO-EI be accorded confidential classification for an additional 18-month period.

Ruling

Upon review, it appears that portions of Exhibits GJY-1 through GJY-6 to the prefiled direct testimony of Gerard J. Yupp, which were the subject of Order No. PSC-05-0507-CFO-EI, dated May 9, 2005, and Order No. PSC-07-0347-CFO-EI, dated April 25, 2007, continue to be proprietary confidential business information within the meaning of Section 366.093, F.S., to the same extent confidentiality was granted by this Commission's prior orders. While it is not clear, as FPL asserts, whether this information constitutes "trade secrets" as that term is used in Section 366.093(3)(a), F.S., the information constitutes "[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." Therefore, FPL's request for extension of confidential treatment of the portions of Exhibits GJY-1 through GJY-6 to the prefiled direct testimony of Gerard J. Yupp contained in Document No. 03211-05 is granted.

Section 366.093(4), F.S., provides that any finding by the Commission that records contain proprietary confidential business information shall be effective for a period not to exceed 18 months, absent good cause shown. Accordingly, the redacted information identified in Document No. 03211-05, shall be granted confidential classification for a period of 18 months from the issuance of this Order.


Based on the foregoing, it is

ORDERED by Commissioner Katrina J. McMurrian, as Prehearing Officer, that Florida Power & Light Company's Second Request for Extension of Document No. 03211-05 is granted. It is further

ORDERED that the information in Document No. 03211-05 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 shall be the only notification by the Commission to the parties of the date of declassification of the materials discussed herein.

By ORDER of Commissioner Katrina J. McMurrian, as Prehearing Officer, this 7th day of May, 2009.


KATRINA J. McMURRIAN
Commissioner and Prehearing Officer

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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 25-22.060, 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.