

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear cost recovery clause.

DOCKET NO. 090009-EI
ORDER NO. PSC-09-0567-CFO-EI
ISSUED: August 20, 2009

ORDER GRANTING PROTECTIVE ORDER AND FLORIDA POWER & LIGHT
COMPANY'S REQUEST FOR CONFIDENTIAL CLASSIFICATION
FILED IN DOCKET NO. 090009-EI
(DOCUMENT NO. 04144-09)

On May 1, 2009, 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 of information contained in portions of Exhibit SDS-1 to Steven D. Scroggs' testimony, Exhibit RSK-1 to Rajiv S. Kundalkar's testimony, and John Reed's testimony (Document No. 04144-09). On May 21, 2009, FPL filed its Motion for Temporary Protective Order to exempt this information from Section 119.07(1), F.S. These requests were filed in Docket No. 090009-EI.

Request for Confidential Classification

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 (b) and (d) of Section 366.093(3), F.S., provide that proprietary confidential business information includes, but is not limited to "[i]nternal auditing controls and reports of internal auditors;" and "[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."

FPL contends that certain information contained in Exhibit SDS-1 to Steven D. Scroggs' testimony, Exhibit RSK-1 to Rajiv S. Kundalkar's testimony, and John Reed's testimony, as more specifically described in the table in Attachment A, falls 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 submits that the information in question concerns bids or other contractual terms, the public disclosure of which would violate FPL's contract with certain vendors and impair FPL's efforts to enter into contracts on commercially favorable terms. FPL also contends that the information in question pertains to internal auditing controls and reports of internal auditors.

DOCUMENT NUMBER-DATE

08698 AUG 20 09

FPSC-COMMISSION CLERK

Ruling on Confidentiality Request

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 “[i]nternal auditing controls and reports of internal auditors;” and “[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.” Thus, the information identified in Document No. 04144-09 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.

Motion for Temporary Protective Order

FPL also seeks protection of the documents as provided in Section 366.093(2), F.S., and Rule 25-22.006(6), F.A.C., while the material is in the possession of the Office of Public Counsel (OPC). Section 366.093(2), F.S., directs that all records produced pursuant to a discovery request for which proprietary confidential status is requested shall be treated by any party subject to the public records law as confidential and exempt from the public records law. Section 119.07(1), F.S. Rule 25-22.006(6), F.A.C., codifies the Commission’s policy regarding the protection of confidential information from public disclosure during the discovery process in a manner that is not overly burdensome to both parties. Rule 25-22.006(6)(a), in pertinent part, states:

In any formal proceeding before the Commission, any utility or other person may request a protective order protecting proprietary confidential business information from discovery. Upon a showing by a utility or other person and a finding by the Commission that the material is entitled to protection, the Commission shall enter a protective order limiting discovery in the manner provided for in Rule 1.280, Florida Rules of Civil Procedure.

In addition, Rule 25-22.006(6)(c), F.A.C., states that if a party allows OPC to inspect or take possession of utility information, then that “utility may request a temporary protective order exempting the information from section 119.07(1), F.S.” The Rule further requires the utility to file a specific request for a protective order under paragraph (a) of the Rule if the information is to be used in the proceeding before the Commission.

FPL is seeking protection of information contained in portions of its witnesses’ testimony, which will clearly be used in the instant docket. In addition, FPL has demonstrated

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that the material is proprietary confidential business information. Accordingly, it is appropriate in this instance to grant a protective order pursuant to paragraph (a) of the Rule 25-22.006(6), F.A.C., rather than a temporary protective order under paragraph (c) of the Rule, as was requested by FPL.

Based on the foregoing, it is


ORDERED by Commissioner Katrina J. McMurrian, as Prehearing Officer, that Florida Power & Light Company's Request for Confidential Classification of Document No. 04144-09 is granted. It is further

ORDERED that the information in Document No. 04144-09 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. It is further

ORDERED that the Motion for Temporary Protective Order filed by Florida Power & Light Company is granted as a Protective Order, as explained herein.

By ORDER of Commissioner Katrina J. McMurrian, as Prehearing Officer, this 20th day of August, 2009.


KATRINA J. McMURRIAN
Commissioner and Prehearing Officer

(S E A L)

KY/ smc

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.

Attachment A

Document Description	Line No. / Col. No.
Direct Testimony of John J. Reed, Concentric Energy Advisors	Page 10, Lines 3-17 Page 15, Lines 11-21
Exhibit JJR-1, FPL's Internal Controls Review	Page 10, Lines 7-37 Page 11, Lines 1-9 Page 12, Lines 15-19 Page 22, Lines 4-11
Schedule AE-8: Preconstruction Costs and Carrying Costs on Construction Cost Balance, Contracts Executed, New Nuclear	Page 1, Columns 6-9 & 12
Schedule AE-8A: Preconstruction Costs and Carrying Costs on Construction Cost Balance, Contracts Executed Details, New Nuclear	Pages 22-32, Lines 8 & 12
Schedule P-8: Preconstruction Costs and Carrying Costs on Construction Cost Balance, Contracts Executed, New Nuclear	Page 53, Columns 6-9 & 12
Schedule P-8A: Construction Costs and Carrying Costs on Construction Cost Balance, Contracts Executed Details, New Nuclear	Pages 54-59, Lines 8 & 12
Schedule AE-8: Construction Costs and Carrying Costs on Construction Cost Balance, Contracts Executed, Uprate Project	Pages 21-22, Columns 6-9 & 12
Schedule AE-8A: Construction Costs and Carrying Costs on Construction Cost Balance, Contracts Executed Details, Uprate Project	Pages 23-45, Lines 8 & 12
Schedule P-8: Construction Costs and Carrying Costs on Construction Cost Balance, Contracts Executed, Uprate Project	Pages 67-68, Columns 6-9 & 12
Schedule P-8A: Construction Costs and Carrying Costs on Construction Cost Balance, Contracts Executed Details, Uprate Project	Pages 69-88, Lines 8 & 12