

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-12-0154-CFO-EI
ISSUED: March 29, 2012

ORDER GRANTING FLORIDA POWER & LIGHT COMPANY'S RENEWED REQUEST
FOR CONFIDENTIAL CLASSIFICATION OF MATERIALS PROVIDED PURSUANT TO
AUDIT NO. 08-003-4-2 (DOCUMENT NO. 03897-10
X-REF. DOCUMENT NOS. 03913-08, 03914-08, 03915-08, AND 04588-08)

On May 6, 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 its Renewed Request for Extension of Confidential Classification (Renewed Request) of certain information submitted by FPL pursuant to Audit Control No. 08-003-4-2 (the Audit). (Document No. 03897-10, x-ref. Document Nos. 03913-08, 03914-08, 03915-08, and 04588-08).

FPL filed its original request for confidential treatment of certain workpapers provided during the Audit on May 29, 2008 (Original Request). FPL states that some of the information that was the subject of its Original Request warrants continued treatment as proprietary and confidential business information. Accordingly, FPL has submitted this Renewed Request and has included its Revised Exhibit C which reduces the number of pages for which confidential treatment is sought. Revised Exhibit C is a line by line justification of the documents for which FPL now seeks confidential treatment.

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)(b),(d), and (e) of Section 366.093 F.S., provide that proprietary confidential business information includes, but is not limited to "[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 in its Revised Exhibit C to the First Request, fall within these categories and, thus, constitutes proprietary confidential business information entitled to protection under Section 366.093, F.S.,

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and Rule 25-22.006, F.A.C. FPL states that this information is intended to be and continues to be treated by FPL as private and has not been publicly disclosed.

FPL states that certain of the documents or materials contain or consist of PSC auditor's notes relating to actions take by the FPL board of directors, as set forth in FPL board minutes and consents. According to FPL, such actions, minutes, and consents, and therefore the auditors notes related thereto, are considered by FPL and FPL Group to be highly sensitive, proprietary confidential business information.

FPL avers that certain of the documents or materials contain information on heavy oil hedges, including contractual data. FPL states that the disclosure of this information would impair FPL's efforts to contract for goods or services on favorable terms in the future.

FPL contends that some of the information contains or constitutes auditing controls and reports of external auditors or information relating to the same, which the external auditors consider to be proprietary and confidential. Other of the information contains or constitutes internal auditing controls and reports of internal auditors or information relating to internal auditing reports issued in 2007. Accordingly, FPL requests confidential classification of the information.

FPL states that some of the information contains or constitutes customer-specific account information. FPL asserts that its corporate policy is to not disclose customer-specific information. FPL contends that this policy extends to, but is not limited to, customer names, addresses, telephone numbers, account numbers, rates, billing determinants, conservation savings, and bills. FPL states that it does not disclose the information, except as required by law, to entities or persons other than the customer absent the customer's consent.

Some of the information contains billing statements for purchase power from several entities. FPL argues that disclosure of this information would injure those entities in the marketplace. FPL concludes that disclosing this information would place FPL at a competitive disadvantage and should therefore be granted confidential status.

FPL asserts that certain of the confidential information includes contractual data such as pricing and other terms, payment records, and vendor and supplier rates for oil and gas procurement, the disclosure of which would impair the efforts of FPL to contract for gas and oil procurement on favorable terms for the benefit of its customers. FPL asserts it would also impair the competitive interest of FPL and its vendors. FPL concludes that such information is protected by Sections 366.093(3)(d) and (e), F.S.

FPL avers that certain of the documents and materials provided in connection with the Audit contain or constitute information relating to confidential vendor settlement claims associated with the transformer fire that occurred at Turkey Point. FPL contends that if this information was made public, certain procedures would be revealed to the detriment of FPL and its customers, and would impair FPL's efforts to enter into contracts on commercially favorable terms.

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 “[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.” Thus, the information identified in Document No. 03897-10, x-ref. Document Nos. 03913-08, 03914-08, 03915-08, and 04588-08 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. 03897-10, x-ref. Document Nos. 03913-08, 03914-08, 03915-08, and 04588-08 is granted. It is further

ORDERED that the information in Document No. 03897-10, x-ref. Document Nos. 03913-08, 03914-08, 03915-08, and 04588-08 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.

By ORDER of Commissioner Eduardo E. Balbis, as Prehearing Officer, this 29th 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.

LCB

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.