

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for increase in rates by Florida
Power & Light Company.

DOCKET NO. 080677-EI
ORDER NO. PSC-12-0188-CFO-EI
ISSUED: April 10, 2012

ORDER GRANTING REQUEST FOR CONFIDENTIAL CLASSIFICATION OF
INFORMATION PROVIDED PURSUANT TO AUDIT NO. 09-110-4-1
(DOCUMENT NO. 11550-09 X-REF. DOCUMENT NOS. 06926-09, 06927-09, 06928-09,
06929-09, 06930-09, 06931-09, 06932-09, 06933-09 AND 07819-09)

On July 30, 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 its Request for Confidential Classification (Request) of certain information submitted by FPL in connection with the Audit Control No. 09-110-4-1 (the Audit). (Document No. 11550-09 x-ref. Document Nos. 06926-09, 06927-09, 06928-09, 06929-09, 06930-09, 06931-09, 06932-09, 06933-09, and 07819-09).

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)(a),(b),(c),(d),(e), and (f) of Section 366.093 F.S., provide that proprietary confidential business information includes, but is not limited to “[t]rade secrets;” “[i]nternal auditing controls and reports of internal auditors;” “[s]ecurity measures, systems, or procedures;” “[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;” “[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information;” and “[e]mployee personnel information unrelated to compensation, duties, qualifications, or responsibilities.”

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 as its Exhibit C to the Request, fall 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.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

FPL avers that certain of the documents obtained by the Commission in connection with the Audit contain or constitute information relating to internal auditing controls and reports of internal auditors. FPL claims these are entitled to confidential treatment as proprietary confidential business information pursuant to Section 366.093(3)(b), F.S.

FPL states that certain of the documents provided contain or constitute information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information. Specifically, according to FPL, the information provided includes information relating to FPL's competitively placed insurance program. FPL asserts that the continued confidentiality of this information allows FPL to maintain low insurance costs for FPL, which benefits FPL's customers.

FPL asserts that certain of the documents are proprietary confidential business information because they contain or constitute competitively sensitive data, the disclosure of which would impair FPL's efforts to contract for services on favorable terms in the future. According to FPL, these documents include information relating to negotiated contractual terms and data pertaining to the procurement of legal services.

FPL contends that certain of the documents contain or constitute contractual vendor data, such as pricing and other terms, the disclosure of which would impair the efforts of FPL to contract for goods or services on favorable terms in the future, to the detriment of FPL and its customers. Some of these documents also contain or constitute competitively sensitive data, the disclosure of which could impair the competitive business of the provider of the information. FPL states that some of the information includes information relating to purchase orders and other information specific to the terms of the sale of metamorphic materials to third party vendors.

FPL also asserts that some of the documents include employee personnel information unrelated to compensation, duties, qualifications, or responsibilities. As such, FPL argues that the information is to be treated as confidential pursuant to Section 366.093(3)(f), F.S.

FPL avers that some of the information contains or constitutes information concerning bids or other contractual data, the disclosure of which would impair FPL's efforts to contract for goods or services on favorable terms in the future. Additionally, according to FPL, the documents contain information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information. According to FPL, specifically, the information provided contains vendor invoices and cash voucher transaction summaries that were provided to the Commission auditors. FPL states that these documents also contain pricing information and vendor names, which if disclosed, would impair FPL's ability to contract for certain goods and services on favorable terms in the future, to the detriment of FPL and its customers.

FPL contends that certain of the information contains or constitutes contractual data and negotiated agreements for goods or services for FPL facilities. FPL argues that the disclosure of this information would impair FPL's efforts to contract for goods or services on favorable terms in the future. FPL states that these documents contain negotiated or other non-public pricing for

associated work scopes, negotiated commercial terms and conditions, the identities of specific suppliers, and in some instances, specific contractual obligations imposed on FPL to assert confidentiality. According to FPL, this information, if made public, would disclose certain negotiations and methods to its detriment and to the detriment of its customers. FPL argues further that public disclosure of this information would impair FPL's competitive interests because possession of this information by potential future suppliers in the marketplace would undermine the effectiveness of FPL's competitive bidding processes, including the possibility of engaging in anticompetitive activity, which could result in higher costs to FPL.

FPL states that certain of the documents for which it claims confidential treatment contain or constitute competitively sensitive employee information, which if disclosed, would impair customers' interests in high quality and low cost electric service. FPL states that it operates within a very competitive market for highly skilled and trained employees. FPL contends that public disclosure of compensation and incentive information would enable competing employers to meet or beat the compensation offered by FPL. According to FPL this would result in the loss of talented employees, including highly skilled employees with expertise in various fields and those who have completed training programs and courses with FPL, to competitors. FPL argues that revealing this information would also result in the inability to attract new talent, or conversely, the need to increase the level of compensation. FPL concludes that the quality of service and cost of service implications would be detrimental to FPL and its customers. FPL additionally argues that this information is private to the employees identified and disclosure would violate their personal rights of privacy. Finally, FPL states that certain of the information includes personnel identification numbers.

FPL asserts that certain of the information provided includes square footage rates, which could be utilized to extrapolate the pricing that FPL has negotiated with various vendors to maintain FPL's facilities. FPL asserts that public disclosure of this information would impair FPL's competitive interests because possession of this information by potential future suppliers of services in the marketplace would allow them to undermine the effectiveness of FPL's competitive bidding processes. FPL states that this includes the possibility of the providers engaging in anticompetitive activity. FPL asserts that the results of disclosing the information would result in higher costs to FPL and its customers.

According to FPL some of the documents contain or constitute internal controls, security measures, systems and procedures. FPL states that the information provided by FPL includes a process and controls document on the recording of net write-offs. FPL asserts that the documents provided also contain information related to the calculation of provision adjustments related to bad debt associated with commercial customers. FPL claims that this includes customer-specific account information, which FPL treats as confidential and does not disclose, except as required by law, to entities or persons other than the customer absent the customer's consent. FPL concludes that disclosure of the information would impair FPL's competitive interests.

FPL asserts that the some of the information provided in response to the Audit contains or constitutes security measures, systems and procedures, internal controls, and reports of

external auditors or information relating to the same. According to FPL, these documents also include information relating to trade secrets. FPL states specifically the information contains or constitutes oil financial instruments, fuel status and inventory reports, contractual data and negotiated agreements for services of FPL facilities, the disclosure of which would impair FPL's efforts to contract for goods or services on favorable terms in the future. FPL asserts that if this information were made public, it would disclose certain competitively sensitive procedures to the detriment of FPL and its customers, and would impair FPL's efforts to enter into contracts on commercially favorable terms.

FPL asserts that some of the documents or materials for which FPL claims confidential treatment include documents that relate to FPL's Energy Services Company. FPL states that the documents include employee personnel information unrelated to compensation, duties, qualifications, or responsibilities. FPL states that specifically, the information includes auditor's notes which describe sensitive employee information.

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 "[t]rade secrets;" "[i]nternal auditing controls and reports of internal auditors;" "[s]ecurity measures, systems, or procedures;" "[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;" "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information;" or "[e]mployee personnel information unrelated to compensation, duties, qualifications, or responsibilities." Thus, the information identified in Document No. 11550-09 x-ref. Document Nos. 06926-09, 06927-09, 06928-09, 06929-09, 06930-09, 06931-09, 06932-09, 06933-09, and 07819-09 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.


Based on the foregoing, it is

ORDERED by Commissioner Art Graham, as Prehearing Officer, that Florida Power & Light Company's Request for Confidential Classification of Document No. 11550-09 x-ref. Document Nos. 06926-09, 06927-09, 06928-09, 06929-09, 06930-09, 06931-09, 06932-09, 06933-09, and 07819-09 is granted. It is further

ORDERED that the information in Document No. 11550-09 x-ref. Document Nos. 06926-09, 06927-09, 06928-09, 06929-09, 06930-09, 06931-09, 06932-09, 06933-09, and 07819-09 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 will be the only notification by the Commission to the parties concerning the expiration of the confidentiality time period.

By ORDER of Commissioner Art Graham, as Prehearing Officer, this 10th day of April, 2012.


ART GRAHAM
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.

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.