

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery
clause with generating performance incentive
factor.

DOCKET NO. 130001-EI
ORDER NO. PSC-13-0461-CFO-EI
ISSUED: October 14, 2013

ORDER GRANTING FLORIDA POWER & LIGHT COMPANY'S FIRST REQUESTS FOR
EXTENSION OF CONFIDENTIAL CLASSIFICATION OF INFORMATION PURSUANT TO
AUDIT NUMBER 11-129-4-2 (DOCUMENT NO. 06727-11, 06728-11, 06729-11, AND
07322-11)

On July 29, 2013 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 first request for extension of confidential classification (Requests) of information pursuant to Audit No. 11-129-4-2 (Document Nos. 06727-11, 06728-11, 06729-11, and 07322-11). This request was filed in Docket No. 130001-EI.

FPL's original request for confidential treatment of information provided during the Audit was granted by Order No. PSC-12-0109-CFO-EG, issued March 13, 2012. FPL states that some of the information that was the subject of Order No. PSC-12-0109-CFO-EG warrants continued treatment as proprietary and confidential business information. Accordingly, FPL has submitted this First Request and has included its First Revised Exhibit C and D. First Revised Exhibit D consists of the affidavits of Antonio Maceo, Solomon L. Stamm and Gerard J. Yupp in support of this request. Regarding First Revised Exhibit C, FPL contends that all of the information listed in the original request remains confidential and that Exhibit C is revised only to identify Sol Stamm as a new affiant.

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. Sections (3)(d) and (e) of Section 366.093 F.S., provide that proprietary confidential business information includes, but is not limited to "information 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 "information 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 First 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.,

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 contends that certain information provided by FPL for the audit contains information related to auditing controls as well as reports of internal auditing controls and reports of internal auditors or information relating to internal auditing reports issued in 2010 and external auditors or information relating to same, which the external auditors consider to be proprietary and confidential. FPL asserts that this information is protected by Section 366.093(3)(b), F.S.

FPL further contends that some of the documents also contain information concerning bids or contractual data, the disclosure of which would prejudice FPL and its customers, and would impair FPL's efforts to enter into contracts on commercially favorable terms. Specifically, the information provided by FPL includes oil financial instruments, fuel status and inventory reports, contractual data, and negotiated agreements for services of FPL facilities. FPL contends that this information also relates to FPL's competitive interest and that disclosure would reveal FPL's competitively sensitive procedures and impair the competitive business of the provider of the information. FPL asserts that this information is protected from public disclosure pursuant to Section 366.093(3)(d) and (e), F.S.

FPL states that certain materials also contain information related to data pertinent to FPL's procurement activities and hedging program. The documents contain or constitute trade secrets of FPL, which allow FPL to hedge its fuel purchases on favorable terms for its customers. FPL contends that the disclosure of this trade secret information would provide other market participants with insight into FPL's marketing and trading practices, as well as internal policy and procedure that would allow them to anticipate FPL's marketing and trading decision and/or impair FPL's ability to negotiate to the detriment of FPL and its customers. FPL asserts that such information is protected by Section 366.093(3)(a),(d) and (e), F.S.

Additionally, FPL states that the documents or materials also contain or constitute information regarding physical and financial details related to FPL's annual hedging program for natural gas and fuel oil. The information contains monthly realized values for FPL's hedge positions and resulting impact on the cost of natural gas and fuel oil. FPL argues that the disclosure of this information would impair the efforts of FPL to contract for goods and services on favorable terms for the benefit of its customers, and would impair the competitive interests of FPL and its vendors. Further, FPL asserts that disclosure of certain information would also place FPL at a competitive disadvantage when coupled with other information that is publicly available. FPL asserts that this information is protected by Section 366.093(3)(d) and (e), F.S.

FPL further states that the documents or materials contain the names of financial counterparties with which FPL executes heavy fuel oil hedging transactions. Due to the extremely limited population of potential counterparties that participate in this market, FPL asserts that the disclosure of this data would harm the competitive business of FPL and impair the efforts of the Company to contract for hedging instruments on favorable terms. Specifically, the disclosure of the names of certain financial counterparties would reveal transaction frequency and volume between FPL and those financial counterparties. FPL contends that this would harm

FPL's efforts to contract with those financial counterparties on favorable terms in the future, to the detriment of FPL and its customers. FPL asserts that this information is protected by Section 366.093(3)(e), F.S.

In its first request for extension filed in the instant docket, FPL states that it now incorporates by reference and adopts the arguments propounded in its original request. FPL asserts that the period of confidential treatment of the above numbered documents is due to expire soon. FPL contends that the information deemed confidential warrants continued treatment as proprietary and confidential business information within the meaning of Section 366.093(3), F.S. FPL further asserts that the confidential information is intended to be and has been treated by FPL as private and its confidential nature has been maintained. FPL also asserts that the disclosure of the information would cause harm to FPL and its customers. Finally, FPL contends that nothing has changed since the filing of the original requests to render the information stale or public, such that continued confidential treatment would not be appropriate.

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 an extension 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 continued classification as proprietary confidential business information. The information constitutes "information 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 "information 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 Nos. 06727-11, 06728-11, 06729-11, and 07322-11 shall be granted a continuation of 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 First Request for Extension of Confidential Classification of Document No. 06727-11, 06728-11, 06729-11, and 07322-11 is granted. It is further

ORDERED that the information in Document Nos. 06727-11, 06728-11, 06729-11, and 07322-11 for which an extension of 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 14th day of October, 2013.



EDUARDO E. BALBIS
Commissioner and Prehearing Officer
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

JEG

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.