

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 140001-EI
ORDER NO. PSC-14-0088-CFO-EI
ISSUED: February 5, 2014

ORDER GRANTING FLORIDA POWER AND LIGHT COMPANY'S FIRST REQUEST FOR
EXTENSION OF CONFIDENTIAL CLASSIFICATION OF INFORMATION IN AUDIT
NUMBER 10-130-4-1 (DOCUMENT NOS. 07986-10, 07987-10, 07988-10, AND 08555-10)

On September 25, 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 third request for extension of confidential classification (Request) of information provided pursuant to Audit No. 10-130-4-1 (Audit) (Document Nos. 07986-10, 07987-10, 07988-10, and 08555-10). 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-12-0153-CFO-EG, issued March 29, 2012, and included Exhibits A, B, C, and D. FPL states that some of the information that was the subject of Order No. PSC-12-0153-CFO-EG warrants continued treatment as proprietary and confidential business information. Accordingly, FPL has included First Revised Exhibits C and D to its request. FPL contends that the information in Exhibits A and B to its original request remain confidential. FPL's First Revised Exhibit C is revised only to identify Solomon L. Stamm as a new affiant. First Revised Exhibit D contains the affidavits of Solomon L. Stamm, Antonio Maceo, Martin A. Garmendia, Gary A. McBean, and Gerard J. Yupp in support of its request.

Section 366.093(1), F.S., provides that records that the Florida Public Service Commission (Commission) has found to contain proprietary confidential business information shall be kept confidential and shall be exempt from Chapter 119, F.S. 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 that has not been voluntarily disclosed to the public. Section 366.093(3), F.S., provides, in pertinent part, that proprietary confidential business information includes, but is not limited to:

- (a) Trade secrets.
- (b) Internal auditing controls and reports of internal auditors.
- (d) 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.

(e) 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 fall within these categories and, thus, constitutes proprietary confidential business information entitled to continued 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 asserts that the information it provided for the Audit contains or constitutes trade secrets of FPL, which allow FPL to hedge its fuel purchases on favorable terms for FPL and its customers. FPL contends that the disclosure of this information would provide other market participants insight into FPL's market and trading practices, as well as internal policy and procedures 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 contends that such information is protected by Section 366.093(3)(a), F.S.

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.

Additionally, FPL asserts that some of the documents also contain contractual information, the disclosure of which would impair FPL's ability to contract for goods and services on favorable terms in the future. FPL asserts that much of the information is also competitively sensitive, which if disclosed could impair the competitive interests of FPL or the provider of the information, and would place FPL at a competitive disadvantage when coupled with other information that is publicly available. FPL asserts that this information is protected from public disclosure pursuant to Section 366.093(3)(d) and (e), F.S.

FPL further asserts that certain information provided by FPL also contains competitively sensitive information related to certain employees' compensation. FPL argues that public disclosure of this information would enable competing employers to meet or beat the compensation offered by FPL, resulting in the loss of talented employees, or conversely, the need to increase the level of compensation already paid in order to retain these employees and attract new talent. FPL contends that the quality of service and the cost of service implications would be detrimental to FPL and its customers. FPL asserts that such information is protected from public disclosure by Section 366.093(3)(e), F.S.

In its First Request for Extension FPL states that it 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 up to 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 described above appears to be “trade secrets;” “internal auditing controls;” “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. 07986-10, 07987-10, 07988-10, and 08555-10 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 Julie I. Brown, as Prehearing Officer, that Florida Power & Light Company’s Third Request for Extension of Confidential Classification of Document Nos. 07986-10, 07987-10, 07988-10, and 08555-10 is granted. It is further

ORDERED that the information contained in Document Nos. 07986-10, 07987-10, 07988-10, and 08555-10 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 Julie I. Brown, as Prehearing Officer, this 5th day of
February, 2014.



JULIE I. BROWN
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.

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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 25-22.0376, 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.