

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-13-0589-CFO-EI
ISSUED: November 1, 2013

ORDER GRANTING FLORIDA POWER & LIGHT COMPANY'S SECOND REQUEST FOR
EXTENSION OF CONFIDENTIAL CLASSIFICATION OF INFORMATION PURSUANT TO
AUDIT NO. 08-003-4-3 (DOCUMENT NO. 05238-13)

On September 3, 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 second request for extension of confidential classification (Request) of information pursuant to Audit No. 08-003-4-3 (Document No. 05238-13). This request was filed in Docket No. 130001-EI.

FPL file its original request on June 27, 2008. An order was not issued regarding this request. FPL then filed a renewed request for confidential treatment of information provided during the Audit and it was granted by Order No. PSC-12-0110-CFO-EI, issued March 13, 2012. The renewed request included Exhibits First Revised Exhibits A, B, C, and D. FPL states that some of the information that was the subject of Order No. PSC-12-0110-CFO-EI warrants continued treatment as proprietary and confidential business information. Accordingly, FPL has included Second Revised Exhibits A, B, C, and D. Second Revised Exhibit C is a table that identifies the specific pages, lines, or columns that remain confidential and references the specific statutory bases for confidentiality and the affiants who support the requested classification. Second Revised Exhibit D contains the affidavits of Lisa Fuca, Damaris Rodriguez, and Gerard J. Yupp in support of its request. FPL contends that all of the information designated in Second Revised Exhibits A, B, C, and D continues to be proprietary confidential business information within the meaning of Section 366.093(3), F.S.

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 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 contends that some of the documents contain information including data related to security measures and negotiated agreements for the protection of FPL facilities, including the names and compensation rates of security officers, and security related information required by the Nuclear Regulatory Commission to be kept confidential. FPL asserts that the disclosure of this information would make public certain FPL security measures, systems, or 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 this information is protected from public disclosure pursuant to Section 366.093(3)(c), (d) and (e), F.S.

Additionally, FPL states that certain information provided by FPL contains contractual data, such as pricing and other terms, and supplier rates regarding purchased power, the disclosure of which would impair the efforts of FPL to contract for energy on favorable terms for the benefit of its customers and would impair the interest of FPL and its vendors. FPL further contends that certain information would also place FPL at a disadvantage when coupled with other information that is publicly available. FPL asserts that such information is protected from public disclosure by Section 366.093(3)(d) and (e), F.S.

Further, FPL contends that some documents contain information that relates to customer-specific account information. FPL states that it is the policy of FPL not to disclose customer-specific information, except as required by law, to entities or person other than the customer absent the customer's consent. FPL states that its policy is premised on customers' right to privacy and the potential that disclosure of customer specific information may harm some customers' competitive interests. FPL asserts that such information is protected pursuant to Section 366.093(3)(e), F.S.

In its second request for extension filed in the instant docket, FPL states that it incorporates by reference and adopts the arguments expressed in its original and renewed request for extension. 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 No. 05238-13 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 Second Request for Extension of Confidential Classification of Document No. 05238-13 is granted. It is further

ORDERED that the information in Document No. 05238-13 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 1st day of November, 2013.



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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

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appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.