

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of optional non-standard meter rider, by Florida Power & Light Company.

DOCKET NO. 130223-EI
ORDER NO. PSC-14-0288-CFO-EI
ISSUED: June 3, 2014

ORDER GRANTING FLORIDA POWER & LIGHT COMPANY'S REQUEST FOR CONFIDENTIAL CLASSIFICATION AND MOTION FOR TEMPORARY PROTECTIVE ORDER (DOCUMENT NO. 02495-14 x-ref. 01711-14 and 02236-14)

On April 15, 2014, 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 a notice of intent to request confidential classification for certain information contained in its response to the Office of Public Counsel's (OPC) First Request for Production of Documents No. 2 (Document No. 01711-14). At that time FPL also filed a motion for temporary protective order regarding this same information. On May 12, 2014, FPL filed its request for confidential classification of the information contained in its response to OPC's First Request for Production of Documents No. 2 (Document No. 02236-14). On May 23, 2014, FPL revised its request for confidentiality removing certain documents from its May 12th request (Document No. 02495-14).

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

The information provided in these responses falls into several categories. First, cost information used in the development of the charges for the non smart meter tariff (prices and invoices for printing and mailing customer notices, requests for proposals for services, employee names and salaries used to develop personnel costs for administering the non smart meter program, and e-mails concerning the bids and their evaluation). (Bates Nos. 0363, 0684-85, 0747-750, 0752, 0859, 0886-892, 0918-929, 1072-73, 1097-1100, 1133-4, 1191-1201, 1203 and 1205). Second, cost spreadsheets listing aggregated payroll and other operation expenses necessary to run the program. (Bates Nos. 1203, 1205, 1457-58, 1498, 1500, 1977 and 1980). Third, lists of customers who retained their analog meters (Bates Nos. 1228-1455 and 1990-2175).

With regard to the first set of responses, FPL contends that release of this bidding and contractual information would impair FPL's ability to contract for goods and services at the lowest possible price in the future. FPL also asserts that disclosure of employee salaries and benefits would enable competing employers to meet or beat the compensation offered by FPL thereby decreasing FPL's ability in the future to hire and retain qualified employees at the lowest possible price. With regard to the second set of responses, FPL contends that disclosure of this information would allow competitors to derive pricing information to FPL's detriment. Finally, the third set of responses consists of customer names, addresses and GPIS coordinates for non smart meter customers. FPL states that it has always kept such information confidential and does not disclose it absent customer consent.

Time Period For Confidential Classification

FPL requests confidential classification for this information for a period of 18 months. 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."

Ruling

Upon review, it appears the above-referenced information satisfies the criteria set forth in Sections 366.093(3)(d) and (e), F.S., for classification as proprietary confidential business information. The information constitutes "[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 "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. 02495-14, x-ref Document Nos. 01711-14 and 02236-14, 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.

FPL also seeks protection of the documents as provided in Section 366.093(2), F.S., and Rule 25-22.006(6), F.A.C., while the material is in the possession of the Office of Public Counsel (OPC). Section 366.093(2), F.S., directs that all records produced pursuant to a discovery request for which proprietary confidential status is requested shall be treated by any party subject to the public records law as confidential and exempt from the public records law. Section 119.07(1), F.S. Rule 25-22.006(6), F.A.C., codifies the Commission's policy regarding the protection of confidential information from public disclosure during the discovery process in a manner that is not overly burdensome to both parties. Rule 25-22.006(6)(a), F.A.C., in pertinent part, states:

In any formal proceeding before the Commission, any utility or other person may request a protective order protecting proprietary confidential business information from discovery. Upon a showing by a utility or other person and a finding by the Commission that the material is entitled to protection, the Commission shall enter a protective order limiting discovery in the manner provided for in Rule 1.280, Florida Rules of Civil Procedure.

In addition, Rule 25-22.006(6)(c), F.A.C., states that if a party allows OPC to inspect or take possession of utility information, then that “utility may request a temporary protective order exempting the information from Section 119.07(1), F.S.”

Upon consideration of FPL’s assertions of the confidential nature of the information contained in FPL’s responses to OPC’s First Request for Production of Documents No. 2, FPL’s Motion for Temporary Protective Order is hereby granted. As a result, this information shall be protected from disclosure pursuant to Rule 25-22.006(6)(c), F.A.C.

Based on the foregoing, it is

ORDERED by Commissioner Lisa Polak Edgar, as Prehearing Officer, that Florida Power & Light Company’s Request for Confidential Classification of Document No. 02495-14, x-ref Document Nos. 01711-14 and 02236-14, is granted. It is further

ORDERED that the information in Document No. 2495-14, x-ref Document Nos. 01711-14 and 02236-14, 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 shall be the only notification by the Commission to the parties of the date of declassification of the materials discussed herein. It is further

ORDERED that the Motion for Temporary Protective Order filed by Florida Power & Light Company is granted.

By ORDER of Commissioner Lisa Polak Edgar, as Prehearing Officer, this 3rd day of
June, 2014.


LISA POLAK EDGAR
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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.

SBr

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.