

State of Florida



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

## -M-E-M-O-R-A-N-D-U-M-

**DATE:** June 28, 2016  
**TO:** Suzanne Brownless, Office of the General Counsel  
**FROM:** John Slemkewicz, Division of Accounting & Finance JS  
**RE:** CONFIDENTIALITY OF CERTAIN INFORMATION  
DOCKET NO: 160021-EI DOCUMENT NO: 03148-16

RECEIVED-FPSC  
2016 JUN 28 PM 3:15  
COMMISSION CLERK

DESCRIPTION: FPL (Moncada) - (CONFIDENTIAL) Certain information provided in response to discovery requests propounded by staff and OPC; specifically, OPC's 1st request for PODs (Nos. 2, 8, 10, 15, 19, 28, 34, 36, and 38); OPC's 3rd request for PODs (No. 89); staff's 1st set of interrogatories (No. 3); staff's 3rd set of interrogatories (Nos. 89 and 114); and staff's 3rd request for PODs (Nos. 15, 18, and 20). [x-ref DN 02689-16]

SOURCE: Florida Power & Light Company

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 or Company) requests confidential classification of its responses to OPC's 1st request for PODs (Nos. 2, 8, 10, 15, 19, 28, 34, 36, and 38); OPC's 3rd request for PODs (No. 89); staff's 1st set of interrogatories (No. 3); staff's 3rd set of interrogatories (Nos. 89 and 114); and staff's 3rd request for PODs (Nos. 15, 18, and 20). (Document No. 03148-16)

Staff has reviewed the documents and, in staff's opinion, the requests meet the criteria for confidentiality contained in Sections 366.093(3)(d), (e) and (f), F.S., with the exception of a portion of the response to OPC's 1st request for PODs - No. 19. In staff's opinion, only Column C of POD No. 19 should be granted confidentiality. However, staff recommends that the request for confidentiality of all of the other information included in Document No. 03148-16 be approved.

### OPC's 1<sup>st</sup> Request for PODs (Nos. 2, 8, 10, 15, 19, 28, 34, 36, and 38)

#### • No. 2

Pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., FPL requests confidential classification of its response to OPC's 1st request for PODs - No. 2. This document contains employee personnel information unrelated to compensation, duties, qualifications, or responsibilities. The document also includes proprietary survey results provided by third parties. Therefore, staff recommends that this information included in POD No. 2 should be deemed confidential pursuant to Sections 366.093(e) and (f), F.S.

• **No. 8**

Pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., FPL requests confidential classification for an actuarial valuation report on its retiree benefit plan, filed on May 23, 2016 in response to OPC's 1<sup>st</sup> request for PODs – No. 8. Staff has reviewed FPL's confidentiality request, and in staff's opinion, the request meets the criteria for confidentiality contained in Section 366.093, F.S. Therefore, staff recommends that the request for confidentiality of certain information included in POD No. 8 be approved.

• **No. 10**

FPL claims that the information contained within the documents is intended to be and has been treated by FPL as proprietary confidential business information relating to competitive interests, the disclosure of which would impair the competitive interests of FPL or its vendors. Specifically, the materials include proprietary long-term and short-term forecast information sold by vendors; the seller's business and competitive interests would be harmed if these documents were in the public domain. The documents also contain information regarding negotiated rating agency fees, which could impair the Company's ability to negotiate such rates on favorable terms in the future. Additionally, the rating agency fees are kept confidential from the rating agency analysts in order to protect the unbiased nature of corporate credit ratings. Other materials contain non-public, forecasted company information, potential investments and/or divestitures, and the company's financial strategy. Finally, the designated materials include communications with rating agencies, which are made subject to an expectation of privacy and confidentiality. As such, this information in POD No. 10 is protected by Section 366.093(3)(d) and (e), F.S.

• **No. 15**

Pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., FPL requests confidential classification for an audit report on its retirement benefit costs, filed on May 23, 2016 in response to OPC's 1<sup>st</sup> request for PODs – No. 15. Staff has reviewed FPL's confidentiality request, and in staff's opinion, the request meets the criteria for confidentiality contained in Section 366.093, F.S. Therefore, staff recommends that the request for confidentiality of certain information included in POD No. 15 be approved.

• **No. 19**

Pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., FPL requests confidential classification of a portion of its response to OPC's 1st request for PODs - No. 19. The proposed confidential information is presented on Bates Number pages OPC 007357 and 007358 and includes the allocation of executive salaries. While the executives are not identified by name, they have been assigned unique identifying numbers. Because the executive salaries are allocated to other NextEra Energy companies that are not directly related to FPL's electric utility operations, staff would agree that the executives' identities in Column C should be held confidential. However, the information in Columns A, B, and D through L is not confidential in staff's opinion. Therefore, staff recommends that only the information in Column C should be deemed confidential pursuant to Sections 366.093(e), F.S.

● **No. 28**

FPL claims that the confidential information contained within the document is intended to be and has been treated by FPL as private, its confidentiality has been maintained, and its disclosure would cause harm to FPL and its customers. FPL claims the documents contain confidential information relating to FPL's competitive interests. Specifically, the documents contain information concerning environmental liabilities and contractual data concerning negotiated terms and conditions of unconsummated real estate contracts. Disclosure of this information could impair FPL's ability to negotiate terms for real estate contracts on similar or favorable terms in the future. The documents also contain pro forma tax documentation that was incorporated into NextEra Energy's tax return, which is confidential pursuant to 26 U.S.C. § 6103. As such, this information included in POD No. 28 is protected by Section 366.093(3)(d) and (e), F.S.

● **No. 34**

FPL claims that the information contained within the documents is intended to be and has been treated by FPL as proprietary confidential business information relating to competitive interests, the disclosure of which would impair the competitive interests of FPL or its vendors. Specifically, the materials include proprietary long-term and short-term forecast information sold by vendors; the seller's business and competitive interests would be harmed if these documents were in the public domain. The documents also contain information regarding negotiated rating agency fees, which could impair the company's ability to negotiate such rates on favorable terms in the future. Additionally, the rating agency fees are kept confidential from the rating agency analysts in order to protect the unbiased nature of corporate credit ratings. Other materials contain non-public, forecasted company information, potential investments and/or divestitures, and the company's financial strategy. Finally, the designated materials include communications with rating agencies, which are made subject to an expectation of privacy and confidentiality. As such, this information included in POD No. 34 is protected by Section 366.093(3)(d) and (e), F.S.

● **No. 36**

FPL claims that the confidential information contained within its response to OPC's First Request for Production of Documents - No. 36 is intended to be and has been treated by FPL as private, its confidentiality has been maintained, and its disclosure would cause harm to FPL and its customers. FPL claims the confidential information contains information regarding financing rates negotiated and procured by FPL. Public disclosure of this information could impair FPL's competitive advantage and impede its ability to negotiate similar financing terms in the future. As such, this information included in POD No. 36 is protected by Section 366.093(3)(e), F.S.

● **No. 38**

Pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., FPL requests confidential classification of certain information filed in response to a portion of OPC's POD, No. 38. The company is claiming confidentiality of its responses to a portion of OPC's First PODs, No. 38, Page No. 005396, under Section 366.093(3), F.S. More specifically, the confidentiality request is being made under 366.093(3)(d) and (e), F.S. Per the Statute, the propriety of confidential business information includes: "[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 Section 366.093(3)(e), F.S. “[I]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.”

Staff has reviewed FPL’s response to OPC’s POD No. 38 and the associated confidentiality request. Details of a portion of the response include information related to FPL’s contractual future expected maintenance intervals with its vendors of major component replacements. The Company claims releasing this information would put it at a competitive disadvantage because it would negatively impact their ability to negotiate with vendors in the future. Technical staff agrees with this assertion. In technical staff’s opinion, the information that is the subject of FPL’s request meets the criteria for confidentiality contained in Sections 366.093(3)(d), and 366.093(3)(e), F.S.

**OPC’s Third Request for PODs (No. 89):**

On May 2, 2016, FPL filed a motion for temporary protective order for certain confidential information provided in response to Office of Public Counsel’s 3<sup>rd</sup> request for PODs - No. 89. FPL states, “The confidential information includes, but is not limited to, information related to competitive interests, the disclosure of which could harm the competitive business of the provider of the information (exempt from the Public Records Act pursuant to section 366.093(3)(e), F.S.). Staff has reviewed FPL’s confidentiality request, and in staff’s opinion, the request meets the criteria for confidentiality contained in Section 366.093, F.S. Therefore, staff recommends that the request for confidentiality of certain information included in POD No. 89 be approved.

**Staff’s 1st set of interrogatories (No. 3)**

Pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., FPL requests confidential classification of its response to staff’s 1st request for interrogatories - No.3. This document contains information concerning negotiated terms and conditions of unconsummated real estate transactions. The disclosure of this information could impair FPL’s ability to negotiate on future real estate transactions. Therefore, staff recommends that this information should be deemed confidential pursuant to Section 366.093(e), F.S.

**Staff’s 3rd set of interrogatories (Nos. 89 and 114)**

● **No. 89**

Pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., FPL requests confidential classification for source material used in testimony, filed on May 23, 2016 in response to staff’s 3rd set of interrogatories – No. 89. Staff has reviewed FPL’s confidentiality request, and in staff’s opinion, the request meets the criteria for confidentiality contained in Section 366.093, F.S. Therefore, staff recommends that the request for confidentiality of certain information included in Interrogatory No. 89 be approved.

• **No. 114**

Interrogatory No. 114 contains proprietary confidential business information such as pricing and other contractual terms related to FPL's natural gas optimization transactions. The disclosure of this information would impair the efforts of FPL to contract for goods or services on favorable terms for the benefit of its customers, and would impair the competitive interests of FPL and its vendors. Staff has reviewed FPL's confidentiality request for Interrogatory No. 114 and in staff's opinion, the request meet the criteria for confidentiality contained in Sections 366.093(d) and (e), F.S. Therefore, staff recommends that the request for confidentiality of certain information included in Interrogatory No. 114 be approved.

**Staff's 3rd request for PODs (Nos. 15, 18, and 20)**

FPL claims that the information contained within the documents is intended to be and has been treated by FPL as proprietary confidential business information relating to competitive interests, the disclosure of which would impair the competitive interests of FPL or its vendors. Specifically, the materials include proprietary long-term and short-term forecast information sold by vendors; the seller's business and competitive interests would be harmed if these documents were in the public domain. The documents also contain information regarding negotiated rating agency fees, which could impair the Company's ability to negotiate such rates on favorable terms in the future. Additionally, the rating agency fees are kept confidential from the rating agency analysts in order to protect the unbiased nature of corporate credit ratings. Other materials contain non-public, forecasted Company information, potential investments and/or divestitures, and the Company's financial strategy. Finally, the designated materials include communications with rating agencies, which are made subject to an expectation of privacy and confidentiality. As such, this information included in POD Nos. 15, 18, and 20 is protected by Section 366.093(3)(d) and (e), F.S.

cc: Office of Commission Clerk  
AFD (Barrett, Buys, Galloway, Smith, Vogel)  
ECO (Higgins)



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

**DATE:** May 24, 2016

**TO:** Division of Accounting and Finance, Office of Primary Responsibility

**FROM:** OFFICE OF COMMISSION CLERK

**RE:** CONFIDENTIALITY OF CERTAIN INFORMATION

DOCKET NO: 160021-EI DOCUMENT NO: 03148-16

DESCRIPTION: FPL (Moncada) - (CONFIDENTIAL) Certain information provided in response to discovery requests propounded by staff and OPC; specifically, OPC's 1st request for PODs (Nos. 2, 8, 10, 15, 19, 28, 34, 36, and 38); OPC's 3rd request for PODs (No. 89); staff's 1st set of interrogatories (No. 3); staff's 3rd set of interrogatories (Nos. 89 and 114); and staff's 3rd request for PODs (Nos. 15, 18, and 20). [x-ref DN 02689-16]

SOURCE: Florida Power & Light Company

The above confidential material was filed along with a request for confidential classification. Please complete the following form by checking all applicable information and forward it to the attorney assigned to the docket, along with a brief memorandum supporting your recommendation.

- The document(s) is (are), in fact, what the utility asserts it (them) to be.
- The utility has provided enough details to perform a reasoned analysis of its request.
- The material has been received incident to an inquiry.
- The material is confidential business information because it includes:
  - (a) Trade secrets;
  - (b) Internal auditing controls and reports of internal auditors;
  - (c) Security measures, systems, or procedures;
  - (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 information;
  - (f) Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities;
- The material appears to be confidential in nature and harm to the company or its ratepayers will result from public disclosure.
- The material appears not to be confidential in nature.
- The material is a periodic or recurring filing and each filing contains confidential information.

This response was prepared by JOHN SLEMKEWICZ on 6-28-16, a copy of which has been sent to the Office of Commission Clerk and the Office of General Counsel.