

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida Power & Light Company.

DOCKET NO. 160021-EI

In re: Petition for approval of 2016-2018 storm hardening plan, by Florida Power & Light Company.

DOCKET NO. 160061-EI

In re: 2016 depreciation and dismantlement study by Florida Power & Light Company.

DOCKET NO. 160062-EI

In re: Petition for limited proceeding to modify and continue incentive mechanism, by Florida Power & Light Company.

DOCKET NO. 160088-EI
ORDER NO. PSC-16-0312-CFO-EI
ISSUED: August 3, 2016

ORDER GRANTING FLORIDA POWER & LIGHT COMPANY'S SECOND
REQUEST FOR CONFIDENTIAL CLASSIFICATION
(DOCUMENT NO. 03148-16, EX REF. 02689-16, 04833-16)

On May 23, 2016, 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 request for confidential classification for its responses to: Office of Public Counsel's (OPC) First Request for Production of Documents, Nos. 2, 8, 10, 15, 19, 28, 34, 36 and 38; OPC's Third Request for Production of Documents No. 89; Commission staff's First Set of Interrogatories No. 3; Commission staff's Third Set of Interrogatories Nos. 89 and 114; and Commission staff's Third Request for Production of Documents Nos. 15, 18, and 20. (Document No. 03148-16, ex ref. 02689-16). FPL originally requested that Columns A through L on lines 97 through 145 on both pages of OPC's First Request for Production of Documents No. 19 be classified as confidential. However, on July 13, 2016, FPL restricted its request for confidentiality to Column C on these two pages (Document No. 04833-16).

Request for Confidential Classification

FPL contends that information contained in its responses to: OPC's First Request for Production of Documents, Nos. 2, 8, 10, 15, 19, 28, 34, 36 and 38; OPC's Third Request for Production of Documents No. 89; Commission staff's First Set of Interrogatories No. 3, Commission staff's Third Set of Interrogatories Nos. 89 and 114; and Commission staff's Third Request for Production of Documents Nos. 15, 18, and 20, constitutes proprietary confidential business information entitled to protection under Section 366.093, F.S., and Rule 25-22.006, F.A.C. FPL asserts that this information is intended to be and is treated by FPL as private and has not been publicly disclosed.

The information for which FPL seeks confidentiality consists of its responses to the following discovery requests:

A. OPC's Requests for Production of Documents

No. 2 – These are documents which contain employee information and third party reports used in developing the projected employee benefit costs¹ for the 2017 and 2018 test years.

No. 8 – This is an actuarial valuation report for NextEra Energy, Inc. (NextEra) for the period ending December 31, 2014, regarding its retiree benefits plan.

No. 10 – These are power point slides that discuss: Moody's Investment Service reports and ratings for NextEra Energy for 2014; Standard and Poor's Ratings Services reports for 2015 for NextEra for 2015; Fitch Ratings Annual Update for 2016; Standard and Poor's Ratings update for 2016; and various proprietary long-term and short-term NextEra and FPL forecasts regarding sales, operation and maintenance (O&M) expenses, revenue requirements, cash flow, negotiated rating agency fees, potential investments and/or divestitures, and general financial strategies.

No. 15 – These materials consist of an audit report on NextEra's retirement benefit costs as of December 31, 2010 and Aon Hewitt reports on retirement benefit obligations as of December 31, 2011, 2012, 2013, 2014 and 2015.

No. 19 – This information is marked Bates Number pages OPC 007357 and 007358 and includes the allocation of executive salaries for corporate services provided by FPL to other NextEra companies.

No. 28 – This information consists of a draft of Form 1120 of FPL's 2014 corporate income tax return and a calculation of deferred severance percentages for Section 199 deductions.

No. 34 – This information consists of communications between credit rating agencies (Moody's, Fitch, Standard & Poor's) and NextEra and/or FPL regarding NextEra's and FPL's financial forecasts, potential investments/divestitures and financial strategies for 2015 and 2016.

No. 36 – This information consists of e-mails regarding the funding of term loans negotiated between FPL and Scotia Bank and CIBC, and e-mails securing a bi-lateral revolving line of credit with TD Bank for the purposes of supporting FPL's liquidity.

No. 38 – This information consists of schedules related to the development of life or net salvage parameters associated with major component replacement parts for generating units used in the development of depreciation rates.

¹ Retirement income, active employee health care, retiree health and welfare, active employee welfare (death and disability benefits), and time off with pay.

No. 89 – This information consists of contract information for Burns & McDonnell, the Gunster law firm, and the Radey law firm used in the development of FPL’s rate case expense.

B. Commission Staff’s Interrogatories

No. 3 – This information consists of a summary of the negotiated terms and conditions of purchase agreements for various parcels of real estate owned by FPL for which a closing has not yet taken place.

No. 89 – This information consists of the same information provided to OPC in response to its First Request for Production of Documents No. 2 discussed above.

No. 114 - This information consists of the quantities and dates of natural gas sale transactions from FPL’s fuel inventory.

C. Commission Staff Requests for Production of Documents

No. 15 - This information consists of Blue Chip Financial Forecasts, Vol. 33, Nos. 12, December 1, 2014.

No. 18 – This information consists of refinancing assumptions and rating agency fees used in the determination of the commitment fees reflected on MFR Schedule D-3 for 2017.

No. 20 - This information consists of refinancing assumptions and rating agency fees used in the determination of the commitment fees reflected on MFR Schedule D-3 for 2018.

FPL has requested that this information described above be granted confidentiality for a period of 18 months and returned to FPL as soon as the information is no longer necessary for the Commission to conduct its business.

Ruling

Section 366.093(1), F.S., provides that records that the 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:

- (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.

Upon review, it appears that the above-referenced information satisfies the criteria set forth in Section 366.093(3)(b), F.S., for classification as proprietary confidential business information. The information contained in OPC's Request for Production of Documents Nos. 2, 8, 15, and 19, as well as Commission staff's Interrogatories 3 and 89, contain employee information and third party reports used in developing employee benefit costs for the 2017 and 2018 test years. The disclosure of this information could result in increased personnel costs for FPL. Therefore, I find that the information contained in these documents shall be granted confidential classification pursuant to Section 366.093(e), F.S.

OPC's Request for Production of Documents Nos. 10, 34, and 36, as well as Commission staff's Request for Production of Documents Nos. 15, 18 and 20 are documents which discuss rating agency reports and proprietary long-term and short-term NextEra and FPL forecasts of sales, O&M expenses, revenue requirements, cash flow, negotiated rating agency fees, potential investments and/or divestitures, and general financing strategies and forecasts. Disclosure of these materials could result in higher financing and services costs as well as violate non-disclosure agreements between FPL and its vendors. Therefore, I find that these materials shall be granted confidentiality under the provisions of Section 366.093(d) and (e), F.S.

OPC's Request for Production No. 28 consists of a draft IRS tax form which is confidential pursuant to 26 U.S.C. § 6103. Section 192.105, F.S., deems such information exempt from the provisions of Section 119.07(1), F.S. OPC's Production of Documents Request No. 38 includes the estimated salvage parameters and projected replacement intervals and costs of major generation plant components which if disclosed could result in higher costs being paid for replacement equipment. OPC's Request for Production No. 89 consists of legal and consulting service contracts which if disclosed could result in higher costs for such services in the future. Commission staff's Interrogatory No. 114 contains detailed information regarding natural gas sales the disclosure of which would also impair the efforts of FPL to contract for goods and services at the lowest possible price. Therefore, I find that these materials shall be granted confidentiality under the provisions of Section 366.093(d) and (e), F.S.

Thus, as discussed above, the information identified in Document No. 03148-16, 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 up to 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 hereby

ORDERED by Commissioner Lisa Polak Edgar, as Prehearing Officer, that Florida Power & Light Company's Request for Confidential Classification of Document No. 03148-16, ex ref. 02689-16, 04833-16, is granted in part and denied in part, as set forth herein. It is further

ORDERED that the information in Document No.03148-16, ex ref. 02689-16, 04833-16 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.

By ORDER of Commissioner Lisa Polak Edgar, as Prehearing Officer, this 3rd day of August, 2016.



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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.