

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Energy conservation cost recovery
clause.

DOCKET NO. 170002-EG
ORDER NO. PSC-17-0236-CFO-EG
ISSUED: June 20, 2017

ORDER GRANTING FLORIDA POWER & LIGHT COMPANY'S
SECOND REQUEST FOR EXTENSION OF CONFIDENTIAL CLASSIFICATION OF
MATERIALS PROVIDED PURSUANT TO AUDIT NO. 13-004-4-3
(DN 03726-17 x-ref DN 04235-13 and 04446-13)

On March 21, 2017, 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 Second Request for Extension of Confidential Classification of Materials Provided Pursuant to Audit No. 13-004-4-3 (Second Request).¹ FPL requests that the Florida Public Service Commission (Commission) extend the period of confidential treatment previously granted to materials FPL provided pursuant to Audit No. 13-004-4-3 (Audit) (Document Nos. 04235-13, 04446-13, and 03726-17).

Request for Confidential Classification

On August 1, 2013, FPL filed a Request for Confidential Classification (Original Request) of materials provided during the Audit, which included Exhibits A, B, C, and D.² FPL's Original Request was granted by Order No. PSC-13-0480-CFO-EG, issued October 15, 2013. On April 1, 2015, FPL filed a First Request for Extension of Confidential Classification (First Request) of the Audit materials, which included a First Revised Exhibit D.³ FPL's First Request was granted by Order No. PSC-15-0474-CFO-EG, issued on October 15, 2015.

In its Second Request, FPL incorporates by reference and adopts the statements and findings contained in its Original and First Requests and Order Nos. PSC-13-0480-CFO-EG and PSC-15-0474-CFO-EG. FPL asserts that the period of confidential treatment granted by Order No. PSC-15-0474-CFO-EG will soon expire and that some of the information previously granted confidentiality warrants continued confidential treatment as proprietary, confidential business information as defined by Section 366.093(3), F.S. Accordingly, FPL submitted First Revised Exhibits A, B, and C, in order to reduce the number of pages for which confidential treatment is sought, and Second Revised Exhibit D, in support of its Second Request.

¹ Document No. 03725-17, filed in Docket No. 170002-EG, In Re: Energy conservation cost recovery clause.

² Document No. 04445-13, filed in Docket No. 130002-EG, In Re: Energy conservation cost recovery clause.

³ Document No. 01758-15, filed in Docket No. 150002-EG, In Re: Energy conservation cost recovery clause.

FPL's First Revised Exhibits A and B are highlighted and redacted copies of the specific Audit work papers in which FPL identifies the portions of the previously designated confidential information it contends warrants continued confidential treatment. FPL's First Revised Exhibit C is a table in which FPL identifies the specific pages, lines, or columns of the previously designated confidential information it contends warrants continued confidential treatment, along with the statutory basis for confidentiality. Second Revised Exhibit D contains the Declarations of FPL Internal Audit Manager, Antonio Maceo, and FPL Demand Side Management Cost and Performance Manager, Anita Sharma, which identify and describe the confidential nature of the information FPL contends warrants continued confidential treatment, to support its Second Request.

FPL asserts in its Second Request that the information for which it seeks continued confidential treatment consists of information relating to: (i) internal auditing controls, reports and notes of FPL internal auditors, the disclosure of which could harm the FPL's business operations; (ii) contractual data or bids, such as negotiated terms with third parties, the disclosure of which could impair the efforts of FPL to contract for goods and/or services on favorable terms; and/or (iii) competitive interests, such as payroll, pension and welfare rates, the disclosure of which would impair FPL's competitive business interests. In addition, FPL contends that some of the competitively sensitive information contains customer-specific account information, which includes customer names, addresses, telephone numbers and account numbers, rates, billing determinants (kW and kWh usage), conservation savings in kW, kWh and bills. FPL states that it is FPL's policy not to disclose customer-specific information, except as required by law, to entities or persons other than the customer absent the customer's consent. FPL contends that its policy is premised upon customers' right to privacy and the potential that disclosure of customer-specific information may harm some customers' competitive interests.

FPL contends that the information identified in its Second Request warrants continued treatment as proprietary and confidential business information within the meaning of Section 366.093(3)(b), (d) and (e), F.S. FPL asserts that the information identified is intended to be, and has been treated by as private, its confidentiality has been maintained, and its disclosure would cause harm not only to FPL, but to FPL customers as well. FPL further contends that nothing has changed since the filing of its Original or First Requests to render the identified information stale or public, such that continued confidential treatment would not be appropriate. Finally, FPL requests that the information be returned to FPL as soon as it is no longer necessary for the Commission to conduct its business.

Ruling

Section 366.093(1), F.S., provides that records that the Commission finds to contain proprietary 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 has not been voluntarily disclosed to the public. Specifically, Section 366.093(3)(b), (d) and (e), F.S., provide that proprietary confidential business information includes, but is not limited to:

- (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.

Upon review, I find that the identified by FPL in its Second Request satisfies the criteria set forth in Section 366.093(3)(b), (d) and (e), F.S., for classification as proprietary confidential business information. The information described above is information relating to (i) “internal auditing controls and reports of internal auditors,” the disclosure of which could harm the company’s business operations; (ii) “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 (iii) “competitive interests, the disclosure of which would impair the competitive business of the provider of the information.” Thus, the information identified in Document Nos. 03726-17 and 04235-13, 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. With regard to FPL’s request that the information be returned to FPL as soon as it is no longer necessary for the Commission to conduct its business, since audit materials of the type contained in these documents must be retained by the Commission for 15 years, Document Nos. 03726-17 and 04235-13 cannot be returned to FPL at this time. Because Document No. 03726-17 supersedes FPL’s Original and First Requests, however, Document No. 04446-13 may be returned to FPL.

Based on the foregoing, it is hereby

ORDERED by Commissioner Ronald A. Brisè, as Prehearing Officer, that Florida Power & Light Company’s Second Request for Extension of Confidential Classification of Materials Provided Pursuant to Audit No. 13-004-4-3, as detailed in First Revised Exhibits A, B, and C and Second Revised Exhibit D, is granted. It is further

ORDERED that the information contained in Document Nos. 03726-17 and 04235-13, for which confidential classification has been granted, shall remain protected from disclosure for a period of up to 18 months from the date of the 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 Florida Power & Light Company or another affected person shows, and the Commission finds, that the records continue to contain proprietary confidential business information. It is further

ORDERED that Document No. 03726-17 supersedes Document No. 04446-13, and that Document No. 04446-13 shall be returned to Florida Power & Light Company by the Office of the Commission Clerk. It is further

ORDERED that this Order shall be the only notification by the Commission to the parties concerning the expiration of the confidentiality time period.

By ORDER of Commissioner Ronald A. Brisé, as Prehearing Officer, this 20th day of June, 2017.



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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.

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.