

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 20210015-EI
ORDER NO. PSC-2021-0299-PCO-EI
ISSUED: August 6, 2021

ORDER DENYING FLORIDIANS AGAINST INCREASED
RATES, INC.'S REQUESTS FOR CONFIDENTIAL CLASSIFICATION
(DOCUMENT NOS. 06506-2021 AND 08288-2021)

On June 18, 2021, pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), Floridians Against Increased Rates, Inc. (FAIR) filed a request for confidential classification of information contained in its response to Florida Power & Light Company's (FPL) First Request for Production of Documents to FAIR, No. 4 (Document No. 06234-2021). On July 23, 2021, FAIR filed a Corrected Request for Confidential Classification (Corrected Request) of information contained in its response to FPL's First Request for Production of Documents to FAIR, No. 4 (Document 08288-2021). In FAIR's Corrected Request, FAIR stated that the purpose of the Corrected Request is to withdraw FAIR's original request (Document No. 06234-2021) and replace it with the Corrected Request (Document 08288-2021). This request was filed in Docket No. 20210015-EI.

On June 21, 2021, pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., FAIR filed a Second Request for Confidential Classification (Second Request) of information contained in the Exhibit NHW-3 to the testimony of FAIR's witness Nancy H. Watkins filed on June 21, 2021 (Document No. 06506-2021). This request was also filed in Docket No. 20210015-EI.

The information that is the subject of the Corrected Request and the Second Request are substantially the same with a few minor differences. Both of the filings consist of FAIR's membership roster. The differences in the filings appear to be the removal of duplicated members, addition of new members, and addition of business names for some of the members.

Request for Confidential Classification

FAIR contends that the information contained in its responses to FPL's First Request for Production of Documents No. 4 and in Exhibit NHW-3 to the testimony of FAIR's witness Nancy H. Watkins are proprietary and confidential business information entitled to protection under Section 366.093(a) and (e), F.S., and Rule 25-22.006, F.A.C. FAIR asserts that this information is intended to be and is treated by FAIR as private and has not been publicly disclosed.

FAIR contends that these documents, for which confidentiality is requested, consist of an Excel spreadsheet of its current membership roster listing personal information (names, addresses, email addresses, phone numbers, and utility) concerning its members (all of whom are

customers of Florida utilities). FAIR claims the documents are proprietary confidential business information which contain FAIR's trade secrets and competitive business information, the disclosure of which would impair the competitive business interests of FAIR and its members. FAIR asserts that:

Section 366.093(s), F.S., defines proprietary confidential business information to mean information, including trade secrets, that is (i) intended to be and is treated as private confidential information by FAIR (ii) because disclosure of the information would cause harm, (iii) to FAIR's business operation, and (iv) the information has not been voluntarily disclosed to the public.

FAIR claims that it has "a policy not to disclose its members' personal information," and has represented to its members that their personal information will not be disclosed. FAIR argues that similar personal information of utility customers has been previously granted confidential classification by the Commission in Order No. PSC-07-0553-CFO-EI.¹ FAIR argues that this information is protected by Section 366.093(3)(a) and (e), F.S.

Ruling

Section 366.093(1), F.S., provides that records the Florida Public Service Commission (Commission) has found 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. Section 366.093(3), F.S., provides that proprietary confidential business information includes, but is not limited to:

(a) Trade secrets

...

(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 the above-referenced information does not satisfy the criteria set forth in Section 366.093(3), F.S., for classification as proprietary confidential business information. The request is insufficient on its face.

¹ Order No. PSC-07-0553-CFO-EI, issued June 29, 2007, in Docket 070240-EI, In re: Request for confidential classification of materials provided in connection with audit of customer deposit procedures, by Florida Power & Light Company. The Commission granted FPL's request for confidential classification finding that "[d]isclosure of FPL's customers' personal account numbers could provide unauthorized access to third parties; thus potentially harming FPL and its customers."

Although FAIR asserts in its Corrected Request and Second Request that the documents are proprietary confidential business information, FAIR fails to provide any details on how the documents contain information relating to trade secrets and competitive interests, the disclosure of which would impair the competitive business of the provider of the information. Nor does FAIR explain what its competitive business interests are that would be harmed should the information be disclosed. FAIR cites Order No. PSC-07-0553-CFO-EI and argues that similar personal information of utility customers has been previously granted confidential classification by the Commission. However, in that case, FPL's request for confidential classification² of Document No. 02916-2007 contained more information than is provided in FAIR's requests. In its request, FPL stated that the documents contained "customer account numbers and credit scores made part of the [Commission] [s]taff auditor work papers," customer names, addresses, telephone numbers, rates, billing determinants (kW and kWh usage), conservation savings in kW/kWh, and bills. In that case, the Commission granted FPL's request for confidential classification and found that "[d]isclosure of FPL's customers' personal account numbers could provide unauthorized access to third parties; thus potentially harming FPL and its customers."

The information in FAIR's Corrected Request and Second Request, for which confidentiality is requested, does not contain sensitive personally identifiable information, such as account numbers, credit scores, rates, billing determinants, conservation savings or bills. In FAIR's Corrected Request and Second Request, FAIR states that "the documents . . . which are proprietary confidential business information contain FAIR's trade secrets and competitive business information, the disclosure of which would impair the competitive business interests of FAIR and its members." FAIR does not provide any reasoning as to why it believes that the documents contain information relating to trade secrets and competitive interests, the disclosure of which would impair the competitive business of the provider of the information. Nor does it identify what competitive business interest would be harmed by the disclosure.

Section 119.01, F.S., provides that documents submitted to governmental agencies shall be public records. The only exceptions to this law are specific statutory exemptions and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision, such as the specific statutes cited above pertaining to confidentiality. Rule 25-22.006(4)(c), F.A.C., implementing applicable statutes within the rule, provides that the utility or other person shall "demonstrate how the information asserted to be confidential qualifies as one of the statutory examples listed in Section 364.183(3), 366.093(3) or 367.156(3), F.S.," or the utility or other person must explain how "the ratepayers or the person's or utility's business operations will be harmed by disclosure." Because FAIR has not demonstrated how the information asserted to be confidential qualifies as confidential under the statute or applicable rule, FAIR's requests for confidential classification of the information in Document Nos. 06506-2021 and 08288-2021 are therefore denied.

² Document No. 02915-2007, filed on April 4, 2007, in Docket 070240-EI, In re: Request for confidential classification of materials provided in connection with audit of customer deposit procedures, by Florida Power & Light Company.

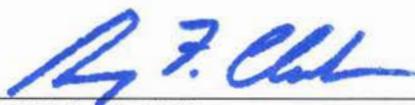
ORDER NO. PSC-2021-0299-PCO-EI
DOCKET NO. 20210015-EI
PAGE 4

Based on the foregoing, it is hereby

ORDERED by Chairman Gary F. Clark, as Prehearing Officer, that Floridians Against Increased Rates, Inc.'s Requests for Confidential Classification of Document Nos. 06506-2021 and 08288-2021 are hereby denied. It is further

ORDERED that these documents shall be kept confidential until the time for filing an appeal of this Order has expired, and, upon request, through completion of judicial review.

By ORDER of Chairman Gary F. Clark, as Prehearing Officer, this 6th day of August, 2021.



GARY F. CLARK
Chairman and Prehearing Officer
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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.

BYL

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.