

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Conservation Cost) DOCKET NO. 910002-EG
Recovery Clause.) ORDER NO. 24533
) ISSUED: 5/15/91
_____)

ORDER ON CONFIDENTIALITY

On December 27, 1990, the Florida Public Service Commission issued Staff's First Set of Interrogatories (Nos. 1-16) in this docket. Interrogatory No. 4 of this set of interrogatories requires Florida Power & Light (FP&L) to produce all of its advertising contracts currently held for the purpose of conservation advertising. FP&L's contract with Beber Silverstein & Partners (Beber contract) falls within this category. Because the Beber contract contains "proprietary confidential business information," FP&L filed a request (Document No. 1805-91) on February 22, 1991, to classify certain portions of the Beber contract as confidential.

Florida law provides, in Section 119.01, Florida Statutes, 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. This law derives from the concept that government should operate in the "sunshine." In the instant matter, the value that all parties would receive by examining and utilizing the information contained in this document must be weighed against the legitimate concerns of FP&L regarding disclosure of business information which it considers proprietary. It is our view that parties must meet a very high burden when requesting confidential classification of documents.

Pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, FP&L has the burden to show that the material submitted is qualified for confidential classification. Rule 25-22.006, Florida Statutes, provides that the Company may fulfill its burden by demonstrating that the information falls under one of the statutory examples set out in Section 366.093, Florida Statutes, or by demonstrating that the information is proprietary confidential information, the disclosure of which will cause the Company or its ratepayers harm.

Section 366.093(3)(d), Florida Statutes, provides several examples of proprietary confidential business information. Included in this list is "[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." To establish that material is

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proprietary confidential business information under Section 366.093(d), Florida Statutes, a utility must demonstrate (1) that the information is contractual data, and (2) that the disclosure of the data would impair the efforts of the utility to contract for goods or services on favorable terms. We have previously recognized that this latter requirement does not necessitate the showing of actual impairment, or the more demanding standard of actual adverse results; instead, it must simply be shown that disclosure is "reasonably likely" to impair the company's contracting for goods or services on favorable terms.

FP&L requested that the highlighted portions of lines 11 through 16 on page B1 of Appendix B be classified as confidential. This information sets forth the hourly rates for advertising work for various employee classifications of the Beber agency. Also, FP&L requested that the highlighted portions of lines 1 through 4, 6, and 10, on page B2 of Appendix B be classified as confidential. This information sets forth the commission rates for work to be done or supervised by Beber.

We find that this highlighted information is contractual data. We also find that disclosure of this information is reasonably likely to impair FP&L's efforts to contract for these services on favorable terms in the future. If public disclosure is made, advertising agencies may not offer FP&L their best rates since doing so could materially affect their business with clients that do not have the market presence of FP&L. This would result in increased advertising expenses to the detriment of FP&L's ratepayers. Furthermore, we find that this information is intended to be, and is treated by FP&L as private, and it has not otherwise been publicly disclosed.

Because FP&L has met the burden of proving that this information is confidential, and because the merits of confidential classification outweigh the merits of public disclosure in this instance, we find that the highlighted portions of lines 11 through 16 on page B1 of Appendix B, and that the highlighted portions of lines 1 through 4, 6, and 10, on page B2 of Appendix B, is proprietary confidential business information.

The return of this information to FP&L shall be handled according to the procedure found in Rule 25-22.006, Florida Administrative Code, and in Section 366.093, Florida Statutes. .

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DECLASSIFICATION

Rule 25-22.006(8)(a), Florida Administrative Code, provides that information classified as proprietary confidential business information shall remain so for a period not to exceed 18 months; however, we may extend this period if we find that a longer period is necessary to protect the ratepayers or the business operations of the utility.

We find that FP&L has shown good cause why this information should be classified for a period longer than 18 months. The highlighted portions of lines 11 through 16 on page B1 of Appendix B, and the highlighted portions of lines 1 through 4, 6, and 10, on page B2 of Appendix B, shall be classified as proprietary confidential business information until June 31, 1993. FP&L should conclude negotiations for a new advertising contract by this date. We find that disclosure before this date could impair FP&L's ability to contract for advertising services.

Based on the foregoing, it is,

ORDERED by the Florida Public Service Commission that the highlighted portions of lines 11 through 16 on page B1 of Appendix B, and the highlighted portions of lines 1 through 4, 6, and 10, on page B2 of Appendix B, is proprietary confidential business information. It is further

ORDERED that the highlighted portions of lines 11 through 16 on page B1 of Appendix B, and the highlighted portions of lines 1 through 4, 6, and 10, on page B2 of Appendix B, shall be classified as proprietary confidential business information until June 31, 1993.

By ORDER of Commissioner Betty Easley, as Prehearing Officer, this 15th day of MAY, 1991.


BETTY EASLEY, Commissioner
and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration from the full Commission within 14 days pursuant to Rule 25-22.006(3), Florida Administrative Code, for rulings on confidentiality issued by a Prehearing Officer; 2) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, for any rulings on issues other than confidentiality if issued by a Prehearing Officer; 3) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 4) 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 sewer utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, 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.