

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Petition by Florida Power & Light )  
Light Company for Rate Unification and for ) DOCKET NO. 20210015-EI  
Base Rate Increase ) FILED: August 16, 2021  
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**FLORIDIANS AGAINST INCREASED RATES, INC.’S MOTION FOR  
RECONSIDERATION OF ORDER NO. PSC-2021-0299-PCO-EI DENYING  
REQUEST FOR CONFIDENTIAL CLASSIFICATION**

Floridians Against Increased Rates, Inc. (“FAIR”), pursuant to Rule 25-22.0376, Florida Administrative Code (“F.A.C.”), and the notice provisions of Commission Order No. PSC-2021-0299-PCO-EI (“Order Denying Confidential Classification” or simply “Order”), issued on August 6, 2021, hereby respectfully files FAIR’s Motion for Reconsideration of the subject Order. In the interest of time, FAIR seeks review and reconsideration by the full Commission (which is assigned to this docket). In summary, FAIR respectfully submits that the Order overlooked or misapprehended the factual nature of the information for which FAIR seeks confidential classification, which FAIR submits is, on its face, the “sensitive personally identifiable information” of FAIR’s members. FAIR further submits that the Order overlooked, as a point of law, that FAIR’s requests for confidential classification fall squarely within the scope of, and satisfy, the basic requirements of Section 366.093, Florida Statutes. As grounds for the requested relief, FAIR further states as follows.

## **BACKGROUND**

FAIR has submitted to the Commission two of its membership rosters, on different dates (June 21, 2021, and July 23, 2021) and contemporaneously with each, FAIR submitted requests for confidential classification<sup>1</sup> of certain specified information contained in each of these membership rosters. Because FAIR's membership has grown over time these two lists contain different numbers of members. The members' information in the lists includes, among other information, the members' names, mailing street addresses, email addresses, business address if applicable, and (for a significant number of members), telephone numbers. The foregoing is the information for which FAIR seeks confidential classification. The rosters also include the member's city where it receives electric service from a Florida utility, the state (Florida), the ZIP code, the utility that serves the member, and whether the member applied on-line or via a hard-copy of pdf of a paper application. FAIR has not sought and does not seek confidential classification of this latter information.

On August 6, 2021, the Commission issued the Order Denying Confidential Classification, apparently based on conclusions that the "information in FAIR's Corrected Request and Second Request . . . does not contain sensitive personally

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<sup>1</sup> FAIR's Corrected Request for Confidential Classification, PSC Document No. 08288-2021, was submitted on July 23, 2021, and FAIR's Second Request for Confidential Classification, 06506-2021, was submitted on June 21, 2021. These are hereinafter referred to as "FAIR's Requests."

identifiable information, such as account numbers, credit scores, rates, billing determinants, conservation savings or bills,” Order Denying Confidential Classification at 3, and that FAIR did not explain how the ratepayers’ – here all of FAIR’s members are ratepayers of Florida investor-owned utilities – or the petitioner’s business operations would be harmed by disclosure. Id.

### **STANDARD OF REVIEW**

The standard of review applicable to a motion for reconsideration is whether the motion identifies a point of fact or law that was overlooked or that the Commission failed to consider in making the decision of which reconsideration is sought. Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981).

### **ARGUMENT**

The Order Denying Confidential Classification overlooked or misapprehended the factual nature of the information that FAIR seeks to protect, and the Order further appears to have overlooked the relevant legal facts that FAIR’s claims are squarely within the non-exclusive scope of Section 366.093, Florida Statutes, and that FAIR’s assertion that its membership roster comprises FAIR’s trade secret information should result in the Commission granting confidential classification as requested.

While more detail might have been desirable, FAIR believes and respectfully submits that the information for which confidential protection is sought qualifies on

its face as appropriately protected confidential information, and that FAIR's allegations provide sufficient basis upon which the Commission should grant the requested treatment. FAIR further respectfully asks that the Commission consider the harms that would result from denial: First, the information in FAIR's membership rosters is, for all practical purposes, a *mailing list* with the members' street addresses and email addresses, and denial of FAIR's Requests would result in making FAIR's members being exposed to direct mailings and e-mailings. Second, disclosing FAIR's membership roster, which is directly analogous to the "list of customers" that is expressly within the scope of protected, or at least protect-able, information under Section 812.081, Florida Statutes, would harm FAIR's interests in conducting its business operations by revealing its members' sensitive personal confidential information contrary to FAIR's policy not to disclose it and also by exposing FAIR to the consequences of anyone using FAIR's membership roster – the equivalent of a customer list – to directly contact members for whatever reasons anyone gaining access to the list might have.

I. The Commission Should Protect the Sensitive Personally Identifiable Information of FAIR's Members.

The information for which FAIR seeks confidential classification is, on its face, sensitive personally identifiable information. FAIR seeks protection of its members' names, street mailing addresses, email addresses, and, to the extent applicable, telephone numbers and business names where members have provided that

information. FAIR respectfully asserts that, where the Order stated, “The information in FAIR’s Corrected Request and Second Request . . . does not contain sensitive personally identifiable information, such as account numbers, credit scores, rates, billing determinants, conservation savings or bills,” the Order overlooked the facts of what information would be disclosed, and instead focused on a list of certain information, none of which is present here, that would also include sensitive, personally identifiable information (account numbers, bill information, and the like). The Order appears to accept the legal premise that “sensitive personally identifiable information” is appropriately protected from disclosure. FAIR submits that, accepting this premise, reconsideration should be granted and confidential classification should be afforded to the information of FAIR’s members. The scope of sensitive personally identifiable information is not limited to the types of information listed in the Order; it is inarguable that a person’s name, address, email address, and telephone number constitute personally identifiable information, and it is at best difficult to argue that the disclosure of this information would not be sensitive to many individuals.

The Commission should grant reconsideration and the requested confidential classification of this sensitive personally identifiable information of FAIR’s members.

**II. FAIR’s Membership Roster Should be Treated as a “List of Customers” Protected from Disclosure as a Trade Secret.**

FAIR appropriately alleged that its membership roster is FAIR’s trade secret information, consistent with the specific requirements of Section 366.093, Florida

Statutes. Corrected First Request at 2, Declaration of Michael Hightower. In this regard, FAIR's membership roster is, for all practical purposes, and on its face, the equivalent of a "list of customers," which is one of the identified types of trade secret information in Section 812.081, Florida Statutes. FAIR's declarant stated that the information contains FAIR's trade secrets. Id. The requirements of Section 812.081, Florida Statutes, are that the information must be secret, of value, used in the business of the owner of the information, and of advantage to the business. FAIR specifically alleged that the information "constitutes FAIR's trade secrets," Corrected First Request at 2, Declaration of Michael Hightower at 1, that FAIR has a policy of not disclosing this information, Corrected First Request at 3, and that it has not voluntarily disclosed the information to anyone except as required in the course of this docket. Id.

The Commission should recognize that FAIR's membership rosters are, for all practical purposes, a "list of customers" that should be protected under Sections 366.093 and 812.081, Florida Statutes, and the Commission should accordingly grant reconsideration and the requested confidential classification of FAIR's membership rosters.

III. Considering the Harms That Would Result from Disclosure, the Commission Should Grant the Requested Reconsideration and Confidential Classification.

The plain intent of Section 366.093, Florida Statutes, is to afford protection from public disclosure of information that "is intended to be and is treated by the

person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations." Section 366.093(3), Florida Statutes. Thus, FAIR submits that the Commission should consider the harms that would result from disclosure of its members' personal information, which FAIR again believes and asserts is clearly "sensitive personally identifiable information."

From the perspective of FAIR's members, disclosure of their mailing addresses, email addresses, and telephone numbers would be equivalent to giving away FAIR's mailing list, which would expose FAIR's members to being peppered with unwanted emails or regular mail, or telephone calls, by persons who would otherwise be wholly unauthorized to know this information or their status as FAIR members.

From the perspective of FAIR itself, the membership roster is, for all practical purposes, FAIR's customer list, one of the specific types of information that is subject to protection under Section 812.081, Florida Statutes. FAIR appropriately alleged that the personal information – but not the other information contained in the roster that is not personally identifiable – is FAIR's trade secret information, the disclosure of which would harm FAIR's operations, by disclosing FAIR's members' personal information to unauthorized persons and likely by impairing FAIR's ability to recruit members. (FAIR's policy, announced to its members, that it will not voluntarily disclose their information would be undermined or nullified, which can only harm

FAIR's ability to recruit new members.) Again, FAIR believes and asserts that these allegations and the specific nature of the information are sufficient to warrant the requested grant of confidential classification.

### **CONCLUSION AND RELIEF REQUESTED**

As explained in its Requests, FAIR alleged that it treats the information in its membership rosters for which it seeks confidential classification as its confidential proprietary information and that it constitutes FAIR's trade secret information, equivalent to information in a list of customers. As explained above, the names, street addresses, email addresses, and telephone numbers of FAIR's members are, on their face, the sensitive personally identifiable information of the members, and the potential harm of allowing FAIR's membership list to be used by anyone, whether authorized by FAIR or not, should result in the Commission granting the requested confidential classification of this information.

**WHEREFORE**, Floridians Against Increased Rates, Inc., respectfully requests that the Commission grant reconsideration of the Order Denying Confidential Classification and grant the requested confidential classification of its members' information for which such protection is sought.

Respectfully submitted this 16th day of August, 2021.

**/s/ Robert Scheffel Wright**

Robert Scheffel Wright

[schef@gbwlegal.com](mailto:schef@gbwlegal.com)

John T. LaVia, III

[jlavia@gbwlegal.com](mailto:jlavia@gbwlegal.com)

Gardner, Bist, Bowden, Dee, LaVia, Wright, Perry & Harper, P.A.

1300 Thomaswood Drive

Tallahassee, Florida 32308

Telephone (850) 385-0070

Facsimile (850) 385-5416

Attorneys for Floridians Against Increased Rates, Inc.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished

by electronic mail on this 11th day of August, 2021, to the following:

### **Florida Power & Light Company**

Kenneth A. Hoffman  
134 W. Jefferson Street  
Tallahassee, FL 32301  
(850) 521-3901  
(850) 521-3939  
[ken.hoffmann@fpl.com](mailto:ken.hoffmann@fpl.com)  
Represented By: Gulf Power Company

### **Florida Power & Light Company**

Wade Litchfield/John  
Burnett/Maria Moncada  
700 Universe Boulevard  
Juno Beach, FL 33408-0420  
(561) 691-7101  
(561) 691-7135  
[wade.litchfield@fpl.com](mailto:wade.litchfield@fpl.com)  
[john.t.burnett@fpl.com](mailto:john.t.burnett@fpl.com)  
[maria.moncada@fpl.com](mailto:maria.moncada@fpl.com)  
Represented By: Gulf Power  
Company

### **Gulf Power Company (Pensacola)**

Russell A. Badders  
One Energy Place  
Pensacola, FL 32520-0100  
(850) 444-6550  
[Russell.Badders@nexteraenergy.com](mailto:Russell.Badders@nexteraenergy.com)  
Represents: Florida Power & Light  
Company

### **Office of Public Counsel**

Richard Gentry/Patricia A.  
Christensen/Anastacia Pirrello  
c/o The Florida Legislature  
111 W. Madison St., Rm 812  
Tallahassee FL 32399  
(850) 488-9330  
(850) 487-6419  
[christensen.patty@leg.state.fl.us](mailto:christensen.patty@leg.state.fl.us)  
[GENTRY.RICHARD@leg.state.fl.us](mailto:GENTRY.RICHARD@leg.state.fl.us)  
[PIRRELLO.ANASTACIA@leg.state.fl.us](mailto:PIRRELLO.ANASTACIA@leg.state.fl.us)

### **AARP Florida**

Zayne Smith  
360 Central Ave., Suite 1750  
Saint Petersburg, FL 33701  
(850) 228-4243  
[zamith@aarp.org](mailto:zamith@aarp.org)

### **Broward County**

Jason Liechty  
115 S. Andrews Ave., Room 329K  
Fort Lauderdale, FL 33301  
(954) 519-0313  
[JLIECHTY@broward.org](mailto:JLIECHTY@broward.org)

### **Earthjustice**

Bradley Marshall/Jordan Luebke  
111 S. Martin Luther King Jr. Blvd.  
Tallahassee, FL 32301  
(850) 681-0031  
(850) 681-0020  
[bmarshall@earthjustice.org](mailto:bmarshall@earthjustice.org)  
[jluebke@earthjustice.org](mailto:jluebke@earthjustice.org)  
Represents: Florida Rising, Inc./League of  
Latin American Citizens of Florida;  
Environmental Confederation of  
Southwest Florida, Inc.

### **Environmental Confederation of Southwest Florida**

421 Verna Road  
Miami, FL 33193  
Represented By: Earthjustice

### **Federal Executive Agencies**

T. Jernigan/Maj. H. Buchanan/Capt.  
R. Friedman/TSgt. A. Braxton/E.  
Payton  
139 Barnes Drive, Suite 1  
Tyndall AFB, FL 32403  
(850) 283-6663  
[ebony.payton.ctr@us.af.mil](mailto:ebony.payton.ctr@us.af.mil)  
[thomas.jernigan.3@us.af.mil](mailto:thomas.jernigan.3@us.af.mil)  
[ULFSC.Tyndall@us.af.mil](mailto:ULFSC.Tyndall@us.af.mil)  
[holly.buchanan.1@us.af.mil](mailto:holly.buchanan.1@us.af.mil)  
[robert.friedman.5@us.af.mil](mailto:robert.friedman.5@us.af.mil)  
[arnold.braxton@us.af.mil](mailto:arnold.braxton@us.af.mil)

**Florida Consumer Action Network**

Bill Newton  
[billn@fcan.org](mailto:billn@fcan.org)

**Florida Industrial Power Users Group**

Jon C. Moyle, Jr./Karen A. Putnal  
c/o Moyle Law Firm  
118 North Gadsden Street  
Tallahassee, FL 32301  
(850) 681-3828  
(850) 681-8788  
[jmoyle@moylelaw.com](mailto:jmoyle@moylelaw.com)  
[kputnal@moylelaw.com](mailto:kputnal@moylelaw.com)  
[mqualls@moylelaw.com](mailto:mqualls@moylelaw.com)

**Florida Retail Federation**

227 South Adams St.  
Tallahassee, FL 32301  
(850) 222-4082  
(850) 226-4082  
Represented by: Stone Law Firm

**Florida Rising, Inc.**

10800 Biscayne Blvd., Suite 1050  
Miami, FL 33161  
Represented By: Earthjustice

**League of United Latin American Citizens of Florida**

6041 SW 159 CT  
Miami, FL 33193  
Represented By: Earthjustice

**Stone Law Firm**

James Brew/Laura Baker/Joseph  
Briscar  
1025 Thomas Jefferson St., NW, Ste.  
800 West  
Washington DC 20007  
(202) 342-0800  
(202) 342-0807  
[jbrew@smxblaw.com](mailto:jbrew@smxblaw.com)  
[lwb@smxblaw.com](mailto:lwb@smxblaw.com)  
[jrb@smxblaw.com](mailto:jrb@smxblaw.com)  
Represents: Florida Retail Federation

**Southern Alliance for Clean Energy**

P.O. Box 1842  
Knoxville TN 37901  
(865) 637-6055  
Represented By: George Cavros

**Daniel R. and Alexandria Larson**

16933 W. Harlena Dr.  
Loxahatchee FL 33470  
Represented By: Nathan A. Skop

**George Cavros**

120 E. Oakland Park Blvd., Suite 105  
Fort Lauderdale FL 33334  
(954) 295-5714  
[george@cavros-law.com](mailto:george@cavros-law.com)  
Represents: Southern Alliance for  
Clean Energy

**Vote Solar**

Katie Chiles Ottenweller  
838 Barton Woods Rd. NE  
Atlanta, GA 30307  
(706) 224-8017  
[katie@votesolar.org](mailto:katie@votesolar.org)

**Nathan A. Skop**

420 NW 50th Blvd.  
Gainesville FL 32607  
(561) 222-7455  
[n\\_skop@hotmail.com](mailto:n_skop@hotmail.com)  
Represents: Daniel R. and  
Alexandria Larson

**Christina I. Reichert**

Earthjustice  
4500 Biscayne Blvd., Ste. 201 Miami,  
FL 33137  
[creichert@earthjustice.org](mailto:creichert@earthjustice.org)  
[flcaseupdates@earthjustice.org](mailto:flcaseupdates@earthjustice.org)

**/s/ Robert Scheffel Wright**

ATTORNEY