

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Rates and Charges)	DOCKET NO. 900038-EI
of Florida Power and Light Company.)	ORDER NO. 24802
_____)	ISSUED: 7-11-91

ORDER ON CONFIDENTIALITY

BY THE COMMISSION:

During our review of Florida Power & Light Company's (FPL) minimum filing requirements, Commission Staff requested access to various FPL records. FPL argues that certain information obtained by Commission Staff during this investigation is confidential pursuant to Rule 25-22.006, Florida Administrative Code, and Section 366.093, Florida Statutes. Accordingly, on December 28, 1990, FPL filed a Request for Confidential Classification of Certain Material Obtained During the Commission's Review of FPL's Minimum Filing Requirements (Document No. 11401-90).

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 FPL 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, FPL 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), Florida Statutes, provides several examples of proprietary confidential business information. Included in this list are "[i]nternal auditing controls and reports of internal auditors." Section 366.093(3)(b), Florida Statutes.

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FPL argues that Attachment A (Document Nos. 11379-90 and 11402-90) to FPL's request for confidentiality is an internal audit. The material in Attachment A was obtained from FPL in response to the Commission Staff's Document/Record Request No. 41, dated November 27, 1990. The response was obtained by Commission Staff from the reports of FPL's internal auditors, and the internal auditor's supporting work papers. The FPL internal auditors were investigating fraudulent acts for the period January 1989 through November 1990. We find that this information in Attachment A is intended to be and is treated by FPL as confidential, that this information has not been publicly disclosed, and that it has been circulated to a select few FPL employees on a need to know basis only. We also find that all of the material in Attachment A was extracted from an internal audit, and accordingly, it meets the definition of proprietary confidential information, pursuant to Section 366.093(3)(b), Florida Statutes.

In addition to internal audits, "[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" is also listed as proprietary confidential business information. Section 366.093(3)(d), Florida Statutes.

To establish that material is proprietary confidential business information under Section 366.093(3)(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.

FPL argues that the highlighted material found in Attachment B (Document Nos. 11379-90 and 11402-90) is contractual data, and that disclosure of the information is reasonably likely to impair FPL's ability to contract for goods and services. Attachment B was filed in response to Staff's Document/Record Request No. 49. The highlighted information in the response came from a FPL purchase order for the purchase of computer software. We find that disclosure of the purchase price would be reasonably likely to impair FPL's efforts to contract for computer software services on

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favorable terms in the future. Currently, computer firms are willing to provide price concessions to FPL, due to the Company's presence in the software market. However, if this contractual pricing information were to be made public, it would be reasonably likely that FPL would be unable to gain price concessions in the future. We find that FPL has treated this pricing data as confidential information, as it is FPL's policy to not disclose the terms and conditions of its negotiated contracts. We also find that page 1, lines marked 1 and 2, and page 2, lines marked 1 and 2, shall be classified as proprietary confidential business information, pursuant to Section 366.093(3)(d), Florida Statutes, because the information is contractual data, the disclosure of which would be reasonably likely to impair FPL's efforts to contract for computer software services on favorable terms in the future.

We note that FPL filed an Addendum on January 7, 1991, and attached to this Addendum was Audit Disclosure No. III (Document No. 227-91), which was produced by Commission staff, and which contained the confidential pricing information in Attachment B, discussed above. In addition, on June 17, 1991, FPL filed another copy of Audit Disclosure No. III (Document No. 6205-91) which was more legible than the original filing. This Audit Disclosure was partly derived from the confidential contractual data in Attachment B. Accordingly, the confidential data on Audit Disclosure No. III will also be afforded the same confidential treatment as the confidential data in Attachment B.

We also note that because we find the highlighted information in Attachment B to be proprietary confidential business information under Section 366.093(3)(d), Florida Statutes, we decline to rule on whether this same information is also confidential under Section 366.093(3)(e), Florida Statutes.

The Florida Legislature has also defined "[e]mployee personnel information unrelated to compensation, duties, qualifications, or responsibilities" as proprietary confidential business information." Section 366.093(3)(f), Florida Statutes.

FPL argues that the highlighted portions of Attachment C (Document Nos. 11379-90 and 11402-90) to FPL's request is employee personnel information, unrelated to compensation, duties, qualifications, or responsibilities. FPL filed Attachment C in response to Staff's Document/Record Request No. 54. The material in Attachment C is a confidential summary of a labor grievance

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arbitration. We find that the arbitration of a grievance between FPL and the International Brotherhood of Electrical Workers, for theft by an employee, is not related to that employee's compensation, duties, qualifications, or responsibilities. The portions of the summary which were highlighted were specified so that the confidentiality of the name, job title, and other personal information of the terminated employee would remain confidential. Specifically, the highlighted portions of lines 3, 5, 6, 9, 19, 23, and 24 state the name of the employee, the job title of the employee, the date the employee was discharged, and the date the employee's hearing was held. This information could be used in conjunction with other publicly disclosed information to identify the name of the terminated employee. We find that it is FPL's policy to maintain the confidentiality of those employees who are discharged or terminated by FPL, and that this material is intended to be, and is treated by FPL as confidential. This highlighted information has not been publicly disclosed; it has been circulated to a select few employees of FPL on a need to know basis only. Accordingly, we find that the highlighted portions of lines 3, 5, 6, 9, 19, 23, and 24 are employee personnel information, unrelated to compensation, duties, qualifications, or responsibilities, pursuant to Section 366.093(3)(f), Florida Statutes.

The confidential information in Attachments A, B, and C to FPL's request for confidentiality shall be returned according to the procedures found in Rule 25-22.006, Florida Administrative Code, and in Section 366.093, Florida Statutes.

Finally, we find that the confidential information discussed in the body of this Order shall be classified as proprietary confidential business information for a period not longer than 18 months, as is specified in Section 366.093(4), Florida Statutes, and in Rule 25-22.006(8), Florida Administrative Code.

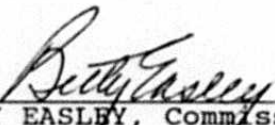
It is, therefore,

ORDERED by the Florida Public Service Commission that the specified information in Attachments A, B, and C to Florida Power & Light Company's Request for Confidential Classification, as discussed in the body of this Order, is proprietary confidential business information, and that it shall be afforded confidential classification pursuant to Section 366.003, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. It is further

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ORDERED that this information shall be classified as proprietary confidential business information for a period not longer than 18 months.

By ORDER of Commissioner Betty Easley, as Prehearing Officer, this 11th day of July, 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 within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) 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

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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.