

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 080677-EI  
ORDER NO. PSC-09-0568A-CFO-EI  
ISSUED: September 1, 2009

AMENDATORY ORDER

BY THE COMMISSION:

On August 20, 2009, this Commission issued Order No. PSC-09-0568-CFO-EI, denying Florida Power & Light Company's Second Revised Request for Confidential Classification of Document No. 08412-09. This Order corrects scrivener's errors contained on pages 7, 8, and 10 of Order No. PSC-09-0568-CFO-EI. The corrected Order attached hereto as Attachment A, and incorporated herein, amends and replaces Order No. PSC-09-0568-CFO-EI.

It is, therefore,

ORDERED by the Florida Public Service Commission that Order No. PSC-09-0568-CFO-EI is hereby amended as set forth in the body of this Order and is replaced by this Order. It is further

ORDERED that Attachment A to this Order is incorporated herein by reference. It is further

ORDERED that Order No. PSC-09-0568-CFO-EI is affirmed in all other respects.

By ORDER of the Florida Public Service Commission this 1st day of September, 2009.



ANN COLE  
Commission Clerk

(SEAL)

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DOCUMENT NUMBER DATE

09090 SEP-18

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 080677-EI  
ORDER NO. PSC-09-0568-CFO-EI  
ISSUED: August 20, 2009

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman  
LISA POLAK EDGAR  
KATRINA J. McMURRIAN  
NANCY ARGENZIANO  
NATHAN A. SKOP

ORDER DENYING REQUEST FOR CONFIDENTIAL CLASSIFICATION  
(DOCUMENT NO. 08412-09)

BY THE COMMISSION:

Background

Our staff sought discovery concerning executive compensation in this rate case, ultimately seeking certain compensation information for the executives of Florida Power & Light Company (FPL or company) whose total compensation exceeds \$165,000. On July 21, 2009, FPL timely filed a Request for Confidential Classification of Staff's Third Set of Interrogatories No. 16 and Staff's Fourth Set of Interrogatories No. 32 and Request for Determination by Full Commission. On July 27, 2009, FPL filed its Revised Request for Confidential Classification of Staff's Third Set of Interrogatories No. 16, Staff's Fourth Set of Interrogatories No. 32, and Staff's Eighth Set of Interrogatories No. 97 and Request for Determination by Full Commission.

On August 6, 2009, our staff requested specific supplements to FPL's responses to the discovery at issue. To seek confidential classification for its supplemental responses to the discovery, on August 13, 2009, FPL and its intervenors filed a Second Revised Request for Confidential Classification of Staff's Third Set of Interrogatories Nos. 16-17, Staff's Fourth Set of Interrogatories No. 32, and Staff's Eighth Set of Interrogatories No. 97 (Second Revised Request) and Request for Determination by Full Commission. This Second Revised Request, and all exhibits attached thereto, replace and supersede FPL's July 21 and July 27, 2009, requests for confidential classification.

FPL requests that the Exhibits A, B, and C that were previously provided be returned to FPL and be replaced with those attached to the Second Revised Request. Exhibit A consists of documents for which FPL seeks confidential treatment with the confidential information highlighted (Document No. 08412-09); Exhibit B consists of edited versions of the documents

with the confidential information redacted; and Exhibit C is a table containing a line-by-line and page-by-page identification of the information for which confidential treatment is sought and references to the specific statutory basis or bases for the claim of confidentiality and to the affidavit in support of the requested classification. In the Second Revised Request, FPL incorporates by reference the Exhibit D previously provided, which is a copy of the affidavit of Kathleen Slattery, attesting to the detrimental impacts FPL anticipates as a result of the public disclosure of the information.

By its Second Revised Request, FPL requests that certain employee salary information be afforded confidential classification pursuant to section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.). Section 366.093, F.S., sets out exceptions from Chapter 119, F.S. (the Public Records Act), for certain proprietary confidential business information filed with the Commission, and states, in relevant part, that

[p]roprietary confidential business information includes, but is not limited to:

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(e) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

(f) Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities.

Pursuant to Rule 25-22.006(10), F.A.C., if this Commission denies a request for confidential classification, the material at issue is kept confidential until the time for filing an appeal has expired, and the utility or other person may request continued confidential treatment until juridical review is complete.

Progress Energy Florida, Inc. (PEF) also sought confidential treatment for similar employee compensation information sought by our staff in Docket No. 090079-EI.<sup>1</sup> Because of the similarity of the issues between FPL and PEF and to promote administrative efficiency and consistency of results, we granted FPL and PEF's Requests for Determination by Full Commission and ruled upon FPL's Second Revised Request at our August 18, 2009, agenda conference.

We have jurisdiction pursuant to section 366.093, F.S.

#### Second Revised Request for Confidential Classification

##### FPL's Request

By its Second Revised Request, FPL seeks confidential classification of certain employee compensation information which it claims is competitively sensitive and private information produced in response to Interrogatory Nos. 16 and 17 from Staff's Third Set of Interrogatories

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<sup>1</sup> In Re: Petition for increase in rates by Progress Energy Florida, Inc.

(Nos. 9-19), Interrogatory No. 32 from Staff's Fourth Set of Interrogatories (Nos. 20-35), and Interrogatory No. 97 from Staff's Eighth Set of Interrogatories (Nos. 96-97) (DN 07400-09 and DN 07694-09). In support of its request, FPL argues that the Legislature has determined that certain categories of information listed in subsections 366.093(3)(a) through (f), F.S., are automatically entitled to confidential treatment. FPL argues that the statute is equally clear that any information that meets the criteria of the statute as set forth in subsection 366.093(3) is entitled to be protected. That criteria includes that the information is owned or controlled by the company, is intended to be and is treated by the person or company as private, would cause harm to the ratepayers or the person or company's business operations, and has not been disclosed unless disclosed pursuant to some order or agreement that further protects the information from public disclosure. FPL argues that the information subject to this request meets these criteria and should be afforded confidential protection.

According to FPL, subsection 366.093(3)(f), F.S., entitles automatic protection to personnel information unrelated to compensation and nothing in that subsection precludes a determination that information related to compensation should be afforded confidential treatment if the relevant criteria are met, particularly given the competitively sensitive nature of the information and the harm to customers and the company's operations which would be a direct result of the disclosure.

FPL cites to a number of Commission orders in which this Commission has granted confidential classification to competitively sensitive compensation information from public disclosure under subsection 366.093(3)(e), F.S.<sup>2</sup> FPL argues that while having full access to as much individual compensation information as we deem appropriate to fulfill our regulatory functions, this Commission has consistently agreed that individual compensation information should not be, nor need be, publicly disclosed. FPL argues that the same principles should be upheld and applied in this instance. According to FPL, to do otherwise would be to disregard a longstanding fundamental respect for privacy that this Commission's actions in the past have maintained. FPL cites to Order No. PSC-02-0235-CFO-EI<sup>3</sup> as an example of where this Commission has recognized the competitively sensitive nature of certain types of compensation information in the past. By that Order, in denying confidential treatment over summary-level compensation information, this Commission stated that the information that was the subject of that request did not reveal "any specifics of compensation plans or compensation levels that would cause irreparable harm to [the utility's] competitive plans." The Commission further stated that "the information is given in total dollar amounts and percentages and does not reveal individual employees' names, levels, incentive compensation, or bonuses which would be competitively sensitive or confidential in nature."

FPL states that it has provided, in a publicly available manner, a variety of information related to employee compensation. Consistent with the requirements of the Securities Exchange Commission, FPL publicly discloses specific compensation information for its top officers. In this proceeding, FPL has provided data related to employees with salaries over \$165,000 as requested. FPL provided summary-level or aggregated data in a publicly available manner, and

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<sup>2</sup> See FPL's Second Revised Request for Confidential Classification at 4-5.

<sup>3</sup> Issued February 25, 2002, in Docket No. 010949-EI, In Re: Request for rate increase by Gulf Power Company.

has made the detail-level information, including names and positions, available to this Commission and to our staff. FPL states that it is requesting protection only for information whose public disclosure would cause the company and its customers irreparable harm.

FPL states that it operates within a highly competitive market for talented employees. Disclosure of compensation and incentive compensation information would enable competing employers to meet, or beat, the compensation offered by FPL. This would result in the loss of highly skilled and trained employees to competitors and the inability to attract new talent, or the need to increase the level of compensation and incentives already paid in order to retain these employees and attract new talent. Overall costs and performance will be affected by such disclosure as the company is forced to pay to retain, or pay to replace and train new employees. FPL states that for these same reasons, compensation information not otherwise required to be publicly disclosed by Securities and Exchange Commission rules is held to be confidential by any major company in the United States. According to FPL, such competitively sensitive information is entitled to protection pursuant to subsection 366.093(3)(e), F.S.

FPL further argues that confidential treatment for salary information linked with employee names is also necessary to protect the individual employees' rights to privacy. In Florida, a citizen's right to privacy is independently protected by Article V, § 23 of the state constitution. To protect the privacy interests of its employees who are not subject to the mandatory disclosure requirements of the Securities and Exchange Commission, FPL will continue to request confidential treatment for individual employees' salaries linked to their names and titles. FPL maintains this information as confidential and it has not been disclosed.

FPL requests that we determine that the information linking particular employees to their compensation information is entitled to protection pursuant to subsection 366.093(3)(e), F.S., or alternatively, that this information should be protected as confidential pursuant to our general authority granted by subsection 366.093(3), F.S.

#### Analysis and Ruling

When a statute is clear and unambiguous on its face, the courts will not look behind its plain language for legislative intent or resort to rules of statutory construction to ascertain intent.<sup>4</sup> Subsection 366.093(3), F.S., clearly and unambiguously defines what constitutes proprietary confidential business information. Pursuant to this subsection, proprietary confidential business information is information that is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that disclosure would cause harm to the ratepayers or to the person or company's business operations, and it must not have been disclosed except under certain circumstances as defined therein. The statute further provides, in subsection 366.093(3)(a)-(f), that proprietary confidential business information includes, but is not limited to, six specific types of information. Subsection 366.093(3)(f) plainly states that proprietary confidential business information includes "[e]mployee personnel information unrelated to compensation, duties, qualifications, or responsibilities."

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<sup>4</sup> Daniels v. FDOH, 898 So. 2d 61, 64 (Fla. 2005).

Therefore, pursuant to the clear and unambiguous language of the statute, employee personnel information that is unrelated to compensation, duties, qualifications, or responsibilities meets the definition of proprietary confidential business information so long as it is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that disclosure would cause harm to the ratepayers or to the person or company's business operations, and it has not been disclosed except under the circumstances as defined therein. Conversely, employee personnel information that is related to compensation, duties, qualifications, or responsibilities is expressly excluded from the definition of proprietary confidential business information. The information at issue pertains to employee compensation. Therefore, we find it unnecessary to determine whether disclosure of the information would cause harm to FPL's ratepayers or to its business operations, regardless of the fact that FPL argues that it would cause such harm.

By Order No. PSC-07-0579-CFO-WS at 3, this Commission found that it "has repeatedly, with very few exceptions [including those cases cited by FPL], denied confidential classification for information relating to salaries, compensation, duties, qualifications, or responsibilities."<sup>5</sup> Also by Order No. PSC-07-0579-CFO-WS at 3, this Commission ruled that "[b]ecause the salary information at issue is employee personnel information related to compensation, and the legislature in section 367.156(3)(f) specifically excluded that category of information from the statutory definition of proprietary business information, the information must be treated as public record pursuant to section 119.01, Florida Statutes."

FPL argues that we should determine that the information linking particular employees to their compensation information is entitled to protection pursuant to subsection 366.093(3)(e), F.S., or alternatively, that this information should be protected as confidential pursuant to our general authority granted by subsection 366.093(3), F.S. However, the language of 366.093(3)(f) clearly and unambiguously excludes the information at issue from the definition of proprietary confidential business information. Even assuming, for the sake of argument, that the statute were ambiguous such that the rules of statutory construction should apply, there is a well-established rule of statutory construction instructing that when two statutory provisions are in conflict, the specific statute controls over the general statute.<sup>6</sup> Under this rule of statutory construction, if we were to determine that the general language of subsection 366.093(3) conflicted with the specific language of subsection 366.093(3)(f), the specific language of subsection 366.093(3)(f) would control over the general language of subsection 366.093(3). Therefore, FPL's argument would fail even if the rules of statutory construction were to apply in this instance.

FPL argues that subsection 366.093(3)(f), F.S., entitles automatic protection to personnel information unrelated to compensation and nothing in that subsection precludes a determination that information related to compensation should be afforded confidential treatment if the relevant

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<sup>5</sup> See Order No. PSC-07-0579-CFO-WS, issued July 13, 2007, in Docket No. 060368-WS, In re: Application for increase in water and wastewater rates in Alachua, Brevard, Highlands, Lake, Lee, Marion, Orange, Palm Beach, Pasco, Polk, Putnam, Seminole, Sumter, Volusia, and Washington Counties by Aqua Utilities Florida, Inc. at 3, fn 2, for a string of citations to Commission orders denying confidential classification for such information.

<sup>6</sup> State Farm Mut. Auto. Ins. Co. v. Nichols, 932 So. 2d 1067, 1073 (Fla. 2006).

criteria are met. FPL is incorrect. Subsection 366.093(3)(f) clearly and unambiguously excludes such information from the definition of proprietary confidential business information. We lack the power to construe an unambiguous statute in a way that would extend or modify its express terms or its reasonable and obvious implications, as to do so would be an abrogation of legislative power.<sup>7</sup>

For the foregoing reasons, we hereby deny FPL and its employee intervenors' Second Revised Request for Confidential Classification of Staff's Third Set of Interrogatories Nos. 16-17, Staff's Fourth Set of Interrogatories No. 32, and Staff's Eighth Set of Interrogatories No. 97 (Document No. 08412-09). FPL shall provide in a publicly available manner, spreadsheets which, at a minimum, match the compensation information at issue to the specific job titles previously provided.

It is, therefore,

ORDERED by the Florida Public Service Commission that FPL and its employee intervenors' Second Revised Request for Confidential Classification of Staff's Third Set of Interrogatories Nos. 16-17, Staff's Fourth Set of Interrogatories No. 32, and Staff's Eighth Set of Interrogatories No. 97 (Document No. 08412-09) is denied. FPL shall provide in a publicly available manner, spreadsheets which, at a minimum, match the compensation information at issue to the specific job titles previously provided. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission this \_\_\_\_\_ day of

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ANN COLE  
Commission Clerk

( S E A L )

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<sup>7</sup> University of Florida, Bd. Of Trustees v. Sanal, 837 So. 2d 512, 516 (Fla. 1st DCA 2003).

CONCURRENCE BY: COMMISSIONER SKOP

COMMISSIONER SKOP, concurring specially with a separate opinion:

The instant case arises from the failure of FPL to comply with legitimate discovery requests which are relevant to the subject matter of the pending rate case and necessary to allow the Commission to perform its regulatory function. FPL advanced several legal arguments in opposition to providing the requested information. First, FPL argued that the compelled production of employee identifiable compensation information would violate the FPL Employee Intervenors' fundamental right of privacy afforded under Article I, Section 23 of the Florida Constitution. Second, FPL further asserted that the amount of compensation received by a specific FPL employee is irrelevant to the Commission's vested ratemaking authority and beyond the scope of the Commission's power to compel discovery. Finally, FPL argued that competitively sensitive data linking particular employees to their compensation is entitled to protection pursuant to subsection 366.093(3)(e), Florida Statutes. Based upon the record evidence before the Commission, I find the FPL arguments to be unpersuasive for the following reasons:

*The Requested Discovery Does Not Infringe Upon the Fundamental Right of Privacy*

The Constitution of the State of Florida provides for a fundamental right of privacy.<sup>8</sup> The fundamental right of privacy must be asserted by a natural person.<sup>9</sup> Although Florida law recognizes a legitimate expectation of privacy with respect to personal financial information, the right of privacy does not provide absolute immunity from governmental regulation and will yield to a compelling state interest in performing a regulatory function through the least intrusive means.<sup>10</sup> Furthermore, when seeking discovery necessary to perform a regulatory function, it is the purview of the Commission, not FPL, to determine what information is relevant.<sup>11</sup>

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<sup>8</sup> Art. I, § 23, Fla. Const. ("Every natural person has the right to be let alone and free from governmental intrusion into his private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.")

<sup>9</sup> Id.; see also Sieniarecki v. State, 756 So. 2d 68, 76 (Fla. 2000) (a daughter could not assert her mother's right to privacy under Fla. Const. Art. I, § 23).

<sup>10</sup> Winfield v. Division of Pari-Mutuel Wagering, 477 So. 2d 544, 548 (Fla. 1985); see also Woodward v. Berkery, 714 So. 2d 1027, 1035-37 (Fla. Dist. Ct. App. 4th Dist. 1997) (example of overreaching discovery). The instant case is readily distinguished from Woodward to the extent that the compelled discovery sought from FPL was reasonably calculated and narrowly tailored to obtain information relevant to the subject matter of the pending rate case and necessary to allow the Commission to perform its regulatory function.

<sup>11</sup> Winfield, 477 So. 2d at 548 ("To ensure that it has all of the information necessary for a complete investigation, the agency rather than the bank or depositor must calculate what is and what is not relevant."; further holding that the subpoena of private bank records without notice did not constitute an impermissible and unbridled exercise of legislative power when seeking relevant discovery necessary to perform a regulatory function.)

In the instant case, the requested discovery, as subsequently modified within the Motion to Compel, was reasonably calculated and narrowly tailored to lead to the discovery of information relevant to the subject matter of the pending rate case and necessary to allow the Commission to perform its regulatory function. Specifically, Attachment B to the Motion to Compel only required FPL to produce the relevant compensation information for each individual job title or position having a total compensation level equal to or exceeding \$165,000. FPL was not required to produce the individual employee names in conjunction with their respective compensation. It further stands to reason that FPL employee compensation information ceases to become personal information when the individual is not specifically named in relation to their compensation, and that FPL employees do not have a reasonable expectation of privacy with respect to their job title or position.<sup>12</sup> Accordingly, the requested discovery does not infringe upon the fundamental right of privacy afforded under Article I, Section 23 of the Florida Constitution because it was crafted in a manner that does not require the disclosure of personal financial information, does not require the disclosure of individual employee names, avoids a direct conflict with the constitutional provision, and fully respects concerns expressed by FPL and the FPL Employee Intervenors thereby rendering the constitutional question moot.<sup>13</sup>

*The Requested Discovery is Relevant*

It suffices to say that employee compensation is a major component of FPL operating expenses and represents a significant component of FPL base rates. In order to determine whether the portion of an employee's compensation allocated to FPL is reasonable, the Commission must assess whether the total compensation for that employee is reasonable. Based upon the failure of FPL to comply with legitimate discovery requests which are relevant to the subject matter of the pending rate case, the Commission is unable to determine the reasonableness of compensation allocations between FPL and FPL Group. Ultimately, this information impacts the revenue requirement, which translates into rates and charges. Accordingly, the discovery sought by the Commission is relevant and necessary to allow the Commission to perform its regulatory function.<sup>14</sup>

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<sup>12</sup> FPL alternatively argued that many job titles are held by only one or two people, so it is the equivalent of providing the specific names from a privacy perspective. This argument is nothing more than an impermissible attempt to expand the scope of existing case law and should be rejected. FPL employees do not have a reasonable expectation of privacy with respect to their job title or position even if compensation information could somehow be indirectly related back to an individual employee through the use of additional knowledge or deductive reasoning. While directly matching an employee with their compensation (i.e., name/compensation) may implicate privacy concerns, a one step removed or attenuated nexus (i.e., job title/compensation) is sufficient to protect the privacy interest.

<sup>13</sup> Having fully considered the privacy interest, including lengthy discussion at bench, and narrowly tailoring the discovery request to avoid infringing upon the right of privacy, the Commission can decide the instant case without reaching the constitutional question on the premise that section 366.093, Florida Statutes, is facially constitutional.

<sup>14</sup> The requested discovery would become irrelevant only if FPL were to withdraw its rate case or request for inclusion of these costs in rates; see also Fla. R. Civ. P. 1.280(b)(1).

Statutory Analysis

When a statute is clear and unambiguous on its face, courts will not look behind the plain language of the statute for legislative intent or resort to rules of statutory construction to ascertain intent.<sup>15</sup> Subsection 366.093(3)(f), Florida Statutes, plainly states that proprietary confidential business information includes “employee personnel information unrelated to compensation, duties, qualifications, or responsibilities”. Therefore, pursuant to the clear and unambiguous language of the statute, employee personnel information that is unrelated to compensation, duties, qualifications, or responsibilities meets the definition of proprietary confidential business information as long as it is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that disclosure would cause harm to the ratepayers or to the person or company’s business operations, and it has not been disclosed except under the circumstances as defined therein. Conversely, employee personnel information that is related to compensation, duties, qualifications, or responsibilities is expressly excluded from the definition of proprietary confidential business information.

FPL argued that the Commission should determine that the information linking particular employees to their compensation information is entitled to protection pursuant to subsection 366.093(3)(e), Florida Statutes, or alternatively, that this information should be protected as confidential pursuant to the general authority granted to the Commission by subsection 366.093(3), Florida Statutes. The language of subsection 366.093(3)(f), Florida Statutes, however, clearly and unambiguously excludes the information at issue from the definition of proprietary confidential business information. Even assuming, for the sake of argument, that the statute were ambiguous such that the rules of statutory construction should apply, there is a well-established rule of statutory construction instructing that when two statutory provisions are in conflict, the specific statute controls over the general statute. Under this rule of statutory construction, if the Commission were to determine that the general language of subsection 366.093(3) conflicted with the specific language of subsection 366.093(3)(f) then the specific language of subsection 366.093(3)(f) would control over the general language of subsection 366.093(3). Accordingly, the FPL argument would fail even if the rules of statutory construction were to apply in this instance.

FPL further asserted that subsection 366.093(3)(f), Florida Statutes, entitles automatic protection to personnel information unrelated to compensation and nothing in that subsection precludes a Commission determination that information related to compensation should be afforded confidential treatment if the relevant criteria are met. FPL is incorrect. Subsection 366.093(3)(f), Florida Statutes, clearly and unambiguously excludes such information from the definition of proprietary confidential business information. While the Commission clearly lacks the power to construe an unambiguous statute in a manner that would extend or modify its express terms, or its reasonable and obvious implications, the Commission may exercise its sole discretion as to the scope of relevant discovery in response to legitimate concerns regarding the

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<sup>15</sup> Daniels v. FDOH, 898 So. 2d 61, 64 (Fla. 2005).

need to safeguard competitively sensitive information.<sup>16</sup> In the instant case, the Commission properly exercised this discretion to the extent that it only required FPL to produce the relevant compensation information for each individual job title or position having a total compensation level equal to or exceeding \$165,000. The use of such discretion forms the basis of the interest balancing analysis which is further discussed below.

*Application of an Interest Balancing Test Promotes Sound Public Policy*

When struggling to balance various competing interests, courts often resort to adopting an interest balancing test. In the instant case, the application of an interest balancing test promotes sound public policy by considering the public interest served by the disclosure of compensation information when such compensation represents a major component of FPL operating expenses and impacts base rates. In articulating such a test, I would adopt the following guiding principals:

- Recognition of the fact that FPL is a regulated monopoly.
- The compelling and overarching public interest in the transparency and disclosure of compensation information above a specified total compensation threshold level.
- Disclosure of compensation information above a specified total compensation threshold level would not require the disclosure of individual employee names.
- The company interest in maintaining rank and file compensation information confidential for competitive reasons below a specified total compensation threshold level.

In the instant case, the Commission properly exercised its discretion by limiting the scope of discovery to the extent that it only required FPL to produce the relevant compensation information for each individual job title or position having a total compensation level equal to or exceeding \$165,000. Accordingly, the Commission's decision serves to achieve the appropriate balance between:

- Limiting the scope of discovery to that which is relevant to the subject matter of the pending rate case and necessary to allow the Commission to perform its regulatory function.
- Narrowly tailoring the discovery request to respect the fundamental right of privacy afforded under Article I, Section 23 of the Florida Constitution.

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<sup>16</sup> University of Florida, Bd. Of Trustees v. Sanal, 837 So. 2d 512, 516 (Fla. 1st DCA 2003); see also Winfield v. Division of Pari-Mutuel Wagering, 477 So. 2d 544, 548 (Fla. 1985) (“To ensure that it has all of the information necessary for a complete investigation, the agency rather than the bank or depositor must calculate what is and what is not relevant.”).

- Recognition of the compelling and overarching public interest in the transparency and disclosure of compensation information above a specified total compensation threshold level.
- Recognition of the company interest in maintaining rank and file compensation information confidential for competitive reasons below a specified total compensation threshold level.

Based upon the aforementioned discussion, I would respectfully hold that the Commission has properly exercised its authority to compel discovery of information relevant to the subject matter of the pending rate case and necessary to allow the Commission to perform its regulatory function through the least intrusive means.

In closing, the failure of FPL to comply with legitimate discovery requests which are relevant to the subject matter of the pending rate case substantially harms the ability of the Commission to perform its regulatory function. Furthermore, as astutely observed by Justice Pariente in Alterra, "...courts also must be alert to the possibility of a litigant raising a claim of the privacy rights of others as a subterfuge to prevent the disclosure of relevant information."<sup>17</sup> Based upon the record evidence before the Commission, the FPL arguments are not persuasive, and I would respectfully hold that the Commission has properly exercised its authority to compel discovery of information relevant to the subject matter of the pending rate case and necessary to allow the Commission to perform its regulatory function through the least intrusive means.

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<sup>17</sup> Alterra Healthcare Corp. v. Estate of Shelley, 827 So. 2d 936, 947 (Fla. 2002) (Pariente, J., concurring).

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.