

Dorothy Menasco

080677- EI

From: rpjrb@yahoo.com
Sent: Monday, November 08, 2010 3:32 PM
To: Filings@psc.state.fl.us; John.Butler@fpl.com
Subject: FW: Appeal to the Classification of the Provisional Electric Forecasted Earnings Surveillance Report ("Report") / Classification Document Number 08713-10
Attachments: Appealletterdated10202010ElectronicallyfiledPDF11082010.pdf

Dear Ann Cole, Office of Commission Clerk and Apryl Lynn, Division of Administrative Services and Mr. Butler,

Attached is the PDF filing for the appeal email that I have sent on Wednesday, October 20th, 2010 at 12:52 PM. The attached PDF file is to serve as the electronically filed document based upon the E-Filing requirements as per Florida Public Service Commission Electronic Filing Requirements.

I am sending this to the above email addresses only to meet the E-Filing requirements as per Florida Public Service Commission Electronic Filing Requirements

Thanks,

Robert H. Smith

Confidentiality Statement

The documents accompanying this telecopy transmission contain information which is confidential and/or legally privileged. The information is intended only for the use of the individual or entity named on this transmission sheet. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this telecopied information is strictly prohibited, and the documents should be returned. In this regard, if you received this telecopy in error, please contact the sender by reply E-mail and destroy all copies of the original.

DOCUMENT NUMBER DATE

09219 NOV-8 0

FPSC-COMMISSION CLERK

11/8/2010

Robert H. Smith
Ratepayer/Shareholder
11340 Heron Bay Blvd. #2523
Coral Springs, Florida 33076-1629

Ann Cole and Apryl Lynn
Office of Commission Clerk and
Division of Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

RE: Docket 080677-EI Appeal to the Classification of the Provisional Electric Forecasted Earnings Surveillance Report ("Report") / Classification Document Number 08713-10 and any other document filed that resembles an Earnings Surveillance report which is a normal operating report.

Dear Ms. Lynn:

Enclosed is Robert H. Smith's motion to Inspect and Examine Confidential Material, which I respectfully request based upon my Federal /State rights to inspect based upon the appeal below.

Copies of the appeal will be served to all parties that have a legal interest in the proceeding as outlined below.

Sincerely,

/S Robert H. Smith

DOCUMENT NUMBER DATE

09219 NOV-6 9

FPSC-COMMISSION CLERK

Before the Florida Public Service Commission

In re:

Docket No. 080677-EI

Complaint by Robert H. Smith ratepayer/shareholder) Emailed Filed October 20th, 2010
with a legal interest for the release of any classified) Electronically Filed November 8th, 2010
Earnings Surveillance reports that might have a legal)
impact on my legal interest in this proceeding as)
outlined by the appeal email dated October 20th, 2010)

MOTION TO INSPECT AND EXAMINE CONFIDENTIAL MATERIAL

From: rpjrb@yahoo.com [<mailto:rpjrb@yahoo.com>]
Sent: Wednesday, October 20, 2010 12:52 PM
To: Lisa Bennett <LBENNETT@PSC.STATE.FL.US>; 'Kimberley Pena'; 'John.Butler@fpl.com'
Cc: 'Office Of Commissioner Edgar'; 'Office of Commissioner Skop'; 'Office Of Commissioner Graham';
'Office of Commissioner Brisé'
Subject: Appeal to the Classification of the Provisional Electric Forecasted Earnings Surveillance Report
("Report") / Classification Document Number 08713-10

Dear Ms. Bennett, Ms. Pena and Mr. Butler,

I am concerned that the lack of transparency with the release of this Surveillance report might not allow for the proper questioning that might give rise to making sure that balance is being maintained between the shareholder's and ratepayers of this rate case proceeding. My prior experience with these types of proceedings up North has been that full transparency was always afforded to make sure that all potential questions were being allowed to be asked to ensure that the interests of all parties of this proceeding are being balanced, maintained and protected. Any lack of transparency might lead to a ruling that might not take into account additional pertinent questions that might benefit ratepayers and/or shareholders. Balance in this proceeding should be fully afforded by full transparency.

I would respectfully request a copy of the forecasted provisional Electric Forecasted Earnings Surveillance Report. I feel that as an interested party with a legal interest in these proceedings from both a ratepayer and shareholder perspective that I would have legal basis to be afforded full transparency with the release of this document prior to the ruling. There are prior emails that have not been answered in its entirety regarding forecast assumptions in this case. If there is any future cost reductions to the cost of service of the company (i.e. interest savings etc.) that have not been modeled in this classified report then there might be additional adjustments that would have to be taken into account before a ruling can be made

Why would this information be hidden from a person with a legal interest in this proceeding? This is both from a ratepayer and shareholder perspective.

DOCUMENT NUMBER DATE

09219 NOV-8 0

FPSC-COMMISSION CLERK

This email is to serve as the appeal under 25-22.006 (7) (a) of the Florida Administrative Code based upon the concerns that have been outlined in the email(s) below. Under Section 119.07(1) of the Florida Statutes access to this information by an inspection should be granted.

Furthermore I am requesting this information under Title 5 of §557(d) (1), §557(a), §556, §553(c), §554(a) of the Administrative Procedure Act.

§557(d) (1) prohibits ex parte communication in any agency proceeding that is subject to the Administrative Procedure Act

§557(a). This section applies "when a hearing is required to be conducted in accordance with §556 of this title

§556 applies "to hearings required by §553 and §554 of the Administrative Procedure Act

§553(c) makes §556 and §557 applicable to a rulemaking proceeding "when rules are required by statute to be made on the record after opportunity for an agency hearing".

§554(a) makes §556 and §557 applicable "in every case of adjudication required by statute to be determined by an agency hearing

The Administrative Procedure prohibition of ex parte communications applies only when a statute requires an agency to issue a rule or to resolve an adjudicatory dispute "on the record after opportunity for agency hearing. The two cases of agency proceedings are often referred to as formal rulemaking and formal adjudication.

Any rate case that the Florida Public Service Commission is hearing would be considered a formal rulemaking and formal adjudication therefore "ex parte communications would be prohibited based upon Title 5 of the Administrative Procedure Act.

The following question(s) have to be answered by both the Utility and the Public Service Commission:

- (1) Did any of the interveners in the ratecase proceeding have access to the information that Florida Power & Light has furnished to the Commission which was classified as confidential?

If so, then this would be "ex parte" communications as outlined for the reasons under Title 5 of the Administrative Procedure Act. This information not being made part of the public record as required for a formal rulemaking and formal adjudication.

- (2) Does the document that has been classified as confidential contain similar information as provided with the normal monthly accounting Surveillance reports that have been submitted to the Public Service Commission in the past?

If so, then the documents submitted does not constitute a report that should be classified as confidential since under normal reporting procedures to the Commission these reports would be made available through a typical Freedom of Information Act request. This type of information has been fully released in the past with this type of request therefore if the

information in the confidential report contains the same exact information then there would be no reason to classify this document as confidential before a ruling is made on the Stipulation and Settlement agreement and then declassify the document after the ruling in the proceeding. This in its self can lead to "ex parte" communications. This information might be pertinent for any person with a legal interest in the proceeding.

- (3) Does a rate order that is issued by the Commission contain similar information that is being furnished by this confidential report?

If so, then the documents submitted does not constitute a report that should be classified as confidential since a typical rate order that has been issued by the Commission would require full disclosure of the same type of information. This has already happened once in this proceeding in which a standard order was issued and there was ample time for intervenor's and/or parties with a legal interest to ask pertinent questions regarding the standard order.

- (4) Why is the Surveillance report being classified as confidential prior to the ruling on the Stipulation and Settlement agreement and being declassified after the ruling? If the information is released after the ruling, how would a person with a legal interest have the ability to potentially ask pertinent questions about the information that has been classified after the commission has already ruled on the Stipulation and Settlement agreement?

The cash rates would have been set and there would be no recourse for a person with a legal interest to be able to question the information before a ruling. Once the cash rates are set for the duration of time in the Stipulation and Settlement agreement, how will the commission address any future cost reductions to the cost of service of the company (i.e. interest savings etc.) that would potentially have to be given back to the ratepayer? Will this be taken care of with an excess earnings test or will the Stipulation and Settlement agreement lock the cash rates in place for a set period of time even though there might be future cost reductions to the cost of service of the company?

Full transparency should be afforded for any party that would have a legal interest in this proceeding. Is there something to hide?

- (5) Does the lack of transparency (whited/redacted) with the confidential classification of this report meet the requirements under the Freedom of Information Act (FOIA), 5 U.S.C. § 552?

If not, then based upon the Office of the Attorney General's memorandum regarding the release of this information should be "administered with clear presumption: In the case of doubt, openness prevails". " This memorandum is meant to underscore that commitment and to ensure that it is realized in practice".

On March 19th, 2009, The Office of the Attorney General has issued a memorandum regarding the release of information under The Freedom of Information Act (FOIA), 5 U.S.C. § 552.

This indicates "The Freedom of Information Act should be administered with clear presumption: In the case of doubt, openness prevails". "This memorandum is meant to underscore that commitment and to ensure that it is realized in practice"

I can email you a Freedom of Information request to ask for this information as well. If this is a normal type of accounting report that is similar to the normal monthly accounting surveillance reports and/or rate orders that are issued by the Commission then there would be no reason for this type of information to be classified as confidential before a ruling is made on the Stipulation and Settlement agreement and then declassified after the ruling in the proceeding. This type of information should be made fully transparent based upon the rules in the Freedom of Information Act (FOIA), 5 U.S.C. § 552

The above question(s) would have to be answered to support why both the Utility and Commission feel that full transparency should not be afforded with release of the Forecasted Earnings Surveillance Report Document Number 08713-10 that has been classified.

If you have any question(s) regarding this appeal please feel free to contact me through email at rpjrb@yahoo.com or give me a call.

Sincerely,

S/Robert H. Smith

(7)(a) Any person may file a petition to inspect and examine any material which the Commission has ruled exempt from Section 119.07(1), Florida Statutes, or which is exempted under paragraph (3)(d) pending the Commission's ruling or as the result of the filing of a notice of intent to request confidentiality. A copy of the petition must be served on the affected utility or person which shall have 10 days to file a response as to why the material should remain exempt. The petitioner shall have 7 days to file a reply to the filed response. The Commission may set the matter for hearing or issue a ruling on the pleadings. Material obtained by the Commission in connection with an inquiry shall not be subject to requests for inspection and examination until after the inquiry is terminated.

(b) A finding of confidentiality notwithstanding, a source may consent to inspection or examination by any person. Such consent shall not constitute a waiver of confidentiality and only the person specified in the consent may inspect or examine the material. The Commission may be requested to issue a protective order to recognize the terms and conditions of the consent. All persons are urged to seek mutual agreement regarding access prior to bringing a controversy to the Commission.

119.07 Inspection, examination, and duplication of records; exemptions.--

(1)(a) Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee. The custodian shall furnish a copy or a certified copy of the record upon payment of the fee prescribed by law or, if a fee is not prescribed by law, for duplicated copies of not more than 14 inches by 8 1/2 inches, upon payment of not more than 15 cents per one-sided copy, and for all other copies, upon payment of the actual cost of duplication of the record. An agency may charge no more than an additional 5 cents for each two-sided duplicated copy. For purposes of this section, duplicated copies shall mean new copies produced by duplicating, as defined in s. 283.30. The phrase "actual cost of duplication" means the cost of the

material and supplies used to duplicate the record, but it does not include the labor cost or overhead cost associated with such duplication. However, the charge for copies of county maps or aerial photographs supplied by county constitutional officers may also include a reasonable charge for the labor and overhead associated with their duplication. Unless otherwise provided by law, the fees to be charged for duplication of public records shall be collected, deposited, and accounted for in the manner prescribed for other operating funds of the agency. An agency may charge up to \$1 per copy for a certified copy of a public record.

WHEREFORE, Robert H. Smith respectfully requests that the Commission and/or Florida Power and Light Company to allow Robert H. Smith to inspect and examine Confidential Material, which I respectively requested in my appeal email dated October 20th, 2010 based upon Federal /State rights to protect my legal interest and to provide full transparency to ensure all pertinent questions have been ask before any ruling is made with the Settlement and Stipulation agreement.

Respectively submitted electronically (email), Wednesday October 20th, 2010 to the listed parties above and electronically filed to filings@psc.state.fl.us on Monday November 8th, 2010 as outlined per Florida Public Service Commission Electronic Filing Requirements.

/S Robert H. Smith
11340 Heron Bay Blvd. #2523
Coral Springs, Florida 33076-1629

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Certificate of Service
Docket No. 080677-EI

I HEREBY CERTIFY that a true and correct copy of the appeal email dated October 20th, 2010 was served via electronic email on Wednesday, October 20th, 2010 and to filings@psc.state.fl.us on Monday, November 8th, 2010. The electronic filing today should not constitute a new filing since the original email filing has been sent on Wednesday, October 20th, 2010. All issues as outlined in the appeal email dated Wednesday, October 20th, 2010 below has been sent to the parties listed below.

Electronic email dated Wednesday, October 20th, 2010

Email: Lisa C. Bennett / LBENNETT@PSC.STATE.FL.US
Office of the General Counsel
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
850-413-6230

Email: Kimberley Pena / KPen@PSC.STATE.FL.US
Chief Deputy Commission Clerk
Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Blvd.
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Email: Office of Commissioner Edgar / Commissioner.Edgar@PSC.STATE.FL.US
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Email: John T. Butler / John.Butler@fpl.com
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408-0420

/s Robert H. Smith