

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery
clause with generating performance incentive
factor.

DOCKET NO. 120001-EI
ORDER NO. PSC-12-0167-CFO-EI
ISSUED: April 2, 2012

ORDER GRANTING FLORIDA POWER & LIGHT COMPANY'S REQUEST FOR
CONFIDENTIAL CLASSIFICATION OF INFORMATION PROVIDED PURSUANT TO
AUDIT NO. 09-190-4-1 (DOCUMENT NO.10751-09, X-REF. DOCUMENT NOS. 10203-09
AND 10204-09)

On October 21, 2009, pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), Florida Power & Light Company (FPL) filed a request for confidential classification (Request) of certain information submitted by FPL pursuant to Audit Control No. 09-190-4-1 (the Audit). (Document No. 10751-09; x-ref Document Nos. 10203-09 and 10204-09).

Section 366.093(1), F.S., provides that "any records received by the commission which are shown and found by the commission to be proprietary confidential business information shall be kept confidential and shall be exempt from Section 119.07(1) [the Public Records Act]." Section 366.093(3), F.S., defines proprietary confidential business information as information that is intended to be and is treated by the company as private, in that disclosure of the information would cause harm to the company's ratepayers or business operations, and has not been voluntarily disclosed to the public. Paragraphs (3)(a),(d), and (e) of Section 366.093 F.S., provide that proprietary confidential business information includes, but is not limited to "[t]rade secrets;" "[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;" and "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information."

FPL contends that the designated portions of the information contained in its responses to the Audit, as more specifically described in the line-by-line/field-by-field justification attached as Exhibit C to the Request, fall within these categories and, thus, constitutes proprietary confidential business information entitled to protection under Section 366.093, F.S., and Rule 25-22.006, F.A.C. FPL states that this information is intended to be and is treated by FPL as private and has not been publicly disclosed.

FPL asserts that certain of the documents or materials are proprietary confidential business information because they contain or constitute competitively sensitive data, the disclosure of which would impair FPL's competitive interests. FPL states that the documents include information concerning bids or contractual data the disclosure of which would impair FPL's efforts to contract for services on favorable terms in the future. FPL avers that the documents include information relating to negotiated contractual terms and data pertaining to the procurement of legal services.

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FPL avers that certain of the documents contain or constitute data pertinent to FPL's procurement activities and hedging program. FPL specifically points to the documents containing information regarding physical and financial details related to FPL's annual hedging program for natural gas and fuel oil as being entitled to confidential treatment. Additionally, according to FPL, the information contains monthly realized values for FPL's hedge position and the resulting impact on the cost of natural gas and fuel oil. FPL contends that the disclosure of this information would impair its efforts to contract for goods and services on favorable terms for the benefit of its customers. FPL also claims disclosure of the information would impair the competitive interest of FPL and its vendors.

FPL states that certain of the documents contain or constitute trade secrets. FPL avers that the documents or materials also contain information concerning bids or contractual data, the disclosure of which would impair FPL's efforts to contract for goods and services on favorable terms. FPL specifically states that the information provided by FPL includes oil financial instruments, fuel status and inventory reports, contractual data, and negotiated agreements for services of FPL facilities. FPL argues that if this information were made public, it would disclose certain competitively sensitive procedures to the detriment of FPL and its customers. FPL also alleges the disclosure would impair its efforts to enter into contracts on commercially favorable terms.

Time Period For Confidential Classification

According to Section 366.093(4), F.S., confidential classification may only extend for 18 months from the issuance of an Order granting confidential classification unless "the Commission finds, for good cause, that the protection from disclosure shall be for a specified longer period." FPL has not requested a period longer than the 18 months.

Ruling

Upon review, it appears the above-referenced information satisfies the criteria set forth in Section 366.093(3), F.S., for classification as proprietary confidential business information. The information constitutes "[t]rade secrets;" "[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;" or "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information." Thus, the information identified in Document No. 10751-09; x-ref Document Nos. 10203-09 and 10204-09 shall be granted confidential classification.

Pursuant to Section 366.093(4), F.S., the information for which confidential classification is granted herein shall remain protected from disclosure for a period of 18 months from the date of issuance of this Order. At the conclusion of the 18-month period, the confidential information will no longer be exempt from Section 119.07(1), F.S., unless FPL or another affected person shows, and the Commission finds, that the records continue to contain proprietary confidential business information.

Based on the foregoing, it is

ORDERED by Commissioner Eduardo E. Balbis, as Prehearing Officer, that Florida Power & Light Company's Request for Confidential Classification of Document No. 10751-09; x-ref Document Nos. 10203-09 and 10204-09 is granted. It is further

ORDERED that the information in Document No. 10751-09; x-ref Document Nos. 10203-09 and 10204-09 for which confidential classification has been granted shall remain protected from disclosure for a period of 18 months from the date of issuance of this Order. It is further

ORDERED that this Order will be the only notification by the Commission to the parties concerning the expiration of the confidentiality time period.

By ORDER of Commissioner Eduardo E. Balbis, as Prehearing Officer, this 2nd day of April, 2012.



EDUARDO E. BALBIS

Commissioner and Prehearing Officer
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

LCB

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.