

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Power and Light Company to determine need for electrical power plant - Lauderdale repowering. ) DOCKET NO. 890973-EI )  
) ORDER NO. 22851 )  
) ISSUED: 4-23-90 )

In re: Petition of Florida Power and Light Company for determination of need for proposed electrical power plant and related facilities - Martin Expansion project. ) DOCKET NO. 890974-EI )  
) ORDER NO. 22851 )  
) ISSUED: 4-23-90 )

ORDER GRANTING SPECIFIED CONFIDENTIALITY

On March 20, 1990, Florida Power & Light Company (FPL) filed a notice of its intent to request specified confidentiality for materials which it was simultaneously providing in response to Staff's First Request for Production of Documents, Item No. 1. This notice was identified as Document No. 2476-90 by the Office of General Counsel. In its notice, FPL stated that it would file a detailed request for specified confidentiality for those materials in accord with Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, on or before April 10, 1990. On April 10, 1990, FPL filed its conforming request which was identified as Document No. 3120-90 by the Office of General Counsel.

These documents were also entered into the record at the hearing in these dockets held on March 21-23, 1990 and marked as Composite Exhibit 33. That being the case, this order will dispose of Documents Nos. 3120-90 and 2476-90.

Staff's First Request for Production of Documents states as follows:

Provide all documents relating to the company's Strategic Energy Business Study (SEBS), prepared from the inception of the SEBS to date. This should include, but is not limited to: all internal memoranda; meeting plans, meeting notes, meeting minutes; presentations to FPL, FPL Group or

DOCUMENT NUMBER-DATE

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any FPL Group subsidiary or affiliate committees (e.g., executive Committee, Steering Committee); graphs; and plans for analyses, analyses, results of analyses.

The initial request for confidentiality filed on March 20, 1990 covered all of the documents given to Commission Staff pursuant to the above document request. The more detailed request, however, is limited to sections of only one document of 35 pages entitled: Strategic Energy Information, Tropicana Products Inc., Florida Power and Light Study, June 6, 1988. The sections of the document for which FPL is requesting confidentiality and a summary of the type of data for which confidentiality is requested is as follows:

<u>Pages</u>	<u>Type of Data</u>
1. 2030288 (col.2)	Projected annual electrical costs
2. 2030289 (lines 2-6)	On-peak and off-peak electrical demands and energy usages
3. 2030289 (lines 9-10)	Electrical usage costs under current and proposed retail rates
4. 2030290 and 2030291	Size of combined cycle cogeneration plant
5. 2030292	Size, investment cost, operating characteristics and operating costs of combined cycle cogeneration plant, steam load
6. 2030293 and 2030297	Size of cogeneration plant and discount rate
7. 2030294	Daily monetary impact of standby rate charges
8. 2030295	Fuel and O&M savings, returns on investment and equity, capital costs, facilities' sizes and present value revenue streams of four self-generating scenarios

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9. 2030296 Same as 2030292 above
10. 2030301-302; Sizes of generators,  
2030304-309 investment in such  
2030311-316 equipment, financing period,  
effective tax rate, current and  
projected O&M costs and savings,  
electrical and steam usages,  
discount rate, cogeneration  
revenues, unleveraged and  
leveraged after-tax cash flows,  
returns on investments and  
equity, and present values of  
annual cash flows
11. 2030303 and 2030310 Sizes of potential cogeneration  
facility installations

For these sections FPL has requested specified confidentiality pursuant to Section 366.093(3)(e), Florida Statutes, which states:

(3) Proprietary confidential business information means information, regardless of form or characteristics, which 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 the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public. Proprietary confidential business information includes, but is not limited to:

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

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Having reviewed the highlighted document provided by FPL, the information for which FPL is requesting confidentiality can be divided into three groups: electrical usage data for Tropicana Products, Inc. (Tropicana); historical and projected annual electric costs to Tropicana using various FPL rates, e.g., GSLDT-2, GSLDT-3, IST-1; or cost scenarios associated with the construction by Tropicana of several types and sizes of cogeneration units. The cost scenarios include very detailed evaluations of the total capital investment and operation and maintenance expenses needed by Tropicana to pursue cogeneration alternatives to satisfy all or part of its electrical needs.

We have consistently found that customer-specific electric demand and energy data is confidential business information. Tropicana has represented to FPL that disclosure of this information will place it at a competitive disadvantage by revealing one of its primary operating costs to its competitors. We have no reason to believe otherwise. We note that FPL has consistently treated this type of information as proprietary to its customers.

We note further that this entire document, not just the information for which confidentiality is requested here, was produced in the ongoing TEC Cogeneration, Inc. v. Florida Power and Light Company litigation (Civil Action No. 88-2145 CIV-ATKINS) pursuant to a protective order entered by the United States District Court, Southern District of Florida. Although the protective order did not grant confidentiality for the document, it did approve the agreement of all parties to the suit not to disclose the contents of the document without first obtaining a ruling from the judge as to its confidential status under federal law. No such ruling has been requested of the federal judge as of this date and thus the documents have continued to be treated confidentially by all parties to the litigation.

Based upon the above, we find that the highlighted sections of the pages identified in Items 1 and 2 above are confidential proprietary business information pursuant Section 366.093(3)(e).

The second group of data identified in the request, electrical usage costs associated with various FPL rate schedules, should likewise be given confidential treatment.

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The reason is simple: a competitor with the appropriate FPL tariff can back into Tropicana's electrical demand and energy usage if such costs are revealed. For this reason we find that the highlighted sections of the pages identified in Item 3 above is proprietary confidential business information pursuant to Section 366.093(3)(e).

The remainder of the highlighted data for which FPL requests confidential status, found in Items 4 through 11 above, is information related to the development of various sized cogeneration facilities to serve all or part of Tropicana's load. Some of this data can be used to calculate Tropicana's current or projected load. Consistent with the ruling above, this data is found to be confidential proprietary business information pursuant to Section 366.093(3)(e).

With regard to the rest of the material in Items 4 through 11, the bottom-line of these analyses is the cost per KWH of electricity which could be produced by various sized cogeneration facilities should they be constructed by Tropicana or some third party. As such it is comparable to the cost which Tropicana pays for electric service: a primary cost of production. This information also includes numerous financial assumptions, e.g., effective tax rates, internal rates of return, discount rates, unleveraged and leveraged after-tax cash flows, which would provide Tropicana's competitors with vital information easily used to Tropicana's detriment in the market place if revealed. For these reasons, we find that the highlighted information found in Items 4 through 11 is also confidential proprietary business information pursuant to Section 366.093(3)(e).

Based upon the above, it is

ORDERED by Commissioner Betty Easley, Prehearing Officer, that the request for specified confidential classification of certain information provided to Staff in response to Staff's First Request for Production of Documents in the above dockets is hereby granted as discussed in the body of this order. It is further

ORDERED that all other sections of the Strategic Energy Information document for which Florida Power and Light Company has not requested confidentiality is hereby found to be

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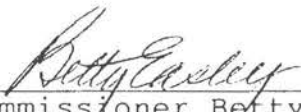
nonconfidential and subject to disclosure to the public in accord with Section 119.07(1), Florida Statutes. It is further

ORDERED that all other documents included in Composite Exhibit 33 at the March 21-23, 1990 hearing in the above dockets are hereby found to be nonconfidential and subject to disclosure to the public in accord with Section 119.07(1), Florida Statutes. It is further

ORDERED that pursuant to Section 366.093(4), Florida Statutes, the sections of the Strategic Energy Information document which have been granted confidentiality by this order shall be held confidential for a period not to exceed 18 months, Florida Power and Light Company having provided no reason to hold such material confidential for a longer period. It is further

ORDERED that if a protest is filed within 14 days of the date of this order it will be resolved by the appropriate Commission panel pursuant to Rule 25-22.006(3)(d), Florida Administrative Code.

BY ORDER of Commissioner Betty Easley, Prehearing Officer,  
this 23rd day of APRIL, 1990.

  
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Commissioner Betty Easley,  
Prehearing Officer

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