

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Environmental cost recovery clause.

DOCKET NO. 040007-EI
ORDER NO. PSC-04-0797-CFO-EI
ISSUED: August 13, 2004

BY THE COMMISSION:

As a result of an audit of Florida Power & Light (FP&L) conducted for the environmental cost recovery clause (ECRC) for the year ending on December 31, 2001, certain documents were granted confidential classification by Order No. PSC-02-1450-CFO-EI, issued on October 21, 2002, in Docket No. 020007-EI, Environmental Cost Recovery Clause,. The documents were granted confidentiality for 18 months, and FP&L now requests that confidentiality be extended for an additional 18 months. Confidential classification under Order No. PSC-02-1450-CFO-EI would have expired on April 21, 2004, but FP&L's request for an extension was filed on April 16, 2004, so there was no lapse in confidential treatment.

The information for which continued confidentiality is requested falls into two categories: 1) internal auditing controls and reports of internal auditors; and 2) customer specific account information.

Florida law presumes that documents submitted to governmental agencies shall be public records. The only exceptions to this presumption are the specific statutory exemptions and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. This presumption is based on the concept that government should operate in the "sunshine." Rule 25-22.006(4)(c), Florida Administrative Code, provides that it is the Company's burden to demonstrate that the documents fall into a statutory exemption or that the information is proprietary confidential business information, the disclosure of which will cause the Company or its ratepayers harm.

Section 366.093, Florida Statutes, defines "proprietary confidential business information" as:

[I]nformation, 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.

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Pursuant to Section 366.093(4), Florida Statutes, confidential protection may be granted for a period longer than 18 months if the entity requesting confidential classification shows good cause why the period should be extended.

FP&L claims that the material should continue to be treated confidentially because it is not "stale." Furthermore, FP&L asserts that it owns or controls the information, has continued to treat it as confidential, and that FP&L and its customers may be harmed by release of the information to the public. FP&L also states that Section 366.093(b) identifies internal auditing controls and reports of internal auditors as proprietary confidential business information. In addition, FP&L states that the Commission has, in the past, found customer specific information to be confidential.

Given the above information, I find that the information for which FP&L seeks continued confidentiality satisfies the criteria of Section 366.093, and shall therefore be granted confidentiality for another 18 months starting from April 21, 2004, the date that confidentiality would have expired.

Based on the foregoing, it is

ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that Florida Power & Light's Request for Confidential Classification is granted. It is further

ORDERED that pursuant to Section 366.093(4), Florida Statutes, and Rule 25-22.006, Florida Administrative Code, any confidentiality granted to the material specified herein shall expire 18 months from April 21, 2004, in the absence of a renewed request for confidentiality. 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 Rudolph "Rudy" Bradley, as Prehearing Officer, this 13th day of August, 2004


RUDOLPH "RUDY" BRADLEY
Commissioner and Prehearing Officer

(S E A L)

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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, 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 wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, 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.