

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Consolidated) DOCKET NO. 911103-EI
Minerals, Inc. Against Florida) ORDER NO. PSC-92-0269-PCO-EI
Power & Light Company For Failure) ISSUED: 4/29/92
to Negotiate Cogeneration)
Contract.)
_____)

ORDER ON CONFIDENTIALITY
REQUESTED BY CONSOLIDATED MINERALS, INC.

BY THE COMMISSION:

Consolidated Minerals, Inc. ("CMI") filed a request for confidential classification pertaining to material CMI provided to the Commission and Florida Power and Light Company ("FPL") during the course of its hearing. This material is intended to be and is considered by CMI to be proprietary and has not been publicly disclosed.

Florida law provides, in Section 119.01, Florida Statutes, that documents submitted to governmental agencies shall be public records. The only exceptions to this law are specific statutory exemptions, and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. This law derives from the concept that government should operate in the "sunshine." In the instant matter, the value that all parties would receive by examining and using the information contained in this document must be weighed against the legitimate concerns of CMI regarding disclosure of business information which it considers proprietary. It is our view that parties must meet a very high burden when requesting confidential classification of documents.

Pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, CMI has the burden to show that the material submitted is qualified for confidential classification. Rule 25-22.006, Florida Administrative Code, provides that the Company may fulfill its burden by demonstrating the information falls under one of the statutory examples set out in Section 366.093, Florida Statutes, or by demonstrating that the information is proprietary confidential information, the disclosure of which will cause harm to CMI's business operations.

To establish that material is proprietary confidential business information under Section 366.093(3)(d), Florida Statutes, a utility must demonstrate (1) that the information is contractual data, and (2) that the disclosure of the data would impair the

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efforts of the utility to contract for goods or services on favorable terms. Likewise, Section 366.093(3)(e), Florida Statutes, provides that a utility must demonstrate (1) that the information relates to competitive interests and (2) that the disclosure of the data would impair the efforts of the utility to contract for goods or services on favorable terms. We have previously recognized that this latter requirement does not necessitate the showing of actual impairment, or the more demanding standard of actual adverse results; instead, it must simply be shown that disclosure is "reasonably likely" to impair the company's contracting for goods or services on favorable terms.

CMI requests that the highlighted portions of pages 31 and 32 of the Charles W. Bush deposition, dated February 18, 1992 be specified confidential treatment. CMI's justification for this request is that these pages contain information that describes its current business strategies and philosophies. In addition, CMI contends that if this information is made public, it would impair its efforts to contract for goods and services on favorable terms, Section 366.093(3)(d), Florida Statutes, and that disclosure of the information would impair CMI's competitive interests, Section 366.093(3)(e), Florida Statutes. Public knowledge of current and future CMI activities and strategies, CMI argues, could give competing entities an unfair economic advantage by alerting them to CMI's plans and by allowing them to contact CMI's vendors and prospective business partners. Also, disclosure could substantially damage the relationship between CMI and its vendors, who rely upon CMI to keep its private business dealings confidential.

After reviewing the documents, we find, for the reasons stated above, that the portions of the deposition of Charles W. Bush located on lines 23-25 on page 31 and on lines 1-2 on page 32 to be proprietary confidential business information.

CMI requests that the information for which it seeks confidential classification not be declassified until September 1, 1993 as provided by Section 366.094(4), Florida Statutes. CMI contends this time is necessary to allow it to remain competitive in its business arena, because giving the public access to this information would give CMI's competitors inside information and could allow them to impede CMI's negotiations with prospective business partners.

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At the end of the classified period, CMI requests that the Commission order the return of records containing proprietary confidential business information if such records are no longer necessary for the Commission to conduct its business. At that time, CMI requests that the Commission then order any other person holding such records to return them to CMI.

It is, therefore,

ORDERED by the Florida Public Service Commission that the information Consolidated Minerals, Inc. seeks to protect from public disclosure identified in Document No. 2869-92, as discussed within the body of this Order, is confidential and shall continue to be exempt from the requirements of Section 119.07(1), Florida Statutes. It is further

ORDERED that the proprietary confidential business information shall be afforded confidential treatment for period of 18 months until September 1, 1993.

By ORDER of Commissioner Betty Easley, as Prehearing Officer, this 29th day of APRIL, 1992.



BETTY EASLEY, Prehearing Officer
and Commissioner

(S E A L)

DLC:bmi

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

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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 25-22.038(2), 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 Records and Reporting, 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.