

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Joint Petition to deter-) DOCKET NO. 920520-EQ
mine need for electric power) ORDER NO. PSC-92-0836-CFO-EQ
plant to be located in Okeechobee) ISSUED: 08/19/92
County by Florida Power & Light)
Company and Cypress Energy)
Partners, Limited Partnership.)
_____)

ORDER GRANTING IN PART AND DENYING IN PART
THE CONFIDENTIALITY REQUEST BY NASSAU POWER CORPORATION

BY THE COMMISSION:

Nassau Power Corporation (Nassau Power), which is a wholly-owned subsidiary of Falcon Seaboard Power Corporation, filed a request for confidential classification (Document No. 9004-92) pertaining to information contained in two letters of intent executed by Nassau Power and major gas suppliers.

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 these letters must be weighed against the legitimate concerns of Nassau Power 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, Nassau Power 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 business information, the disclosure of which will cause the company or its ratepayers harm.

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

DOCUMENT NUMBER-DATE

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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 that (1) the information relates to competitive interests and (2) 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.

The information for which Nassau Power seeks confidential classification is the proposed pricing provisions and price escalation factors contained in two letters of intent. Nassau Power received one letter of intent from J. Aron and Company on August 11, 1992, and one letter of intent from Chevron U.S.A. Production Company on August 10, 1992. The two transactions are the subject of sensitive on-going negotiations.

Nassau Power asserts that the pricing information contained in the letters of intent comprises proprietary confidential business information which must be protected from public disclosure pursuant to section 366.093, Florida Statutes. Specifically, Nassau Power seeks to classify the information found on page 1, line 15, of the body of the J. Aron and Company letter of intent, as well as the information found on lines 4-43 of page 2 and lines 1-10 of page 3 in the Chevron U.S.A. Production Company letter.

Nassau Power states that the above-delineated information contains specific firm pricing offers and is proprietary confidential business information. Also, Nassau Power maintains that this information is controlled and treated by Nassau Power as extremely private and confidential, the disclosure of which would cause harm to Nassau Power and its business operations, and that the information has not been publicly disclosed. Further, Nassau states that this information, which relates to ongoing negotiations, is sensitive and commercially valuable and is distributed within the company only on a need-to-know basis.

Nassau Power also submits that such information is in the nature of a trade secret pursuant to Section 366.093(3)(a), because the information is secret, is of value, is used in Nassau Power's business and would be of advantage to Nassau Power over those who do not possess it. Further, Nassau Power maintains that it takes strict measures to prevent its disclosure.

In addition, Nassau Power asserts that disclosure of the information would impair Nassau Power's and Falcon Seaboard Power's ability to negotiate and enter into contracts on favorable terms. Section 366.093(3)(d). If information concerning the fuel offers is disclosed, competitors of Nassau Power and Falcon Seaboard Power will be privy to valuable information as to the negotiating strategy and postures of the companies which would be extremely valuable.

Also, Nassau Power is prohibited from putting such information into the public domain because the fuel suppliers and Nassau Power have agreed that such information will remain confidential and will not be made public. Nassau Power has no authorization from the gas suppliers to release the contents of the fuel offers. Release of the information, Nassau maintains, would harm the fuel suppliers as well because it would reveal the price at which they are willing to offer gas to Nassau Power.

Regarding this request, we find, Nassau Power's arguments to be persuasive; however, the request is broad and includes words and lines that are not essential to protect its proprietary confidential business information.

Specifically, we find for the reasons stated above that the information found on page 1, line 15, of the body of the J. Aron & Company letter of intent is to be treated as proprietary confidential business information. Based on the foregoing, we also find that the following information on pages 2 and 3 of the Chevron U.S.A. letter of intent is to be treated as proprietary confidential business information:

page 2
lines 11, 13, 16, 19
23, 24, 29, 34, 36
39 and 42

numerical information;

page 3
lines 3, 4, and 9

numerical information;

page 2
lines 9-10

information following the word "contains" on line 9 and before the word "the" on line 10;

page 2
lines 24-26

information following the word "annually" on line 24 and before the word "however" on line 26;

ORDER NO. PSC-92-0836-CFO-EQ
DOCKET NO. 920520-EQ
PAGE 4

page 2
lines 32-33

information following the word
"contains" on line 32 and before
the word "the" on line 33; and

page 3
lines 4-6

information following the word
"annually" on line 4 and before
the word "however" on line 6.

Accordingly, we find that this information should be treated as proprietary confidential business information pursuant to Section 366.093, Florida Statutes. We also note that Nassau Power had requested that lines 4-43 of page 2 and lines 1-10 of page 3 of the Chevron U.S.A. Production Company letter of intent be treated as proprietary confidential business information. We find that only the information listed above is to be treated as confidential and deny the request as it pertains to the information not listed above.

The documents shall remain confidential for 18 months from the date of the Order as provided by Section 366.093, Florida Statutes.

It is, therefore,

ORDERED by the Florida Public Service Commission that the request for confidentiality by Nassau Power Corporation in Document No. 9004-92 is granted in part and denied in part as discussed within the body of this Order. It is further

ORDERED that this information will remain confidential for a period of 18 months from the date this Order is issued.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 19th day of August, 1992.


J. TERRY DEASON, Commissioner
Prehearing Officer

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ORDER NO. PSC-92-0836-CFO-EQ
DOCKET NO. 920520-EQ
PAGE 5

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.

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.