

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Request for confidential treatment of electric and gas forecasted earnings surveillance reports, by Florida Public Utilities Company.

DOCKET NO. 060291-PU
ORDER NO. PSC-06-0497-CFO-PU
ISSUED: June 8, 2006

ORDER DENYING FLORIDA PUBLIC UTILITIES COMPANY'S REQUEST FOR CONFIDENTIAL TREATMENT OF DOCUMENTS NOS. 02804-06 AND 02818-06

BY THE COMMISSION:

On March 29, 2006, Florida Public Utilities Company (FPUC) filed a request for confidential treatment of Documents Nos. 02806-06 and 02817-06. Document No. 02806-06 is FPUC's Electric Forecasted Earnings Surveillance Report for 2006. Document No. 02817-06 is FPUC's Gas Forecasted Earnings Surveillance Report for 2006.

Legal Standard

Pursuant to Section 119.07, Florida Statutes, documents submitted to the Commission are presumed to be public records. This presumption is based on the concept that government should operate in the "sunshine." The only exceptions to this presumption are the specific statutory exemptions provided in the law and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. Subsections 366.093(3)(a) and (3)(e), Florida Statutes, provide the following exemptions asserted by FPUC as pertinent to its request:

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:

(a) Trade secrets.

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

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

According to Section 366.093, Florida Statutes, and Rule 25-22.006(4)(c), Florida Administrative Code, the utility has the burden to demonstrate that the materials qualify for confidential classification. Pursuant to Rule 25-22.006, the utility may meet this burden by demonstrating that the information is proprietary confidential business information, the disclosure of which will cause the Company or its ratepayers harm.

Analysis and Ruling


Based on the definition of proprietary confidential business information stated above, it does not appear that FPUC's forecasted earnings surveillance reports are proprietary confidential business information. FPUC is required by Rules 25-6.1353 and 25-7.1353, Florida Administrative Code, to file forecasted earnings surveillance reports by March 1 of each year. FPUC has filed the reports with this information annually since 1994. Until this year, FPUC filed those reports without also filing a request for confidential classification. In addition, all other investor-owned utilities that are required to file reports under the rules have filed their reports without requesting confidential treatment. In its request for confidential treatment, FPUC recites the words of the statutory exemption but does not identify its competitive interests and makes no demonstration how any such competitive interests would be harmed by disclosure of the information. The information provided in the reports is summarized by broad categories and does not provide sufficient detail to harm any such interests of FPUC. Nor does FPUC show how its earnings forecasts could reveal any trade secrets. FPUC's request merely reiterates the language of the statute; it fails to provide the justification for confidential classification required by Rule 25-22.006, Florida Administrative Code.

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. FPUC has not met its burden and its request is therefore denied.

Based on the foregoing, it is

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that the Request for Confidential Classification filed by Florida Public Utilities Company on March 29, 2006, is denied as described in the body of this Order.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 8th day of
June, 2006.


J. TERRY DEASON
Commissioner and Prehearing Officer

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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.