

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery
clause with generating performance incentive
factor.

DOCKET NO. 090001-EI
ORDER NO. PSC-09-0804-CFO-EI
ISSUED: December 3, 2009

ORDER GRANTING FLORIDA PUBLIC UTILITIES COMPANY'S
CORRECTED REQUEST FOR CONFIDENTIAL CLASSIFICATION
(DOCUMENT NO. 09467-09)

On September 14, 2009, pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), Florida Public Utilities Company (FPUC) filed a request for confidential classification of certain information provided in Exhibits MC-4 and MC-5 to the prefiled direct panel testimony of Mark Cutshaw and Curtis D. Young, specifically portions of Schedules E1, E2, and E7 (Document No. 09467-09). This request was filed in Docket No. 090001-EI.

Request for Confidential Classification

Section 366.093(1), F.S., provides that "any records received by the commission which are shown and found by the commission to be proprietary confidential business information shall be kept confidential and shall be exempt from Section 119.07(1) [the Public Records Act]." Section 366.093(3), F.S., defines proprietary confidential business information as information that is intended to be and is treated by the company as private, in that disclosure of the information would cause harm to the company's ratepayers or business operations, and has not been voluntarily disclosed to the public. Paragraphs (d) and (e) of Section 366.093, F.S., provide that proprietary confidential business information includes, but is not limited to "[i]nformation concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms;" and "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information."

FPUC contends that certain information provided in Exhibits MC-4 and MC-5 to the prefiled direct panel testimony of Mark Cutshaw and Curtis D. Young, specifically Schedules E1, E2 and E7 for both the Northeast and Northwest Divisions, as more specifically described in the table in Attachment A, falls within these categories and, thus, constitutes proprietary confidential business information entitled to protection under Section 366.093, F.S., and Rule 25-22.006, F.A.C. FPUC states that this information is intended to be and is treated by FPUC as private and has not been publicly disclosed.

FPUC specifically contends that Exhibits MC-4 and MC-5 consist of various schedules required by the Commission and provide data supporting the calculations for the purchased power cost recovery factor to be applied to customer bills in 2010. FPUC alleges that both

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FPUC and the power vendor consider the pricing to be proprietary, confidential business information, and both FPUC and the power vendor treat the information as proprietary and confidential. FPUC states the pricing was negotiated between the parties and has been maintained within the control of both companies and has not been publically disclosed. FPUC maintains that disclosure of the negotiated rates would cause harm to FPUC, its customers, and the power vendor by impairing the ability of FPUC to negotiate with other suppliers in the future on favorable terms.

Ruling

Upon review, it appears the above-referenced information satisfies the criteria set forth in Section 366.093(3), F.S., for classification as proprietary confidential business information. The information constitutes “[i]nformation concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms;” and “[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.” Moreover, none of the documentation discussed herein contains any information regarding the compensation of FPUC executives. Thus, the information contained in Document No. 09467-09, as more fully described in Attachment A, shall be granted confidential classification.

Pursuant to Section 366.093(4), F.S., the information for which confidential classification is granted herein shall remain protected from disclosure for a period of 18 months from the date of issuance of this Order. At the conclusion of the 18-month period, the confidential information will no longer be exempt from Section 119.07(1), F.S., unless FPUC or another affected person shows, and the Commission finds, that the records continue to contain proprietary confidential business information.

Based on the foregoing, it is

ORDERED by Commissioner Nathan A. Skop, as Prehearing Officer, that Florida Public Utilities Company’s Corrected Request for Confidential Classification of Document No. 09467-09, as described in Attachment A, is granted. It is further

ORDERED that the information in Document No. 09467-09 for which confidential classification has been granted shall remain protected from disclosure for a period of 18 months from the date of issuance of this Order. It is further

ORDERED that this Order shall be the only notification by the Commission to the parties of the date of declassification of the materials discussed herein.

By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 3rd day of
December, 2009.



NATHAN A. SKOP
Commissioner and Prehearing Officer

(S E A L)

LCB

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; or (2) 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 Office of Commission Clerk, 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.

Attachment A
Panel Direct Testimony of Mark Cutshaw and Curtis D. Young
Exhibits MC-4 and MC-5

Exhibit, Schedule and Page(s)	Line(s) and Column(s)
Exhibit MC-4 Schedule E1 Page 1 of 14	Lines 6, 10, 10b, 12, 13, 20, 24 Columns a and c Lines 10a and 25 Column a
Exhibit MC-4 Schedule E1 Page 2 of 14	Lines 41-46 Columns 13-16 Line 47 Column 13
Exhibit MC-4 Schedule E2 Page 4 of 14	Lines 3, 3a, 5 and 6 Columns a-m
Exhibit MC-4 Schedule E7 Page 5 of 14	All Lines Columns 8-10
Exhibit MC-5 Schedule E1 Page 1 of 6	Lines 6, 10, 10b, 12, 13, 20, 24 Columns a and c Lines 10a and 25 Column a
Exhibit MC-5 Schedule E1 Page 2 of 6	Lines 41-46 Columns 13-16 Line 47 Column 13
Exhibit MC-5 Schedule E2 Page 4 of 6	Lines 3, 3a, 5 and 6 Columns a-m
Exhibit MC-5 Schedule E7 Page 5 of 6	All Lines Columns 8-10