

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 150001-EI
ORDER NO. PSC-15-0461-CFO-EI
ISSUED: October 14, 2015

ORDER GRANTING FLORIDA PUBLIC UTILITIES COMPANY'S REQUEST
FOR CONFIDENTIAL CLASSIFICATION AND MOTION FOR TEMPORARY
PROTECTITIVE ORDER (DOCUMENT NO. 06240-15)

On October 2, 2015, 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 and Motion for Temporary Protective Order (Request) of portions of its responses to Commission Staff's Second Set of Interrogatories Nos. 2(a), 2(b), 7, 8(b) and 9(c) (Document No. 06240-15).

Request for Confidential Classification

FPUC contends that designated portions of the information contained in its responses to Commission Staff's Second Set of Interrogatories Nos. 2(a), 2(b), 7, 8(b) and 9(c), as more specifically described in its Request, constitute proprietary confidential business information entitled to protection under Section 366.093, F.S., and Rule 25-22.006, F.A.C. FPUC's Request contains a detailed matrix providing justification and support for confidential classification of the information on a line-by-line, column-by-column basis. FPUC asserts that this information is intended to be and is treated by FPUC as private and has not been publicly disclosed.

The information provided in its response to Staff's Second Set of Interrogatories Nos. 2(a) and 2(b) contain the estimated amounts to be paid to contract consultants and attorneys for services provided in 2016. FPUC's response to Staff's Second Set of Interrogatories No. 7 contains all non-fuel costs, including legal fees, consulting fees and administrative costs, that have been included in the calculation of fuel factors for 2016. FPUC's response to Staff's Second Set of Interrogatories Nos. 8(b) and 9(c) contain information regarding actual and estimated 2015 "special costs" and costs associated with "special meetings-fuel market issue." FPUC argues that all of this information, if disclosed, would impair its ability to contract with consultants and vendors at the lowest possible price and falls within the protection of Section 366.093(3)(d), F.S. FPUC further argues that if this information were disclosed it would impair the viability and completion of the associated electric supply procurement projects to its ratepayers' detriment in violation of Section 366.093(e), F.S. FPUC requests confidential classification for this information for a period of 18 months.

Ruling

Section 366.093(1), F.S., provides that records the Commission has found to contain proprietary business information shall be kept confidential and shall be exempt from Chapter

119, F.S. 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. Sections 366.093(3)(d) and (e), F.S., provide that proprietary confidential business information includes, but is not limited to:

(d) Information 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.

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

Upon review, it appears the above-referenced information satisfies the criteria set forth in Sections 366.093(3)(d) and (e), F.S., for classification as proprietary confidential business information. The information described above and in FPUC's Request, appears to be information 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. This information reveals consulting and legal fees for the development of alternative fuel suppliers. The public disclosure of any of this information could impair FPUC's ability to negotiate the best deal for these types of services and its disclosure could impact the pursuit and completion of the best, most cost-effective supply alternatives in the marketplace. Therefore, the information contained in Document No. 06240-15, shall be granted confidential classification.

Section 366.093(4), F.S., provides that any finding by the Commission that records contain proprietary confidential business information shall be effective for a period not to exceed 18 months, absent good cause shown. The information identified in Document No. 06240-15, shall be granted confidential classification for a period of 18 months from the issuance of this Order.

Motion for Temporary Protective Order

FPUC also seeks protection of the documents as provided in Section 366.093(2), F.S., and Rule 25-22.006(6), F.A.C., while the material is in the possession of the Office of Public Counsel (OPC). Section 366.093(2), F.S., directs that all records produced pursuant to a discovery request for which proprietary confidential status is requested shall be treated by any party subject to the public records law as confidential and exempt from the public records law. Section 119.07(1), F.S. Rule 25-22.006(6), F.A.C., codifies the Commission's policy regarding the protection of confidential information from public disclosure during the discovery process in a manner that is not overly burdensome to both parties. Rule 25-22.006(6)(a), F.A.C., in pertinent part, states:

In any formal proceeding before the Commission, any utility or other person may request a protective order protecting proprietary confidential business information from discovery. Upon a showing by a utility or other person and a finding by the

Commission that the material is entitled to protection, the Commission shall enter a protective order limiting discovery in the manner provided for in Rule 1.280, Florida Rules of Civil Procedure.

In addition, Rule 25-22.006(6)(c), F.A.C., states that if a party allows OPC to inspect or take possession of utility information, then that “utility may request a temporary protective order exempting the information from section 119.07(1), F.S.”

Upon consideration of FPUC’s assertions of the confidential nature of the information contained in its responses to Commission Staff’s Second Set of Interrogatories Nos. 2(a), 2(b), 7, 8(b) and 9(c), (Document No. 06240-15), FPUC’s Motion for Temporary Protective Order is hereby granted. As a result, this information shall be protected from disclosure pursuant to Rule 25-22.006(6), F.A.C.

Based on the foregoing, it is

ORDERED by Chairman Art Graham, as Prehearing Officer, that Florida Public Utility Company’s request for confidential treatment of portions of Document No. 06240-15 is granted, as set forth herein. It is further

ORDERED that the information contained in Document No. 06240-15, for which confidential classification has been granted, shall remain protected from disclosure for a period of up to 18 months from the date of issuance of this Order. It is further

ORDERED that the Motion for Temporary Protective Order filed by Florida Public Utility Company is granted. 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 Chairman Art Graham, as Prehearing Officer, this 14th day of October, 2015.



ART GRAHAM
Chairman and Prehearing Officer
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

SBr

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 25-22.0376, 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.