

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request to opt-out of cost recovery for investor-owned electric utility energy efficiency programs by Wal-Mart Stores East, LP and Sam's East, Inc. and Florida Industrial Power Users Group.

DOCKET NO. 140226-EI
ORDER NO. PSC-16-0334-CFO-EI
ISSUED: August 12, 2016

ORDER GRANTING WAL-MART STORES EAST, LP AND SAM'S EAST, INC.'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION (DOCUMENT NO. 04911-15)

On August 4, 2015, pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), Wal-Mart Stores East, LP and Sam's East, Inc. (Wal-Mart) filed a Request for Confidential Classification (request) of certain information contained in a certain table, specifically identified as Hearing Exhibit No. 39 (Document No. 04911-15), which was introduced at the evidentiary hearing in this docket. This Request was filed in Docket No. 140226-EI.

Request for Confidential Classification

Wal-Mart contends that the table introduced at the evidentiary hearing contains information of a confidential nature which is proprietary confidential business information within the meaning of Section 366.093(3), F.S., and Rule 25-22.006, F.A.C. Wal-Mart avows that this information is intended to be and continues to be treated by Wal-Mart as private and has not been publicly disclosed.

Wal-Mart asserts that the information warrants treatment as proprietary and confidential business information. Also included within Wal-Mart's request are Exhibit A, Exhibit B, Exhibit C, and Exhibit D. Exhibit A consists of one copy of the highlighted version of Hearing Exhibit No. 39. Exhibit B consists of two copies of the public version of Hearing Exhibit No. 39. Exhibit C is a justification matrix that identifies the specific statutory bases for the claim of confidentiality. Exhibit D is the affidavit of Kenneth E. Baker in support of this Request.

Wal-Mart contends that the table contains information related to Wal-Mart's energy usage on a per-store basis, the disclosure of which could be used by Wal-Mart's competitors to Wal-Mart's competitive disadvantage. This information is protected by Section 366.093(3)(e), Florida Statutes.

Ruling

Section 366.093(1), F.S., provides that records that the Florida Public Service Commission (Commission) has found to contain proprietary confidential 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 provider as private, and that disclosure of the information would cause harm to the provider's ratepayers or business operations, and that has not been voluntarily disclosed to the public. Section 366.093(3), F.S., provides, in pertinent part, that proprietary confidential business information includes, but is not limited to:

- (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 Section 366.093(3), F.S., for classification as proprietary confidential business information. The information described above appears to be information concerning competitive interests of the provider. Thus, the information identified in Document No. 04911-15 shall be granted a continuation of 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 up to 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 Wal-Mart 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 hereby

ORDERED by Commissioner Art Graham, as Prehearing Officer, that Wal-Mart Stores East, LP and Sam's East, Inc. Request for Confidential Classification of Document No. 04911-15 is granted. It is further

ORDERED that the information contained in Document No. 04911-15, 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 this Order will be the only notification by the Commission to the parties concerning the expiration of the confidentiality time period.

By ORDER of Commissioner Art Graham, as Prehearing Officer, this 12th day of August, 2016.



ART GRAHAM

Commissioner 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.

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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; 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

ORDER NO. PSC-16-0334-CFO-EI

DOCKET NO. 140226-EI

PAGE 4

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.