

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition for  
determination of need for  
proposed Stanton Energy Center  
Combined Cycle Unit A by Orlando  
Utilities Commission, Kissimmee  
Utility Authority, Florida  
Municipal Power Agency, and  
Southern Company-Florida, LLC.

DOCKET NO. 010142-EM  
ORDER NO. PSC-01-2195-CFO-EM  
ISSUED: November 13, 2001

ORDER GRANTING IN PART AND DENYING IN PART  
REQUEST FOR CONFIDENTIAL CLASSIFICATION  
(DOCUMENT NO. 01440-01)

On January 31, 2001, pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, Orlando Utilities Commission ("OUC"), on behalf of itself and Kissimmee Utility Authority ("KUA") and Florida Municipal Power Agency ("FMPA"), filed a request for confidential classification of Volume 1E of its Need for Power Application filed in this docket (Document No. 01440-01).

Volume 1E of the Need for Power Application contains evaluations of bidders' proposals that OUC received in response to two requests for proposals ("RFPs") for generating alternatives. More specifically, Volume 1E contains the following documents:

Letter from William H. Herrington to Fred Haddad, dated 8 August 2000, with attachments.

Letter from Selvin Dottin to Frederick F. Haddad, Jr., dated August 2, 2000, with attachments.

Letter from Paul A. Arsuaga to Frederick F. Haddad, Jr., dated August 8, 2000, with attachments.

Section 366.093(1), Florida Statutes, 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 [the Public Records Act]." Section 366.093(3), Florida Statutes, defines

DOCUMENT NUMBER-DATE

14326 NOV 13 01

FPSC-COMMISSION CLERK

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. More specifically, Section 366.093(3)(d), Florida Statutes, defines proprietary confidential business information to include, among other things, "[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."

In its request, OUC asserts that the terms of the bidders' proposals used and presented in their response to OUC's RFPs fit the definition of proprietary confidential business information in Section 366.093(3)(d), Florida Statutes. Accordingly, OUC asserts, the proposals, and OUC's evaluation and explanation of them, are entitled to protection from disclosure.

OUC states that in order to attract potentially favorable contract terms for supply-side alternatives to its next planned generating unit, OUC included confidentiality provisions in its RFPs. OUC asserts that without assurances of confidentiality, potential bidders may withhold sensitive engineering, construction cost, or other information necessary to fully understand and assess the costs and benefits of the proposals. In addition, OUC asserts that potential bidders might not submit bids at all absent these assurances. Thus, according to OUC, without the assurance of confidentiality for the terms of the bidders' proposals, OUC's efforts to contract for goods or services on favorable terms would be impaired. OUC states that it has at all times treated and continues to treat the bidders' proposals as confidential.

Upon review, it is apparent that portions of the letters included in Volume 1E contain information other than the terms of the bidders' proposals. Such information does not appear to meet the statutory standard for confidential classification and, thus, shall not be treated as confidential. OUC's request for confidential classification of Volume 1E is predicated solely on the confidential nature of the bidders' proposals. I find that the bid-related information contained in Volume 1E satisfies the criteria set forth in Section 366.093(3), Florida Statutes, for classification as proprietary confidential business information

and, thus, shall be treated as confidential. Specifically, I find that the information set forth in the tables below 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 shall thus be granted confidential classification. (Volume 1E is not numbered by page; the page numbers set forth in the tables below identify the pages by the order in which they are presented in each of the three letters in Volume 1E, including blank and duplicate pages.)

A. The following portions of the letter from William H. Herrington to Fred Haddad, dated 8 August 2000, with attachments, are granted confidential classification:

Pages	Location	Description
1	2 <sup>nd</sup> full paragraph, lines 1-3	Names of bidders
2	Paragraph continued from p. 1, lines 1-6	Terms of proposals
2	2 <sup>nd</sup> full paragraph, lines 3-6 (bulleted information)	Names of bidders
2	3 <sup>rd</sup> full paragraph, all lines	Names of bidders, terms of proposals
2	6 <sup>th</sup> full paragraph, all lines	Names of bidders, terms of proposals
2	7 <sup>th</sup> full paragraph, all lines	Names of bidders, terms of proposals
3	All lines	Names of bidders, terms of proposals
4	Paragraph continued from p.3 and 1 <sup>st</sup> full paragraph, including table, all lines	Names of bidders, terms of proposals
4	2 <sup>nd</sup> full paragraph, lines 2-3; 3 <sup>rd</sup> full paragraph, lines 1-4	Names of bidders
5	Title of table	Names of bidders

Pages	Location	Description
5	Numerical assumptions and values listed in table	Analysis of terms of proposals
6	Title of table	Names of bidders
6	Numerical assumptions and values listed in table	Analysis of terms of proposals
7	Title of table	Names of bidders
7	Numerical assumptions and values listed in table	Analysis of terms of proposals
8	Title of table	Names of bidders
8	Numerical assumptions and values listed in table	Analysis of terms of proposals
9	Title of table	Names of bidders
9	Numerical assumptions and values listed in table	Analysis of terms of proposals
10	Column labeled "Bidders"	Names of bidders
10	Numerical assumptions and values listed in table	Analysis of terms of proposals

B. The following portions of the letter from Selvin Dottin to Frederick F. Haddad, Jr., dated August 2, 2000, with attachments, are granted confidential classification:

Pages	Location	Description
1	2 <sup>nd</sup> full paragraph, lines 4-7 (bulleted information)	Names of bidders
2	2 <sup>nd</sup> full paragraph, lines 4-6; 4 <sup>th</sup> full paragraph, lines 4-7 (bulleted information)	Names of bidders

Pages	Location	Description
5-7	Headers for columns 3-6; 1 <sup>st</sup> unnumbered row (page 5 only), columns 3-6	Information identifying bidders
5-7	1 <sup>st</sup> unnumbered row, columns 3-6; Numbered rows 1-19, columns 3-6	Terms of proposals
9	Addressee block; file name in footer	Information identifying bidders
10,13	Addressee block; greeting; file name in footer	Information identifying bidders
10,13	Numbered paragraph 3, line 2	Terms of proposals
11,14	Header; file name in footer	Information identifying bidders
15	Addressee block; file name in footer	Information identifying bidders
16,18	Addressee block; greeting; file name in footer	Information identifying bidders
17,19	Header; file name in footer	Information identifying bidders
17,19	Numbered paragraph 5, line 2	Terms of proposals
21	Addressee block; file name in footer	Information identifying bidders
22,24	Addressee block; greeting; file name in footer	Information identifying bidders
23,25	Header; file name in footer	Information identifying bidders
23,25	Numbered paragraph 5, line 2	Terms of proposals
26	Addressee block; file name in footer	Information identifying bidders

Pages	Location	Description
27	Addressee block; greeting; file name in footer	Information identifying bidders
28	Header; file name in footer	Information identifying bidders
30	Header; lines titled "From" and "Phone"	Information identifying bidders
31-34	Signature line (page 31 only); file name in footer	Information identifying bidders
31-34	Responses to Minimum Requirements numbered 1-19	Terms of proposals
36	"Respondents"; 1 <sup>st</sup> full paragraph of letter, lines 1-2	Names of bidders
36-39	Responses in numbered paragraphs 1-8	Terms of proposals
39	Last sentence of letter; signature block	Information identifying bidders
40	"From" line, and lines 1 and 6, in email dated July 25, 2000; "From" line, and line 6, in email dated July 24, 2000; file name at bottom of page	Information identifying bidders
42-44	Letterhead - headers and footers	Information identifying bidders
42-44	Responses in numbered paragraphs 1-5	Terms of proposals
43	Signature block	Information identifying bidders

C. The following portions of the letter from Paul A. Arsuaga to Frederick F. Haddad, Jr., dated August 8, 2000, with attachments, are granted confidential classification:

Pages	Location	Description
1	2 <sup>nd</sup> full paragraph, lines 3-5 (block-indented information)	Names of bidders
2	1 <sup>st</sup> full paragraph, including table, all lines	Names of bidders; terms of proposals
3	Table legend	Names of bidders
5,7	Headers for columns 3-5	Names of bidders
5,7	Numbered rows 1-9 and 17, columns 3-5	Terms of proposals

In conclusion, OUC's request for confidential classification of Volume 1E (Document No. 01440-01) is granted in part and denied in part, as set forth above. Pursuant to Section 366.093(4), Florida Statutes, 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), Florida Statutes, unless OUC 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 Braulio L. Baez, as Prehearing Officer, that Orlando Utilities Commission's Request for Confidential Classification of Document No. 01440-01 is granted in part and denied in part, as set forth in the body of this order. It is further

ORDERED that the information in Document No. 01440-01 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.

ORDER NO. PSC-01-2195-CFO-EM  
DOCKET NO. 010142-EM  
PAGE 8

By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 13th day of November, 2001.



*Braulio BAEZ*

\_\_\_\_\_  
BRAULIO L. BAEZ  
Commissioner and Prehearing Officer

( S E A L )

WCK

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



ORDER NO. PSC-01-2195-CFO-EM  
DOCKET NO. 010142-EM  
PAGE 9

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.