

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-01-2196-CFO-EM
ISSUED: November 13, 2001

ORDER GRANTING IN PART AND DENYING IN PART
REQUEST FOR CONFIDENTIAL CLASSIFICATION
(DOCUMENT NO. 02882-01)

On March 5, 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 its Second Request for Confidential Classification of Exhibits PAA-3 and PAA-4 to the prefiled direct testimony of witness Paul Arsuaga in this docket. These exhibits are filed under the title "Confidential Exhibit C" (Document No. 02882-01).

Exhibits PAA-3 and PAA-4 contain evaluations of bidders' proposals that OUC received in response to its Request for Power Supply Proposals ("Purchase Power RFP") issued May 24, 2000. More specifically, Exhibit PAA-3 consists of a letter from Paul A. Arsuaga to Frederick F. Haddad, Jr., dated August 15, 2000, with attachments, presenting a status report on the Stage 2 screening results of OUC's proposal evaluation. Exhibit PAA-4 consists of a letter from Paul A. Arsuaga to Frederick F. Haddad, Jr., dated August 23, 2000, with attachments, presenting a status report on the revised Stage 2 screening results of OUC's proposal evaluation.

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 proprietary confidential business information as information that is intended to be and is treated by the company as private, in that

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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 Purchase Power RFP 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 Purchase Power RFP. 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 Exhibits PAA-3 and PAA-4 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 Exhibits PAA-3 and PAA-4 is predicated solely on the confidential nature of the bidders' proposals. I find that the bid-related information contained in these exhibits 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.

A. The following portions of Exhibit PAA-3 are granted confidential classification:

Pages	Location	Description
1 of 19	2 nd paragraph, lines 3-5 (block-indented information)	Names of bidders
2 of 19	Table - Headers for columns 2-6	Names of bidders
2 of 19	Table - Numerical values in columns 2-6	Analysis of terms of proposals
4 of 19	"From" line; attachment name, above and below 1st paragraph; 1st paragraph, line 1; 2 nd paragraph, lines 1 and 5; 4 th paragraph, line 9; last three lines	Information identifying bidders
4 of 19	2 nd paragraph, lines 5 and 7-14	Terms of proposals
5 of 19	All lines	Information identifying bidders
6 of 19	Document title, line 2	Names of bidders
6 of 19	2 nd and 3 rd paragraphs titled "PROPOSAL", all lines	Terms of proposals
7 of 19 8 of 19	Document title, line 1; 1 st paragraph, line 2 (page 7 of 19 only); file name in footer	Information identifying bidders
7 of 19 8 of 19	Questions and answers numbered 1-13	Terms of proposals

Pages	Location	Description
9 of 19	Document title, line 1; file name in footer	Information identifying bidders
9 of 19	Questions and answers numbered 7-9	Terms of proposals
10 of 19	Section titled "Transmission losses"; section titled "Evaluation Period", lines 1 and 4	Names of bidders
10 of 19	Section titled "Evaluation Period", lines 2, 4, and 5	Terms of proposals
11 of 19	Table legend	Names of bidders
12 of 19	1 st column of table	Names of bidders
12 of 19	All numerical values listed in table	Analysis of terms of proposals
13-15 of 19	Headers for columns 3-5	Names of bidders
13-15 of 19	Numbered rows 1-17, columns 3-5	Terms of proposals
17 of 19	"From" line; attachment name, above and below body of email; 1 st paragraph, line 3; last eight lines	Names of bidders
18-19 of 19	Numbered question Q3; numbered answers A3-A9; file name in footer	Names of bidders, terms of proposals

B. The following portions of Exhibit PAA-4 are granted confidential classification:

Pages	Location	Description
1 of 5	2 nd paragraph, lines 3-5 (block-indented information)	Names of bidders
2 of 5	1 st paragraph; Table - Numerical values in columns 2- 6	Terms of proposals; analysis of terms of proposals
2 of 5	Table - Headers for columns 2- 6	Names of bidders
3 of 5	Table legend	Names of bidders
4-5 of 5	1 st column of table; 2 nd line above table (page 4 of 5 only)	Names of bidders
4-5 of 15	All numerical values listed in table	Analysis of terms of proposals

In conclusion, OUC's request for confidential classification of Exhibits PAA-3 and PAA-4, filed under the title "Confidential Exhibit C" (Document No. 02882-01) 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 Second Request for Confidential Classification of Document No. 02882-01 is granted in part and denied in part, as set forth in the body of this order. It is further

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ORDERED that the information in Document No. 02882-01 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.

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



FR BAEZ

BRAULIO L. BAEZ
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.