

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-02-0458-CFO-EM
ISSUED: April 3, 2002

ORDER GRANTING REQUEST FOR CONFIDENTIAL CLASSIFICATION
(DOCUMENT NO. 05011-01)

On January 31, 2001, pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, Southern Company-Florida LLC ("Southern-FL"), with the consent of Orlando Utilities Commission ("OUC"), Kissimmee Utility Authority ("KUA"), and Florida Municipal Power Agency ("FMPA") (collectively, "Joint Petitioners"), filed a request for confidential classification of certain specified information in the Need for Power Application ("NPA") filed in this docket, including the Power Purchase Agreement ("PPA") appended to the Application. This information is contained in a document titled "Need for Power Application Volume 1F - Confidential Exhibit B" (Document No. 01442-01). Section 1A.4.0 of the NPA states: "Final executed copies of the PPAs will be provided to the Commission upon their execution." The finalized and executed Power Purchase Agreement between Florida Municipal Power Agency (All Requirements Power Supply Project) and Southern-FL, dated March 19, 2001, has been filed with the Commission and is the document at issue here, pursuant to Southern-FL's April 23, 2001, request for confidential treatment (Document No. 05011-01).

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 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)(e), Florida Statutes, defines proprietary confidential business

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information to include, among other things, "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information."

A. Confidential Information in Power Purchase Agreement

In its request, Southern-FL states that the Power Purchase Agreement between Florida Municipal Power Agency and Southern-FL includes certain confidential pricing information, trade secrets, and other sensitive contract terms and conditions that have been negotiated by the Joint Petitioners. Southern-FL asserts that the disclosure of this specified information would harm its competitive business position. Specifically, Southern-FL asserts that disclosure of this specified information would make it available to actual or potential competitors, vendors, and customers of Southern-FL and would thus harm Southern-FL's ability to negotiate and enter into similar contracts on reasonable business terms. Accordingly, Southern-FL contends that this specified information constitutes proprietary confidential business information entitled to protection from disclosure pursuant to Section 366.093(3)(e), Florida Statutes. Southern-FL affirms that this specified information is intended to be and is treated by Southern-FL as confidential.

Southern-FL asserts that the information found in the Power Purchase Agreement listed below consists of confidential, competitively sensitive terms of the Joint Petitioners' PPA relating to pricing and certain rights and obligations of the parties which were the subject of sensitive negotiations:

Section	Pages	Lines
1.1.7	3	1, 3, 6, 9, 12, 15-16, 18-19, 21-23, 25-26
1.1.51	10	1-5
4.1.2	18	2, 22
4.2.1	20	15-16
4.2.1	20	26-29, Table A
4.2.1	21	1-4, Table A

Section	Pages	Lines
4.2.1 2)	21	17-18
4.2.1 3)	21	20-21
4.2.1 5)	22	9-10
4.2.1 6)	22	13-14
4.2.2	23	4-5, 12-15
4.2.3	24	6-8, Table B
4.2.3 1)	24	11-12
4.2.3 2)	24	22-23
4.2.5.1	25	22, 24-25, 27-29, 31, 33, 35
4.2.5.1	26	1, 3-5, 7
4.2.5.2	26	32-35
4.2.5.3(i)	27	25-32
4.2.5.3(ii)	28	8-16
4.3.5.1	30	35
4.3.5.1	31	1-2
4.3.5.2	31	7-9
4.3.5.3	31	10
5.1.3	33	34-35
5.1.3	34	8-9, 11, 13
6.4	36	20-21, 24
12.5.1	45	21, 25, 28

Section	Pages	Lines
Appendix A		
2	A-1	24-27
2	A-2	1-2
Appendix B		
1.1.1.1	B-1	15, 20-21, 23
Appendix D		
Examples 1-3	D-1	11, 13, 18, 20, 25, 27
Example 4	D-2	5-7

Southern-FL asserts that the disclosure of this information would impair Southern-FL's competitive interests by informing its actual and potential competitors, vendors, and customers of its agreement on this subject, in turn impairing its ability to negotiate similar terms in future contract negotiations.

Southern-FL asserts that the information found in the Power Purchase Agreement listed below consists of confidential, competitively sensitive terms of the Joint Petitioners' PPA relating to certain rights and obligations of the parties which were the subject of sensitive negotiations:

Section	Pages	Lines
1.1.35	7	15-16
1.1.44	8	24-26, 30-33
1.1.60	11	4
1.1.8	3	29-31
1.1.82	13	9-13
4.1	17	5
4.1	19	17, 19, 21

Section	Pages	Lines
4.1.2	17	37
4.3.1	28	18-21, 27-32
4.3.2	29	4, 6-12
4.3.3	29	15-16, 18-19
4.3.3	30	6
4.3.5	30	25-26
5.1.2	33	16-17, 22-23
5.2.2	34	28, 30-32
7.2	37	9-12
10.2	41	32-33
15.1	49	32-34
15.1.1	50	1, 10
15.2	50	30-31, 33
15.4	51	12-13
15.5	51	23, 28
15.6	51	37-38
15.6	52	1, 7, 9
15.7	52	14-15
16.3	55	31
Appendix B		
1.1.1	B-1	7
1.1.1.2	B-1	28
1.2	B-1	34
2.1.1	B-2	28, 31-33

Section	Pages	Lines
2.1.2	B-3	17, 23, 26
3.1.1	B-4	5, 14, 16
3.1.2	B-4	23
3.1.3	B-4	30, 37-38
3.1.3	B-5	2
3.1.4	B-5	7, 10, 15-16, 19, 24, 26
Appendix C	C-1	15-16
Appendix E		
1.	E-1	26-27
1.	E-2	4
9.	E-6	29-30
9.	E-7	2, 6-7

Southern-FL asserts that the disclosure of this information would impair Southern-FL's competitive interests by informing its actual and potential competitors, vendors, and customers of its agreement on this subject, in turn impairing its ability to negotiate similar terms in future contract negotiations.

Southern-FL asserts that the information found in the Power Purchase Agreement listed below consists of confidential, competitively sensitive terms of the Joint Petitioners' PPA relating to pricing and certain rights and obligations of the parties which were the subject of sensitive negotiations, and represents confidential trade secrets:

Section	Pages	Lines
Appendix A		
4	A-3	5-6, 8-9, 11-12, 17, 19-20, 23, 30

Section	Pages	Lines
4	A-4	2
4	A-5	Entire Chart

Southern-FL asserts that the disclosure of this information would impair Southern-FL's competitive interests by informing its actual and potential competitors, vendors, and customers of its agreement on this subject, in turn impairing its ability to negotiate similar terms in future contract negotiations. Southern-FL further asserts that this information derives independent economic value from not being generally known to, and not being readily ascertainable by, other persons who can obtain economic value from its disclosure or use. Southern-FL states that this information is also the subject of reasonable efforts to maintain its secrecy.

B. Findings

Upon review, I find that the specified information set forth above 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 above constitutes "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information" pursuant to Section 366.093(3)(e), Florida Statutes.

Section 366.093(4), Florida Statutes, provides that a finding by the Commission that records contain proprietary confidential business information shall be effective for a period no greater than 18 months, absent good cause shown for a specified longer period. That section further states that the Commission shall order the return of such records when they are no longer necessary for the Commission to conduct its business. In its request, Southern-FL asks that the specified information set forth above be classified as confidential for the maximum period of 18 months and that the unredacted copy of the Power Purchase Agreement be returned to Southern-FL upon closure of this docket.

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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. The unredacted copy of the Power Purchase Agreement may not be returned to Southern-FL upon closure of this docket because the Commission must retain it, as evidence received and considered in support of the Commission's final order in this docket, to comply with the Commission's records retention requirements. At the conclusion of the 18 month period, the confidential information will no longer be exempt from Section 119.07(1), Florida Statutes, unless Southern-FL 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 Southern Company-Florida LLC's Request for Confidential Classification of specified information in Document No. 05011-01 is granted, as set forth in the body of this order. It is further


ORDERED that the information in Document No. 05011-01 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 pursuant to Section 366.093(4), Florida Statutes, and Rule 25-22.006, Florida Administrative Code, any confidentiality granted to the documents specified herein shall expire eighteen (18) months from the date of issuance of this Order in the absence of a renewed request for confidentiality pursuant to Section 366.093. 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.

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By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 3rd day of April, 2002.



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

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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.