

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Florida Power Corporation for approval of agreement with Cedar Brakes IV, LLC to restructure three existing cogeneration contracts with a total capacity of 184 megawatts.

DOCKET NO. 020164-EQ
ORDER NO. PSC-02-0783-CFO-EQ
ISSUED: June 10, 2002

ORDER GRANTING JOINT REQUEST FOR CONFIDENTIAL CLASSIFICATION OF CERTAIN PORTIONS OF EXHIBITS 1 AND 2 TO ABOVE-CAPTIONED PETITION AND REQUEST FOR CONFIDENTIAL CLASSIFICATION OF CERTAIN PORTIONS OF RESPONSE TO STAFF DATA REQUEST (DOCUMENTS NOS. 02244-02 AND 04130-02)

Background

On February 26, 2002, Florida Power Corporation (FPC or Company) filed a Petition for Approval of an Agreement with Cedar Brakes IV, LLC (Cedar Brakes) to restructure three existing cogeneration contracts, along with a Notice of Intent to Request Confidential Classification of certain portions of Exhibits 1 and 2 to the Petition. On March 19, 2002, FPC and Cedar Brakes filed a Joint Request for Confidential Classification of these materials (Joint Request). Exhibits 1 and 2 to the Petition were filed with the requested confidential information highlighted in transparent ink and were assigned Document No. 02244-02. Exhibit 1 consists of a Master Agreement to Amend and Restate Contracts for the Purchase of Firm Capacity and Energy (the Agreement). Exhibit 2 consists of calculations of the savings to FPC's customers from discounted capacity payments pursuant to the Agreement.

On April 15, 2002, FPC filed a Notice of Intent to Request Confidential Classification of certain highlighted portions of its response to a data request propounded by the Commission staff to aid in its review of the Agreement and the economic benefits to be derived therefrom. On May 6, 2002, FPC filed a Request for Confidential Classification of the highlighted information (FPC Request). The highlighted materials consist of information related to FPC's coal forward pricing curves, forecasted energy and

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capacity prices, and contractual capacity discount terms, and were assigned Document No. 04130-02.

In support of the foregoing, FPC and (with respect to the Joint Request) Cedar Brakes state that Subsection 366.093(1), Florida Statutes, provides that any records "found by the [C]ommission to be proprietary confidential business information shall be kept confidential and shall be exempt from s. 119.07(1) [requiring disclosure under the Public Records Act]." Proprietary confidential business information includes, but is not limited to, "[i]nformation concerning . . . 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." Section 366.093(3)(d), Florida Statutes. It also includes "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information." Section 366.093(3)(e), Florida Statutes.

Joint Request (Document No. 02244-02)

According to FPC and Cedar Brakes, the designated commercial terms of the Agreement in Exhibit 1 and the calculation of cost savings that FPC's customers will receive as a result of the Agreement's capacity discounts in Exhibit 2 constitute proprietary confidential business information entitled to protection under Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. This information is intended to be and is treated by FPC and Cedar Brakes as private and has not been disclosed. Disclosure of the Agreement's key commercial terms would impair FPC's efforts to consummate the Agreement itself and to obtain the benefits it offers for FPC's customers. Moreover, public disclosure of the details of the cost and revenue streams and other highly negotiated terms of the Agreement would substantially impair the ability of Cedar Brakes to complete the timely restructuring of all of the contracts and financings required to close the transaction. Knowledge of this confidential information would provide other contracting parties engaged in negotiations with Cedar Brakes with unfair leverage in those negotiations, thus impairing Cedar Brakes' ability to obtain viable contracts. If Cedar Brakes is unable to negotiate commercially satisfactory contracts with these other parties, it will not

proceed with the proposed, restated Agreement, and FPC will not be able to provide the benefits of the Agreement to its customers.

Additionally, FPC and Cedar Brakes state that disclosure of the requested confidential information would jeopardize the ability of both Cedar Brakes and FPC to negotiate similar restructuring transactions with third parties at other cogeneration facilities. This would impair the competitive business of Cedar Brakes and would impair the efforts of FPC to contract for the restructuring of its cogeneration agreements on favorable terms, to the detriment of its customers. In the case of Cedar Brakes, other contract purchasers of qualifying facility (QF) power who are potential parties to restructuring transactions would begin negotiations using the terms of the Agreement most favorable to FPC as a floor from which to negotiate up, while Cedar Brakes' competitors would use the confidential information to undercut its offers to other QF contract purchasers.

In the case of FPC, its QF suppliers who may be interested in contract restructuring would use the terms of the Agreement most favorable to Cedar Brakes as a beginning point in their negotiations, thus compromising the Company's bargaining position. Given the number of FPC's high cost QF contracts, the potential harm to the Company and its customers from disclosure of the Agreement's sensitive commercial terms is particularly serious.

Upon review of the Exhibits 1 and 2 to the Petition, the redacted information contained therein primarily concerns 1) the proposed capacity charge discounts; 2) the expected ratepayer savings resulting from the proposed capacity discounts; and 3) liquidated damage requirements in the event of a default by the seller. It appears that this information could impair FPC and Cedar Brakes' bargaining positions in future cogeneration contract negotiations.

FPC Request (Document No. 04130-02)

Document No. 04130-02, filed in response to a staff data request, consists of 1) a graphical representation of the capacity account specified by one of the existing cogeneration contracts; 2) a comparison of the two fuel pricing options under the Agreement; and 3) FPC's net present value calculations of the ratepayer impact

of the Agreement under various fuel forecast scenarios. According to FPC, the highlighted information contained therein constitutes proprietary confidential business information entitled to protection under Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, and is intended to be and is treated by FPC as private and has not been disclosed. FPC states that disclosure of the information would jeopardize the ability of FPC to negotiate similar restructuring transactions with third parties at other cogeneration facilities. FPC's QF suppliers who may be interested in contract restructuring would have knowledge of the key market forecasts and assumptions which formed the basis of its negotiations with Cedar Brakes, thus compromising the Company's bargaining position with these suppliers. Moreover, FPC states that given the number of its high cost QF contracts, the potential harm to the Company and its customers from disclosure of this sensitive information is particularly serious.

Upon review of the Company's response to staff's data request, the redacted information contained therein consists of 1) the current capacity account balance as specified by one of the existing cogeneration contracts; 2) FPC's forward coal pricing curves; and 3) estimated capacity and energy payments over the life of the Agreement under various coal pricing assumptions. It appears that this information could impair FPC's bargaining position in future cogeneration contract negotiations.

Rulings

It appears that the highlighted information contained in the Joint Request and in the FPC Request is proprietary confidential business information, within the meaning of Section 366.093(3), Florida Statutes, for the reasons expressed by FPC and Cedar Brakes. Therefore, the Joint Request and the FPC Request for confidential classification of this information is granted.

Section 366.093(4), Florida Statutes, provides that "[a]ny finding by the [C]ommission that records contain proprietary confidential business information is effective for a period set by the [C]ommission not to exceed 18 months, unless the [C]ommission finds, for good cause, that the protection from disclosure shall be for a specified longer period." No time period was specified in either the Joint Request or in the FPC Request. Therefore, this

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information shall be granted confidential classification for a period of 18 months from the issuance date of this Order. At the conclusion of the 18-month period, FPC or Cedar Brakes may, in their discretion, renew their requests for confidentiality.

Based on the foregoing, it is

ORDERED by Commissioner Michael A. Palecki, as Prehearing Officer, that Florida Power Corporation and Cedar Brakes' Joint Request for Confidential Classification of Document No. 02244-02 is granted. It is further

ORDERED that Florida Power Corporation's Request for Confidential Classification of Document No. 04130-02 is granted. It is further

ORDERED that the information described within the body of this Order and contained in Documents Nos. 02244-02 and 04130-02 shall expire 18 months from the date of issuance of this Order in the absence of a renewed request for confidentiality. 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 Michael A. Palecki, as Prehearing Officer, this 10th day of June, 2002.



MICHAEL A. PALECKI
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.