

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to determine
need for Hines Unit 3 in Polk
County by Florida Power
Corporation.

DOCKET NO. 020953-EI
ORDER NO. PSC-02-1276-CFO-EI
ISSUED: September 18, 2002

ORDER GRANTING FLORIDA POWER CORPORATION'S FIRST REQUEST FOR
CONFIDENTIAL CLASSIFICATION (DOCUMENT NO. 09329-02)

On September 4, 2002, Florida Power Corporation (FPC), pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, filed its First Request for Confidential Classification. The Request seeks confidential treatment for information in Exhibit_JBC-1 of the prefiled testimony of John B. Crisp. The Exhibit is assigned Document No. 09329-02.

Exhibit_JBC-1 contains detailed descriptions of the proposals FPC received in response to the Request for Proposals (RFP) required by Rule 25-22.082, Florida Administrative Code (Bid Rule). A matrix identifying the lines and pages of the Exhibit that FPC claims is confidential is contained in Attachment A to this Order.

In support of its Request, FPC explains that the following paragraph was included in its RFP:

The bidders should mark all confidential and proprietary information contained in the proposals as "Confidential." While Florida Power will use its best efforts to protect the confidentiality of such information and only release such information to the members of the evaluation team, management, agents and contractors, and as necessary and consistent with applicable laws and regulations, to its affiliates and regulatory commissions, in no event shall Florida Power be liable to a Bidder for any damages of whatsoever kind resulting from Florida Power's failure to protect the confidentiality of Bidder's information. By submitting a proposal, the Bidder agrees to allow Florida Power to use the results of the RFP as evidence in any proceeding before the Florida Public Service Commission (FPSC). To the extent Florida Power wishes to use information that a Bidder considers confidential, Florida Power will petition the Commission to treat such

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information as confidential and to limit its dissemination, but Florida Power makes no assurance of the outcome of any such petition.

Seven bids were received and all bidders requested confidential treatment. FPC has not disclosed the bids to the public.

FPC states that according to Section 366.093(3)(d), Florida Statutes, "information concerning bids" the "disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms" is considered proprietary confidential business information. FPC explains that if bidders thought their bids would be made public, they might not bid at all, or they might withhold sensitive and important information needed to fully understand the costs and benefits of their proposals. In either case, FPC claims that its ability to contract for goods and services on favorable terms would be impaired.

Florida law presumes that documents submitted to governmental agencies shall be public records. The only exceptions to this presumption are the specific statutory exemptions provided in the law and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. This presumption is based on the concept that government should operate in the "sunshine." Rule 25-22.006(4)(c), Florida Administrative Code, provides that it is the Company's burden to demonstrate that the documents fall into a statutory exemption or that the information is proprietary confidential business information, the disclosure of which will cause the Company or its ratepayers harm.

Section 366.093, Florida Statutes, defines "proprietary confidential business information" as:

[I]nformation, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that

provides that the information will not be released to the public.

Upon review of the filings submitted, I find that Exhibit_JBC-1 satisfies the definition of proprietary confidential business information. For the reasons provided by FPC, it is information which, if disclosed, would impair FPC's ability to contract for goods or services. In addition, FPC maintains control over the information, and FPC treats it as confidential. FPC's Request for Confidential Classification is therefore granted.

Pursuant to Section 366.093(4), Florida Statutes, confidential protection may only be granted for a period of 18 months unless the entity making the request shows good cause why the period should be extended. FPC did not specify a duration for the confidential status of the document, so the document will be granted confidential status for 18 months.

Based on the foregoing, it is


ORDERED by the Florida Public Service Commission that Florida Power Corporation's First Request for Confidential Classification is granted. 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 364.183. 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.

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By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 18th day of September, 2002.



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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.