

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery
clause with generating performance incentive
factor.

DOCKET NO. 100001-EI
ORDER NO. PSC-10-0186-CFO-EI
ISSUED: March 29, 2010

ORDER GRANTING FLORIDA PUBLIC UTILITIES COMPANY'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION
(DOCUMENT NO. 04846-08)

On June 6, 2008, pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006(3), Florida Administrative Code (F.A.C.), Florida Public Utilities Company ("FPUC") filed a request for confidential classification of certain information contained in FPUC's Agreement for Generation Services (the "Agreement") with Gulf Power Company ("Gulf Power"), specifically the monthly capacity rates listed in the table on Page 11 (Document No. 04846-08). This request was filed in Docket No. 080001-EI. On December 9, 2009, in Docket Number 090001-EI, FPUC filed a Request for Continued Confidential Treatment of Document No. 04846-08.

Request for Confidential Classification

Section 366.093(1), F.S., 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 Section 119.07(1) [the Public Records Act]." Section 366.093(3), F.S., 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. Paragraphs (d) and (e) of Section 366.093, F.S., provide that proprietary confidential business information includes, but is not limited to "[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 "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information."

FPUC contends in both its original and continued requests for confidential classification that certain information provided in the table on Page 11 of the Agreement falls within these categories and thus constitutes proprietary confidential business information entitled to protection under Section 366.093, F.S., and Rule 25-22.006, F.A.C. FPUC states that this information is intended to be and has been and is treated by FPUC as private and has not been publicly disclosed.

FPUC specifically contends that the Agreement contains the terms, prices, conditions and similar contractual arrangements which were negotiated between the parties for the purchase of

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power by FPUC from Gulf Power. FPUC further contends that included within the Agreement are the monthly capacity rates to be paid by FPUC for the term of the Agreement, and that these rates are detailed in the table on Page 11 of the Agreement. FPUC alleges that these monthly capacity rates were the result of negotiation between the parties and are considered to be proprietary and confidential by both FPUC and Gulf Power. FPUC maintains that disclosure of the negotiated rates would be detrimental to the interests of the parties and their customers, and would impair the ability of FPUC to negotiate with other suppliers, or purchasers, on favorable terms in the future.

Ruling

Upon review, it appears the above-referenced information satisfies the criteria set forth in Section 366.093(3), F.S., for classification as proprietary confidential business information. The information 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 “[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.” Thus, the information contained in the table on Page 11 of the Agreement for Generation Services, Document No. 04846-08, shall be granted confidential classification.

I note that while FPUC filed their initial request for confidential classification in June, 2008, no order determining the confidentiality of this document has been issued, although it has been treated by this Commission as confidential while FPUC’s request was pending. Upon review of the document, it appears that the information is not stale and continues to merit confidential classification at this time. Therefore, pursuant to Section 366.093(4), F.S., 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), F.S., unless FPUC 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 Nathan A. Skop, as Prehearing Officer, that Florida Public Utilities Company’s Request for Confidential Classification of information contained within the table on Page 11 of the Agreement for Generation Services, Document No. 04846-08, is granted. It is further

ORDERED that the information in Document No. 04846-08 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 Nathan A. Skop, as Prehearing Officer, this 29th day of March, 2010.



NATHAN A. SKOP
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; or (2) 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 Office of Commission Clerk, 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.