

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for a limited proceeding to recover incremental storm restoration costs, capital costs, revenue reduction for permanently lost customers, and regulatory assets related to Hurricane Michael, by Florida Public Utilities Company.

DOCKET NO. 20190156-EI  
ORDER NO. PSC-2020-0294-CFO-EI  
ISSUED: August 31, 2020

ORDER GRANTING FLORIDA PUBLIC UTILITIES COMPANY'S  
REQUESTS FOR CONFIDENTIAL CLASSIFICATION  
AND MOTION FOR TEMPORARY PROTECTIVE ORDER  
(DOCUMENT NOS. 03945-2020 AND 04073-2020)

On July 21, 2020, pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), Florida Public Utilities Company (FPUC or Company) filed a Request for Confidential Classification (First Request). FPUC's First Request seeks confidential classification of portions of the direct testimony and exhibits HSW-2 and HSW-5 of the Office of Public Counsel (OPC) Witness Helmuth Schultz (Document No. 03945-2020). On July 27, 2020, also pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., FPUC filed a Request for Confidential Classification and Motion for Temporary Protective Order (Second Request). FPUC's Second Request seeks confidential classification of portions of the rebuttal testimony and exhibit PMC-1 of FPUC Witness P. Mark Cutshaw (Document No. 04072-2020). Both Requests were filed in Docket No. 20190156-EI.

First Request for Confidential Classification

FPUC contends that the information contained in portions of the direct testimony and exhibits HSW-2 and HSW-5 of OPC Witness Helmuth Schultz, constitutes proprietary and confidential business information entitled to protection under Section 366.093, F.S., and Rule 25-22.006, F.A.C. FPUC asserts that this information is intended to be and is treated by the Company as private, and has not been publicly disclosed.

FPUC further contends that the information contained in portions of the direct testimony and exhibits HSW-2 and HSW-5 of OPC Witness Helmuth Schultz, is information relating to contractual rates, the disclosure of which would harm the Company's competitive business interests. Given these facts, FPUC argues that such information is entitled to confidential classification pursuant to Subsection 366.093(3), F.S.

Second Request for Confidential Classification

FPUC contends that the information contained in portions of the rebuttal testimony and exhibit PMC-1 of FPUC Witness P. Mark Cutshaw, constitutes proprietary and confidential

business information entitled to protection under Section 366.093, F.S., and Rule 25-22.006, F.A.C. FPUC asserts that this information is intended to be and is treated by the Company as private, and has not been publicly disclosed.

FPUC further contends that the information contained in portions of the rebuttal testimony and exhibit PMC-1 of FPUC Witness P. Mark Cutshaw, is information relating to contractual rates, the disclosure of which would harm the Company's competitive business interests. Given these facts, FPUC argues that such information is entitled to confidential classification pursuant to Subsection 366.093(3), F.S.

### Ruling

Subsection 366.093(1), F.S., provides that records the Florida Public Service Commission (Commission) has found to contain proprietary business information shall be kept confidential and shall be exempt from Chapter 119, F.S. Subsection 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. Subsection 366.093(3), F.S., provides that proprietary confidential business information includes, but is not limited to:

- (d) Information 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.

Upon review, it appears the above-referenced information satisfies the criteria set forth in Subsection 366.093(3), F.S., for classification as proprietary confidential business information. The information described above and in FPUC's First and Second Requests appears to contain information 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. Thus, the information identified in Document Nos. 03945-2020 and 04073-2020 shall be granted confidential classification.

Pursuant to Subsection 366.093(4), F.S., the information for which confidential classification is granted herein shall remain protected from disclosure for a period of up to 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 Subsection 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.

### Motion for Temporary Protective Order

FPUC also seeks protection of Document No. 04073-2020, as provided in Section 366.093, and Rule 25-22.006, F.A.C. Subsection 366.093(2), F.S., directs that all records produced pursuant to a discovery request for which proprietary confidential status is requested

shall be treated by any party subject to the public records law as confidential and exempt from Subsection 119.07(1), F.S., the public records law. Rule 25-22.006(6), F.A.C., codifies the Commission's policy regarding the protection of confidential information from public disclosure during the discovery process in a manner that is not overly burdensome to both parties. Rule 25-22.006(6)(a), F.A.C., in pertinent part, states:

In any formal proceeding before the Commission, any utility or other person may request a protective order protecting proprietary confidential business information from discovery. Upon a showing by a utility or other person and a finding by the Commission that the material is entitled to protection, the Commission shall enter a protective order limiting discovery in the manner provided for in Rule 1.280, Florida Rules of Civil Procedure.

Upon consideration of FPUC's assertions of the confidential nature of portions of the rebuttal testimony and exhibit PMC-1 of FPUC Witness P. Mark Cutshaw, FPUC's Motion for Temporary Protective Order is hereby granted. As a result, this information shall be protected from disclosure pursuant to Rule 25-22.006(6), F.A.C.

Based on the foregoing, it is hereby

ORDERED by Commissioner Andrew Giles Fay, as Prehearing Officer, that Florida Public Utilities Company's Request for Confidential Classification of Document Nos. 03945-2020 and 04073-2020 is granted. It is further

ORDERED that Florida Public Utilities Company's Motion for Temporary Protective Order of Document No. 04073-2020 is granted. It is further

ORDERED that the information in Document Nos. 03945-2020 and 04073-2020, for which confidential classification has been granted, shall remain protected from disclosure for a period of up to 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 Subsection 119.07(1), F.S., unless Florida Public Utilities Company or another affected person shows, and the Commission finds, that the records continue to contain proprietary confidential business information. It is further

ORDERED that the Temporary Protective Order shall extend not only to the Office of Public Counsel, but also to any consultants or advisors with whom the Office of Public Counsel has contracted for purposes of this proceeding. 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 Andrew Giles Fay, as Prehearing Officer, this 31st day of August, 2020.



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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

AJW

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 25-22.0376, 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.