

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Seminole Electric Cooperative, Inc. for a determination of need for proposed electric power plant.)
DOCKET NO. 880309-EC
ORDER NO. 20342
ISSUED 11-21-88
_____)

ORDER ON CONFIDENTIALITY

On November 8, 1988, Seminole Electric Cooperative, Inc. (SEC) filed its response to Staff's Third Production of Documents Request Numbers 9 and 10. These requests are as follows:

9. Please provide spread sheets detailing the 3-step analysis used in the screening of RFPs described in Woodbury's prefiled testimony of October 26, 1988.
10. Please provide the supporting workpapers for the 3-step RFP screening analysis, including, but not limited to: (a) the detailed scoresheets developed in the third step of the analysis referred to in Woodbury's prefiled testimony of October 26, 1988.

SEC has requested that a portion of both production requests be found to be specified confidential pursuant to Rule 25-22.006, Florida Administrative Code. The portions of these production requests which SEC seeks to have classified as specified confidential are portions which deal with \$/KW amounts for two bidders with which SEC is currently negotiating for the construction of units which would satisfy SEC's power needs. These amounts include \$/KW figures for each bidder's fixed costs and variable costs and a comparison of each bidder's total \$/KW cost to SEC's \$/KW cost of construction for its proposed 220 MW class combined cycle units.

SEC has provided this information for all eight bidders from whom SEC received proposals and is not seeking confidentiality for the information related to the six bidders who have been dropped as viable alternatives to SEC's own proposed generation construction. Further, SEC has provided the Commission with edited responses to each request with only the information relating to the two viable bidders deleted.

Pursuant to Section 350.121, Florida Statutes, and Rule 25-22.006, materials may be classified by this Commission as "specified confidential information." Rule 25-22.006(1)(j), Florida Administrative Code, defines "specified confidential information" as "material that has been determined, pursuant to this rule, to be proprietary confidential business information under Section 350.121, 364.183, 366.093, or 367.156, F.S." "Proprietary confidential business information" is defined in Section 366.093, Florida Statutes, as including, but not limited to: trade secrets; internal auditing controls and reports of internal auditors; security measures, systems or procedures; information concerning bids or other contractual data, the disclosure of which would impair the efforts of the

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public utility to contract for services on favorable terms; and employee personnel information unrelated to compensation, duties, qualifications, or responsibilities. (Emphasis added.)

Other Florida law gives further guidance as to what constitutes confidential information. Section 163.01(15)(m), Florida Statutes, defines "proprietary confidential business information" to include the items found in Section 366.093 and "formulas, patterns, devices, combinations of devices, contract costs, or other information the disclosure of which would injure the affected entity in the marketplace." (Emphasis added.)

Having reviewed the information supplied to the Staff, we find that it is information showing SEC's evaluation of the bids submitted in response to SEC's RFP for purchase power supply alternatives by the two bidders with whom SEC is currently negotiating. It is obvious that a comparison of the fixed and variable costs of each of these projects to each other and to SEC's proposed units would be invaluable information to the bidders and would dramatically affect the negotiations of each bidder with SEC to SEC's detriment. Bidding information and contract costs are both specifically referred to in Sections 366.093 and 163.01(15)(m) as being information which is "proprietary confidential business information." Thus it is clear from the applicable statutes that this type of information was intended by the Legislature to be given proprietary confidential business information status upon request by the appropriate party. In this case the appropriate party is SEC.

For these reasons, we find that portions of the information found in SEC's responses to Staff's Third Request for Production of Documents Numbers 9 and 10 filed on November 8, 1988, as outlined below is proprietary confidential business information and specified confidential business information pursuant to 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. The portions of the materials submitted which have been given proprietary confidential business and specified confidential status are:

1. Columns labeled Company A and Company B on page 3 of 7, Production of Documents Request No. 9;
2. Columns labeled Company A and Company B on page 5 of 7, excluding line 5, Number of MW, Production of Documents Request No. 9;
3. Columns labeled Company A and Company B on page 7 of 7, Production of Documents Request No. 9;
4. Pages 3, 4, 12, 13, 18, 19, 25, 26, 27, 28, 29, 30, 31, 32, 33, and 34 contained in SEC's response labeled 10B, Production of Documents Request No. 10.

Therefore, it is,

ORDERED by Gerald L. Gunter, Prehearing Officer, that the request for specified confidentiality filed by Seminole Electric Cooperative, Inc. is hereby granted as set forth in the body of this order. It is further

ORDERED that the information listed above to which specified confidential status has been given shall be provided only to Commission Staff and Commissioners unless good cause can be shown by other parties to this docket. Upon a showing of good cause, other parties to this docket shall undertake stringent measures to assure the confidentiality of this material and prevent its public disclosure. It is further

ORDERED that this material will retain its specified confidential status until the later of: (1) the date on which SEC has finally rejected both proposals and is no longer engaged in negotiations with either bidder, or (2) should SEC contract with a bidder for the purchase of power and capacity, the date on which such contract terminates or expires. It is further

ORDERED that all materials classified by this order as specified confidential shall be returned to Seminole Electric Cooperative, Inc., pursuant to authorized procedures, at the conclusion of this docket. Conclusion of the docket is defined to mean after the time to file petitions for reconsideration of any order issued in the docket has run, or after the time for the filing of a notice of appeal of any order issued in this docket has run. Should a notice of appeal be filed in this docket, the materials shall be retained by the Commission until the final disposition of that appeal. It is further

ORDERED that if a protest is filed within 14 days of the date of this order, it will be resolved by the appropriate Commission panel pursuant to Rule 25-22.006(3)(d), Florida Administrative Code.

BY ORDER of Commissioner Gerald L. Gunter, as Prehearing Officer, this 21st day of NOVEMBER, 1988.


GERALD L. GUNTER, Commissioner
and Prehearing Officer

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