

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of AES Cedar Bay,) DOCKET NO. 881472-EQ
 Inc. and Seminole Kraft Corporation)
 for determination of need for the) ORDER NO. 20993
 Cedar Bay Cogeneration Project.)
 _____) ISSUED: 4-7-89

ORDER ON CONFIDENTIALITY

On March 13, 1989, AES Cedar Bay, Inc, (AES) and Seminole Kraft Corporation (Seminole Kraft) filed a motion requesting that the First Supplemental Response to Staff Interrogatories Nos. 3 and 16 provided on March 13, 1989, and the First Supplemental Response to Staff Production of Documents Requests Nos. 4, 5 and 6 be classified as "specified confidential information" pursuant to Rule 25-22.006, Florida Administrative Code and Section 366.093, Florida Statutes.

Interrogatory No. 3 requests a detailed cost estimate for the proposed AES cogeneration project which includes: the steam production facilities; electric generation facilities; fuel transportation and storage facilities; associated transmission facilities and the site costs. These estimates were requested in current dollars, with contingencies or escalation factors explicitly identified to arrive at a total January, 1993 (in-service) cost estimate. Interrogatory No. 16 requested a comparison of the 30-year, present worth revenue requirements for the proposed plant with the standard offer and the standard offer with a 20% risk factor. Production of Documents Requests Nos. 4, 5 and 6 asked for the steam contracts between AES and Seminole Kraft, bids for supply and disposal of the combustion waste products of the proposed plant and the coal transportation contract(s) associated with the project, respectively.

On March 17, 1989, AES filed its Second Supplemental Response to Staff Interrogatory No. 16. Simultaneous with the filing of this response, AES also filed a motion requesting that its second response be classified as "specified confidential information" pursuant to Rule 25-22.006 and Section 366.093. The second response provided by AES correctly calculates the information asked for in 1989 dollars, rather than the 1993 dollars used in the first supplemental response to the interrogatory.

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

Other Florida laws offer further guidance as to what constitutes confidential information. Section 163.01(15)(m),

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Florida Statutes, defines "proprietary confidential business information" to include the items found in Section 367.093 and "formulas, patterns, devices, combinations of devices, contract costs, or other information the disclosure of which would injure the affected entity in the marketplace." Finally, "trade secret" is defined in Section 442.102(22), Florida Statutes, as "any confidential formula, pattern, process, device information or compilation of information, including a chemical name or other unique chemical identifier, that is used in an employer's business and that gives the employer an opportunity to obtain an advantage over competitors who do not know or use the formula, pattern, process, device, information, or compilation of information."

AES' request is based on its assertion that the information provided falls within the purview of Section 163.01(15)(m) since these materials are contract costs and bids the disclosure of which would either injure AES' competitive position in the marketplace or impair its ability to contract for services on favorable terms. We agree in part.

The detailed cost estimate of the project, the steam contracts, bids for supply and disposal of combustion waste products, and coal and coal transportation contracts are all materials which fall within the definition of proprietary confidential business information found in Section 163.01(15)(m). Most of these contracts have been privately negotiated by AES with vendors whose products are not regulated in any respect by this agency. It is also clear that the disclosure of the terms of these contracts would hamper AES' ability to negotiate subsequent contracts for the purchase of these items. Because AES is in the cogeneration development business, it will of necessity be negotiating other contracts for fuel, disposal of cogeneration facility waste products and sale of the thermal energy produced by its facilities. Where, as here, the cogeneration project is being developed by an entity unaffiliated with the production process which needs the steam, the negotiated price for steam sales can make or break a proposed project because a certain percentage of thermal output is required to attain the status of a qualifying facility under both federal and state regulations. Also, to the extent that the price attained for steam sales can offset an otherwise too-low avoided cost price for the sale of electricity, it can be the deciding factor in the viability of a project.

For these reasons, we find that the First Supplemental Responses to Interrogatory No. 3 and Production of Documents Requests Nos. 4, 5, and 6, the detailed cost estimate for the project, steam contracts, bids for supply and disposal of combustion waste products and coal supply and transportation contracts are proprietary confidential business information pursuant to Section 163.01(15)(m).

In a previous order on confidentiality, we found that the terms and conditions of the negotiated contract for the sale of AES' cogenerated power to FPL was not proprietary confidential business information pursuant to Section 366.093, Florida Statutes. The responses to Staff Interrogatory No. 16 compare the present worth revenue requirements of the standard offer with and without the 20% risk factor to the present worth

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revenue requirements of the negotiated contract over a 30 year term. The present worth revenue requirements of the standard offer are published in FPL's tariffs. The present worth revenue requirements of the negotiated contract are derivable from the schedules attached to the contract between AES and FPL which we have already found not to be confidential business information. Thus, the information in both the first and second supplemental responses to this interrogatory is either already available or easily derivable from public documents. As such, it does not constitute proprietary confidential business information.

Therefore, it is

ORDERED by Chairman Michael McK. Wilson, Prehearing Officer, that the request for specified confidential classification filed by AES Cedar Bay, Inc. and Seminole Kraft Corporation on March 13, 1989 is granted with regard to the First Supplemental Responses to Staff Interrogatory 3 and the First Supplemental Responses to Staff Requests for Production of Documents No.4, 5 and 6. It is further

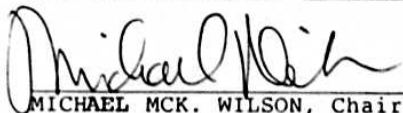
ORDERED that the date on which the First Supplemental Response to Staff Interrogatory 3 and the First Supplemental Responses to Staff Production of Documents Requests Nos. 4, 5, and 6 will no longer be proprietary confidential business information is December 31, 2024, 32 years after the commercial operation date of the proposed cogeneration facility.

ORDERED that the First Supplemental Response to Staff Interrogatory 3 and the First Supplemental Responses to Staff Production of Documents Requests Nos. 4, 5, and 6 be returned to AES Cedar Bay, Inc. and Seminole Kraft Corporation pursuant to the appropriate procedures at the conclusion of this docket. The docket shall be deemed to be concluded when the time for both the filing of a petition for reconsideration and appeal have run or when the reconsideration or appeal is ruled upon.

ORDERED that the request of AES Cedar Bay, Inc. and Seminole Kraft Corporation for specified confidential classification of the First and Second Supplemental Responses to Staff Interrogatory No. 16 is hereby denied. 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 Chairman Michael McK. Wilson, Prehearing Officer, this 7th day of APRIL, 1989.


MICHAEL MCK. WILSON, Chairman and
Prehearing Officer

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