

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Nassau Power)
Corporation to Determine Need for)
Electrical Power Plant (Amelia)
Island Cogeneration Facility))
_____)
)

Docket No. 910816-EQ
Order No. 25302
Issued: 11/6/91

ORDER ON CONFIDENTIALITY

BY THE COMMISSION:

On November 1, 1991, Nassau Power Corporation ("Nassau"), filed a request for confidential classification and a permanent protective order regarding information found in Exhibit JHB-3 to the prefiled direct testimony of John H. Beck, filed in Docket No. 910816-EQ on October 14, 1991.

Florida law provides, in Section 119.01, Florida Statutes, that documents submitted to governmental agencies shall be public records. The only exceptions to this law are specific statutory exemptions, and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. This law derives from the concept that government should operate in the "sunshine." In the instant matter, the value that all parties would receive by examining and utilizing the information contained in this document must be weighed against the legitimate concerns of Nassau regarding disclosure of business information which it considers proprietary. It is our view that parties must meet a very high burden when requesting confidential classification of documents.

Pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, Nassau has the burden to show that the material submitted is qualified for confidential classification. Rule 25-22.006, Florida Administrative Code, provides that the Company may fulfill its burden by demonstrating that the information falls under one of the statutory examples set out in Section 366.093, Florida Statutes, or by demonstrating that the information is proprietary confidential information, the disclosure of which will cause the Company or its ratepayers harm.

Section 366.093(3), Florida Statutes, provides several examples of proprietary confidential business information. Included in this list are "trade secrets" and "information relating to competitive interests." Nassau argues that both of these provisions are applicable here.

Chapter 688, Florida Statutes is the Uniform Trade Secret Act. Section 688.002(4) states that:

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"Trade secret" means information . . . that

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy."

Chapter 812, Florida Statutes addresses Theft, Robbery, and Related Crimes. Section 812.081(1)(c) states that ". . . a trade secret is considered to be: 1. Secret; 2. Of value; 3. For use or in use by the business; and 4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes."

Exhibit JHB-3 is a report entitled Transmission Line Right-of-Way Analysis. Nassau seeks confidentiality for specific price information contained in the report and calculated by Mr. Beck. These prices estimate the right-of-way land acquisition costs for Nassau's proposed transmission line. Specifically, Nassau seeks confidentiality for the price information found at page 5, lines 14 and 18, and page 6, lines 3 and 6.

Nassau states that this information is in Nassau's exclusive control, that it is treated by Nassau as private, and that it has never before been publicly disclosed. Nassau further submits that this information is in the nature of a trade secret because it is secret, it is of value, it is for use in Nassau's business, it is of advantage to Nassau over those who do not possess it, and Nassau takes measures to prevent its disclosure. In addition, Nassau submits that this information relates to Nassau's competitive interests, and that public disclosure would impair those competitive interests.

We find that the land pricing information at page 5, lines 14 and 18, and page 6, lines 3 and 6, is competitively and commercially valuable to Nassau. We understand that Nassau plans to use this information when negotiating with landowners for right-of-way acquisition. If the landowners knew these estimated values, Nassau's competitive negotiating posture could be seriously impaired as it goes through the land acquisition process. We find that public disclosure of this information could harm Nassau, and, accordingly, we find this information to be proprietary

confidential business information.

It is, therefore,

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that the information in Document Number 10923-91 discussed above is proprietary confidential business information, and that it will be treated as such by the Florida Public Service Commission.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 6th day of November, 1991.



SUSAN F. CLARK, Commissioner and
Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

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 25-22.038(2), 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 Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary,

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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.