

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Nassau Power) Docket No. 910816-EQ
Corporation to Determine Need for) Order No. 25304
Electrical Power Plant (Amelia) Issued: 11/6/91
Island Cogeneration Facility))
_____)

THIRD ORDER ON CONFIDENTIALITY

BY THE COMMISSION:

Nassau Power Corporation ("Nassau") filed a request for confidential classification and motion for permanent protective order pertaining to certain material Nassau provided to Florida Power and Light Company ("FPL") pursuant to three nondisclosure agreements. These nondisclosure agreements guarantee FPL's confidential handling of two documents relating to the operation of ITT Rayonier, Inc., and of twelve cycle diagrams which are the proprietary property of Westinghouse.

Pursuant to the terms of the nondisclosure agreements, FPL notified Nassau on November 2, 1991, that it intended to use the confidential information and documents provided to it for cross-examination purposes during the hearing scheduled for November 6 and 7, 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

DOCUMENT NUMBER-DATE

11045 NOV-6 1991

FPSC-RECORDS/REPORTING

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:

"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."

Nassau seeks confidential classification for the following information:

- a. Cogeneration Study for ITT Rayonier, Inc., prepared by Big Bend Engineering Co., Inc., dated November 8, 1990;
- b. Limited Price Information found in the Project Outline, dated November, 1990; and
- c. Twelve cycle diagrams prepared by Westinghouse.

Nassau argues that all of the information listed above comprises proprietary confidential business information.

The Big Bend Engineering study was performed by Big Bend Engineering Company at the ITT site. This study evaluates the internal operations of the ITT Rayonier mill as these operations relate to the development of the proposed cogeneration project. The study is an extensive evaluation of the operations of ITT Rayonier. It contains specific and detailed information on the operation of the ITT Rayonier plant, including, but not limited to, information concerning the plant's fuel usage, the plant's steam usage, and the prices the plant pays for fuel. The Big Bend Engineering study contains information which ITT regards as proprietary, and which has been entrusted to Nassau by ITT. Nassau states that public disclosure could competitively harm ITT vis-a-vis its competitive position with other mills. Pursuant to an agreement with ITT, Nassau is prohibited from releasing the Big Bend Engineering study in the absence of a nondisclosure agreement.

Additionally, Nassau argues that the information contained in the Big Bend Study is controlled by Nassau, that it is treated by Nassau as extremely private and confidential, that disclosure of the information could harm Nassau and its business operations, and that the information has not been publicly disclosed. Nassau is currently engaged in sensitive and on-going negotiations with ITT which look toward the development of a definitive steam sales agreement. Nassau states that public disclosure of the study could harm these sensitive negotiations, and thus the business operations of Nassau and Falcon Seaboard.

Nassau submits that the Big Bend Engineering study is in the nature of a trade secret because the information is secret, it is of value, it is used in Nassau's business, and it could be of advantage to Nassau over those who do not possess it. Further, Nassau takes strict measures to prevent its disclosure.

We find the information contained in the Big Bend Engineering study to be proprietary confidential business information.

The Project Outline is a proposal which Falcon Seaboard presented to ITT Rayonier concerning the proposed cogeneration project. Nassau seeks confidential classification for the two price references which reveal the price at which Nassau would sell steam to ITT. These references appear on page 1, line 12, and page 21, line 10 of the Project Outline. Nassau states that it is engaged in on-going sensitive negotiations with ITT Rayonier, and that it keeps this information private and confidential. Nassau argues that public disclosure of this information could be damaging

to the competitive interests of Nassau and Falcon Seaboard as negotiations with ITT continue, and accordingly, that such disclosure could harm Nassau and Nassau's business operations.

We find that the price information on page 1, line 12, and on page 21, line 10, of the Project Outline to be proprietary confidential business information.

The Westinghouse cycle diagrams are the proprietary business information of Westinghouse. The cycle diagrams contain technical details of unit design and performance which could be of value to competitors of both Westinghouse and Nassau, and that public disclosure could injure the competitive posture of both Westinghouse and Nassau. Moreover, Westinghouse has prohibited Nassau from releasing these cycle diagrams in the absence of a nondisclosure agreement. Nassau further argues that public disclosure of this information could harm Nassau and Falcon Seaboard's competitive interests for the reasons discussed above.

We find the Westinghouse cycle diagrams to be proprietary confidential business information.

Finally, we note that the information which is the subject of this request was provided to FPL only because FPL agreed to keep the information confidential. We find that this information shall be protected from public disclosure during the course of the hearing by using the procedures the parties are to develop for this purpose.

It is, therefore,

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that the information in Document Number 10981-91 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

(S E A L)

MAB:bmi
nasconf3.mb

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, 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.