

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Modified Minimum Filing ) DOCKET NO. 930720-EI  
Requirement Report in compliance ) ORDER NO. PSC-94-1039-CFO-EI  
with Section 366.06(3), Florida ) ISSUED: August 24, 1994  
Statutes, for Fernandina Beach )  
by Florida Public Utilities )  
Company. )  
\_\_\_\_\_)

ORDER GRANTING REQUEST FOR  
CONFIDENTIAL CLASSIFICATION

BY THE COMMISSION:

On April 7, 1994, Florida Public Utilities Company (FPUC) or utility) filed a Request for Confidential Classification for portions of documents which were assigned Document No. 3303-94. These documents, including the supporting workpapers, were obtained as part of the staff audit of the utility's Modified Minimum Filing Requirement Report (MMFR).

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." It is this Commission's view that the burden to be met by one requesting specified confidential classification of documents submitted during a proceeding before us is very high. Rule 25-22.006, Florida Administrative Code, provides that the Company may fulfill its burden by demonstrating how that information qualifies as 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.

The utility's request for confidential classification states that the material is proprietary confidential business information. FPUC states that the information should be deemed as confidential since the information relates to contractual data and information relating to competitive interests, pursuant to section 366.093(3) (d) and (e), Florida Statutes. FPUC asserts that disclosure of this information would impair FPUC's ability to contract for goods and services on favorable terms and would impair FPUC's competitive interests. More specifically, the information relates to certain environmental claims. FPUC states that if the general nature or the specific facts associated with these claims are disclosed, FPUC would be placed in a severe and adverse position regarding the future resolution of these claims. The utility also maintains that

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the ability to negotiate a favorable conclusion would be compromised to the detriment of the ratepayers and stockholders and that disclosure of the information could also expose FPUC to a breach of contract claim. The company holds this information to be and is treated by FPUC as confidential, that it has not been publicly disclosed, and that it has been circulated to a select few FPUC employees on a need to know basis only.

The material found on Audit Disclosure No. 3, lines 5-10, workpaper 9-1 p.2, lines 8-10, workpaper 9-3 unnumbered p.2, lines 7-11, 16-8, and 28-35, and workpaper 9-3 unnumbered p.3, lines 31-34, is found to be proprietary business information pursuant to Section 366.093(3)(d) and (e), Florida Statutes.

The utility requests that the information retain confidential status for the entire period held by the Commission, and in no event for less than the eighteen months provided in Section 366.093(4), Florida Statutes. Section 366.093(4), Florida Statutes, states that "[a]ny finding by the commission that records contain proprietary confidential business information is effective for a period set by the commission not to exceed 18 months, unless the commission finds, for good cause shown, that the protection from disclosure shall be for a specified longer period." Because FPUC's request is for an unspecified period, pursuant to the statute, this proprietary business information shall remain confidential for a period of 18 months from the date this Order is issued. Near the end of this time period, FPUC may resubmit a petition to extend this period of confidentiality, and the prehearing officer will consider extending the period upon said request.

The utility requests that the documents and copies of the originals of the subject documents in the possession of the Staff be returned to FPUC, through the company's counsel, when the information is no longer required for retention by the Commission.

In consideration of the foregoing, it is

ORDERED that Florida Public Utilities Company's request for confidential classification of the above specified information in its Modified Minimum Filing Requirement Report, the document identified as DN 3303-94 is granted, as discussed within the body of this Order. It is further

ORDERED that the proprietary confidential business information shall remain confidential for 18 months from the date of this Order. It is further

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ORDERED that the documents containing the confidential information as discussed above and all copies of same shall be returned to the counsel for Florida Public Utilities Company when the information is no longer required by this Commission.

By ORDER of Chairman J. Terry Deason, as Prehearing Officer, this 24th day of August, 1994.

  
J. TERRY DEASON, Chairman and  
Prehearing Officer

( S E A L )  
SLE:bmi

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(40), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Section 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.