

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination)
of Need of Hines Unit 2 Power Plant)
_____)

Docket No.: 001064-EI

Submitted for Filing: August 7, 2000

**FLORIDA POWER CORPORATION'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION**

Florida Power Corporation ("FPC" or the "Company"), pursuant to Section 366.093, Fla. Stats., and Rule 25-22.006, F.A.C., requests confidential classification of the proposals FPC received in response to the Company's Request for Proposals issued January 26, 2000, pursuant to Rule 25-22.082, F.A.C., and FPC's evaluation of them. The proposals themselves, together with FPC's documentation of its evaluation of the proposals, are being filed under seal with the Florida Public Service Commission ("PSC" or the "Commission"). They are included as appendices to the Confidential Section of the Company's Need Study, which is also being filed under seal with the Commission, along with the pre-filed testimony of the witnesses who explain FPC's evaluation of the proposals – John B. Crisp and Alan S. Taylor, a consultant with PHB Hagler Bailly retained by FPC to assist it with the RFP. These materials are being filed under seal with the Commission on a confidential basis because the bidders who submitted proposals in response to the Company's RFP asked the Company to keep them confidential by declaring that the terms of their proposals were confidential.

Introduction

In its RFP, the Company provided for the confidentiality of the bids it received in response to its RFP (along with any other information provided by the bidders during the course of the Company's evaluation of their proposals). Specifically, the RFP provided that:

FPC will take reasonable precautions and use reasonable efforts to protect any proprietary and confidential information contained in a proposal provided that such information is clearly identified by the Respondent as "Proprietary and Confidential" on the page on which proprietary and confidential information appears. Such information may, however, be made available under applicable state or federal law to regulatory commission(s), their staff(s), or other governmental agencies having an interest in these matters. FPC reserves the right to release such information to agents, contractors, or to its parent company or to subsidiaries thereof, for the purpose of evaluating the Respondent's proposal but such companies, agents, or contractors will be required to observe the same care with respect to disclosure as FPC. Under no circumstances will FPC or Florida Progress Corporation or their subsidiaries, agents, or contractors, be liable for any damage resulting from any disclosure during or after the solicitation process.

FPC's RFP was issued on January 26, 2000 and set a deadline of March 27, 2000 for the submittal of bids in response to the RFP. Two bidders submitted proposals for FPC's consideration. Both bidders requested confidential treatment for the terms of their proposals. As a result, the Company has treated the bidders' proposals as private, confidential information and the Company has not disclosed them to the public.

The Confidentiality of the Bids

Subsection 366.093(1) provides that "any records received by the Commission which are shown and found by the Commission to be proprietary confidential business information shall be kept confidential and shall be exempt from [the Public Records Act]." Proprietary confidential business information means information that is (i) intended to be and is treated as private, confidential information by the Company, (ii) because disclosure of the information would cause harm, (iii) either to the Company's ratepayers or the Company's business operations, and (iv) the information has not been voluntarily disclosed to the public. § 366.093(3), Fla.Stats.

Specifically, "information concerning bids" the "disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms" is defined as proprietary confidential business information. § 366.093(3)(d), Fla.Stats.

The terms of the bidders' proposals in response to the Company's RFP fit this statutory definition of proprietary confidential business information. Accordingly, the proposals (and FPC's evaluation and explanation of them), are entitled to protection under Section 366.093 and Rule 25-22.006.

The very purpose of the RFP was to obtain potentially favorable contract terms for supply-side alternatives to the Company's next-planned generating unit -- the Hines 2 combined cycle unit -- to provide the 530 megawatts ("MW") of capacity required to meet FPC's reliability need in the winter of 2003/04. The RFP was issued pursuant to the Commission's "bid" rule, which is intended to provide a procedure under which a utility can "solicit and screen, for subsequent contract negotiations, competitive proposals for supply-side alternatives to the utility's next planned generating unit." Rule 25-22.082(1)(b), F.A.C. [emphasis supplied]. FPC specifically stated in the RFP that it was seeking "proposals that will offer exceptional value to FPC and its customers." Through its RFP, FPC endeavored to attract all proposals that might offer lower cost supply-side resources or provide more economic value to FPC and its ratepayers than its next-planned generating unit.

In order to obtain such proposals, however, FPC must be able to assure potential bidders that the terms of their bids will be kept confidential. To this end, FPC included a confidentiality provision in its RFP (as stated above). The purpose behind including that confidentiality provision in the RFP was to provide bidders the assurance that the terms of their bids would be kept confidential and would not be publicly disclosed.

If such assurances are not provided, and potential bidders know that the terms of their bids are subject to public disclosure, they might withhold sensitive engineering, construction, cost, or other information necessary for the utility to fully understand and accurately assess the

costs and benefits of their proposals. Or, persons or companies who otherwise would have submitted bids in response to the utility's RFP might decide not to do so, if there is no assurance that their proposals would be protected from disclosure. (Affidavit of Michael D. Rib, ¶ 6). In either case, without the assurance of confidentiality for the terms of the bids received in response to an RFP, the utility's "efforts ... to contract for goods or services on favorable terms" will be impaired. §366.093, Fla.Stats.

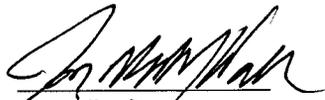
For all these reasons, FPC declared its intent in its RFP to keep the terms of the bidders' proposals in response to the RFP confidential. FPC has treated the bids it received as confidential. (Affidavit of Michael D. Rib, ¶ 7). Upon receipt of the proposals, strict procedures were established and followed to maintain the confidentiality of the proposals, including restricting access to those persons who needed the information to assist the Company in its evaluation of the proposals and restricting the number of, and access to, copies of them. (Id.). At no time since receiving the bids has the Company publicly disclosed the terms of the proposals, even to the other bidders. (Id.). The Company has treated and continues to treat the bidders' proposals as confidential. (Id.).

Attachment A hereto contains a justification matrix supporting FPC's request for confidential classification of the highlighted information in the Confidential Section of FPC's Need Study, its Appendices, and the Confidential Testimony of John B. Crisp and Alan S. Taylor, submitted with FPC's Notice of Intent to Request Confidential Classification filed herewith. The confidential information is identified by appendix number, page, and/or line, where appropriate (for example, in place of certain appendices to the Confidential Section of the Need Study, which would contain virtually nothing but blank pages if the information the

bidders requested FPC to keep confidential was redacted, FPC has included a statement explaining the breadth of the confidential classification).

WHEREFORE, FPC respectfully requests that the bidders' proposals in response to the RFP and FPC's evaluation and explanation of its evaluation of those proposals, contained in the Confidential Section of FPC's Need Study, its Appendices, and the Confidential Testimony of John B. Crisp and Alan S. Taylor, respectively, be classified as confidential for the reasons set forth above.

Respectfully submitted this 7th day of August 2000.



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ATTACHMENT A

DOCUMENT	PAGE/LINE	JUSTIFICATION
Confidential Section of the Need Study	pp. 1-2, 4-6, 13-15 (all or virtually all of the page)	§366.093(3)(d). This is information concerning the bids in response to the Request for Proposals ("RFP"), the disclosure of which would impair the utility's efforts to contract for such services on favorable terms.
Confidential Section of the Need Study	p. 3, lines 1, 7, 14, 17-22 p. 7, lines 1-5, 7, 9, 22 p. 8, lines 17, 21-23 p. 9, lines 1-3 p. 10, lines 11-20, 22 p. 11, lines 2, 7-8, 17-23 p. 12, lines 1-2, 8, 14, 16-22	§366.093(3)(d). This is information concerning the bids in response to the RFP, the disclosure of which would impair the utility's efforts to contract for such services on favorable terms.
Appendix items to the Confidential Section of the Need Study		
Appendix 1 (Confidential Request for Proposal Response from Bidder A)	All	§366.093(3)(d). This is the bid in response to the RFP, the disclosure of which would impair the utility's efforts to contract for such services on favorable terms.
Appendix 2 (Confidential Request for Proposal Response from Bidder B)	All	§366.093(3)(d). This is the bid in response to the RFP, the disclosure of which would impair the utility's efforts to contract for such services on favorable terms.

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Appendix 3 (Confidential Florida Power Corporation ("FPC") Requests for Required Information and the Bidders' Responses)	All	§366.093(3)(d). This is information concerning the bids in response to the RFP, the disclosure of which would impair the utility's efforts to contract for such services on favorable terms.
Appendix 4 (Confidential FPC Requests for Supplemental Information and the Bidders' Responses)	All	§366.093(3)(d). This is information concerning the bids in response to the RFP, the disclosure of which would impair the utility's efforts to contract for such services on favorable terms.
Appendix 5 (Confidential FPC Initial Screening Evaluation of RFP Responses)	All	§366.093(3)(d). This is information concerning the bids in response to the RFP, the disclosure of which would impair the utility's efforts to contract for such services on favorable terms.
Appendix 6 (Confidential FPC Supplemental Screening Evaluation of RFP Responses)	All	§366.093(3)(d). This is information concerning the bids in response to the RFP, the disclosure of which would impair the utility's efforts to contract for such services on favorable terms.
Appendix 7 (Confidential FPC Non-Price Evaluation of Bidder A's Response to FPC's RFP)	All	§366.093(3)(d). This is information concerning the bids in response to the RFP, the disclosure of which would impair the utility's efforts to contract for such services on favorable terms.
Appendix 8 (Confidential FPC Non-Price Evaluation of Bidder B's Response to FPC's RFP)	All	§366.093(3)(d). This is information concerning the bids in response to the RFP, the disclosure of which would impair the utility's efforts to contract for such services on favorable terms.

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DOCUMENT	PAGE/LINE	JUSTIFICATION
<p>Confidential Direct Testimony of John B. Crisp</p>	<p>p. 2, lines 5-7 p. 3, lines 1-2, 11-12, 15-18, 20, 23-25 p. 4, lines 1-13, 16-23 p. 5, lines 1-19 p. 6, lines 11, 14-23 p. 7, lines 1-23 p. 8, lines 1-22 p. 9, lines 18-20, 22-23 p. 10, lines 2-3, 7-23 p. 11, lines 1-12 p. 12, lines 3-4, 9, 12-13, 15-16 p. 14, lines 7-15 p. 15, lines 5-9, 20-23 p. 16, lines 1-6 p. 17, lines 6, 8-22 p. 18, lines 1-23 p. 19, lines 1-3, 7</p>	<p>§366.093(3)(d). This is information concerning the bids in response to the RFP, the disclosure of which would impair the utility's efforts to contract for such services on favorable terms.</p>
<p>Confidential Supplemental Testimony of Alan S. Taylor</p>	<p>p. 1, lines 20-23 p. 2, lines 1-3, 11-14, 20-23 p. 3, lines 1-3, 13-15, 17-18, 20 p. 4, lines 1, 11-15, 23 p. 5, lines 1-6</p>	<p>§366.093(3)(d). This is information concerning the bids in response to the RFP, the disclosure of which would impair the utility's efforts to contract for such services on favorable terms.</p>