

**BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF FLORIDA**

IN RE: )  
 )  
JOINT PETITION OF ORLANDO UTILITIES )  
COMMISSION, KISSIMMEE UTILITY )  
AUTHORITY, FLORIDA MUNICIPAL POWER )  
AGENCY, AND SOUTHERN COMPANY – )  
FLORIDA, LLC, FOR DETERMINATION OF )  
NEED OF THE PROPOSED STANTON )  
ENERGY CENTER COMBINED CYCLE )  
UNIT A. )  
\_\_\_\_\_ )

DOCKET NO. 010142-EM  
FILED: \_\_\_\_\_

**ORLANDO UTILITIES COMMISSION'S  
REQUEST FOR CONFIDENTIAL CLASSIFICATION**

Orlando Utilities Commission (OUC), on behalf of itself and Kissimmee Utility Authority (KUA) and Florida Municipal Power Authority (FMPA), pursuant to Section 366.093, Fla. Stat., and Rule 25-22.006, F.A.C., respectfully requests that the Florida Public Service Commission (the "Commission") classify as confidential the evaluations OUC conducted of the proposals it received in response to OUC's Request for Proposals for Joint Development of the Stanton Energy Center and/or The Cane Island Power Park issued May 26, 2000 (Joint Development RFP) and OUC's Request for Power Supply Proposals issued May 24, 2000 (Purchase Power RFP). OUC's documentation of its evaluation of these proposals is being filed under seal with the Commission. These evaluations are referenced in The Need for Power Application for Stanton Energy Center Combined Cycle Unit A (Stanton A) and are being filed under seal because the bidders who submitted proposals requested confidentiality relative to their proposals. OUC sets out below information in support of its Request for Confidential Classification.

DOCUMENT NUMBER-DATE

01439 JAN 31 06

FPSC-RECORDS/REPORTING

## **A. Introduction**

1. In the Joint Development RFP, OUC included a Confidentiality Agreement that was required to be executed and provided with the bidder's proposal. Each bidder submitting a proposal provided a signed confidentiality agreement.

2. In the Purchase Power RFP, OUC provided for the confidentiality of the bids it received in response to the Purchase Power RFP (along with any other information provided by the bidders during the course of OUC's evaluation of their proposals). Specifically, the Purchase Power RFP contained the following:

OUC will take reasonable precautions and use all reasonable efforts to protect any proprietary and confidential information contained in a proposal provided by each Proposer. Pages of a proposal, which contain any information, which Proposer deems to be proprietary should be marked clearly as "proprietary and confidential." Any such information marked as "proprietary and confidential" shall be treated as confidential by OUC and shall not be disclosed to third parties except as may be required by law. OUC may disclose confidential information of Proposer as necessary under state or federal law to regulatory commissions, their staff, or other governmental agencies having an interest in the matter covered by this RFP. OUC further reserves the right to release such information to other Participants and those of its independent consultants and agents as necessary for the purposes of evaluating the proposal that agree to protect confidential information in the same manner as OUC. Under no circumstances will OUC or the City of Orlando be liable for any damages resulting from any disclosure of confidential information during or after the evaluation of each Proposer's proposal before or after the evaluation period.

3. Two of the bidders providing proposals in response to the Purchase Power RFP also submitted proposals in response to the Joint Development RFP. OUC entered into a confidentiality agreement with both of these bidders. Proposals from the remaining bidders conformed with the above request in the Purchase Power RFP and contained requests for confidentiality of their proposals.

## **B. The Confidentiality of the Proposal Evaluations**

1. 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 OUC, (ii) because disclosure of the information would cause harm, (iii) either to OUC’s ratepayers or OUC’s business operations, and (iv) the information has not been voluntarily disclosed to the public. §366.093(3), Fla. Stat. Specifically, “information concerning bids,” the disclosure of which would impair the efforts of the 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. Stat.

2. The terms of the bidders’ proposals used and presented in their evaluations in response to OUC’s RFPs fit this statutory definition of proprietary confidential business information. Accordingly, the proposals (and OUC’s evaluation and explanation of them) are entitled to protection under Section 366.093 and Rule 25-22.006.

3. The very purpose of the RFPs was to obtain potentially favorable contract terms for supply-side alternatives to OUC’s next planned generating unit – Stanton Energy Center Combined Cycle Unit A – to provide from 500 to 750 MW of capacity required to meet OUC’s, KUA’s, and FMFA’s reliability needs. Through these RFPs, OUC endeavored to attract all proposals that might offer lower cost supply-side resources or provide more economic value to OUC, KUA, and FMFA and their ratepayers than the next planned generating unit.

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

5. 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 to fully understand and accurately access the costs and benefits of their proposals. Alternatively, persons or companies who otherwise would have submitted bids in response to the RFPs might decide not to do so, if there is no assurance that their proposals would be protected from disclosure. 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 and services on favorable terms" will be impaired. §366.093, Fla. Stat.

6. For all of these reasons, OUC declared its intent in the RFPs to keep the terms of the bidders' proposals in response to the RFP confidential. Furthermore, OUC has treated the bids it received as confidential. Upon receipt of the proposals, strict procedures were established and followed to maintain confidentiality of the proposals, including restricting access to only those persons who needed the information to assist OUC in its evaluation of the proposals and restricting the number of, and access to, copies of such proposals.

7. At no time since receiving the bids has OUC publicly disclosed the terms of the proposals, even to other bidders. OUC has at all times treated, and continues to treat, the bidders' proposals as confidential.

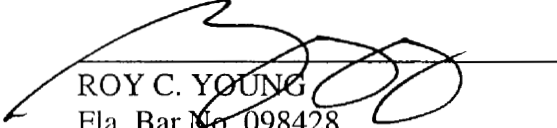
8. OUC attaches hereto and incorporates by reference the following documents in support of this request:

Attachment A: A justification matrix supporting OUC's Request for Confidential Classification of the evaluations.

Attachment B: Volume 1E of the Application which contains the confidential information subject to this request. This document has been placed in a separate envelope marked "Confidential" and should be given confidential treatment by the Commission. There is only one copy of this Attachment B, which is attached to the original filing copy hereof.

WHEREFORE, OUC respectfully requests that its evaluation of the proposals received in response to the Purchase Power RFP and Joint Development RFP, and explanation of the evaluation of those proposals be classified as confidential for the reasons set forth above.

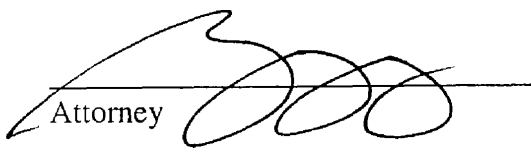
Respectfully submitted this 31<sup>st</sup> day of January 2001.

  
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ATTORNEYS FOR ORLANDO  
UTILITIES COMMISSION

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U. S. Mail to Jack Shreve, Office of Public Counsel, 111 W. Madison Street, Suite 812, Tallahassee, FL 32399, this 31<sup>st</sup> day of Jan, 2001.

  
Attorney

**ATTACHMENT A**

<b>DOCUMENT</b>	<b>JUSTIFICATION</b>
Letter from William H. Herrington to Fred Haddad dated 8 August 2000 with attachments	366.093(3)(d). This is information concerning bids in response to a RFP, the disclosure of which would impair the utility's efforts to contract for such services on favorable terms.
Letter from Selvin Dottin to Fredrick F. Haddad, Jr. dated August 2, 2000 with attachments.	366.093(3)(d). This is information concerning bids in response to a RFP, the disclosure of which would impair the utility's efforts to contract for such services on favorable terms.
Letter from Selvin Dottin to Fredrick F. Haddad, Jr. dated August 8, 2000 with attachments.	366.093(3)(d). This is information concerning bids in response to a RFP, the disclosure of which would impair the utility's efforts to contract for such services on favorable terms.