

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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: March 5, 2001

ORIGINAL

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

Orlando Utility Commission (OUC), on behalf of itself and Kissimmee Utility Authority (KUA) and Florida Municipal Power Authority (FMPA), pursuant to Section 366.093, Fla. Stats., and Rule 25-22.006, F.A.C., respectively 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 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 identified as Confidential Exhibit C, Exhibits PAA-3 and PAA-4 in the Prefiled Direct Testimony of OUC, KUA, and FMPA witness Paul Arsuaga and are being filed under seal because the respondents who submitted proposals requested confidentiality relative to their proposals. OUC sets out below information in support of its Request for Confidential Classification.

A. Introduction

In the Power Supply RFP, OUC provided for the confidentiality of the proposals it received in response to the Power Supply RFP (along with any other information provided by the respondents during the course of OUC's evaluation of their proposals), Specifically, the Power Supply 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 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 the 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

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confidential information during or after the evaluation of each Proposer's proposal before or after the evaluation period.

OUC's RFP for power supply proposals was issued on May 24, 2000 and set a deadline of July 11, 2000 for the submittal of proposals in response to the RFP. Four respondents submitted proposals. All respondents requested confidential treatment for the terms of their proposals. As a result, OUC has treated all respondents' proposals as private, confidential information and OUC has not disclosed them to the public.

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 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.Stats.) 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 information. (366.093(3)(d), Fla.Stats.)

2. The terms of the respondents' proposals in response to OUC's RFP 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 electric capacity and energy required to meet OUC's, KUA's, and FMFA's reliability needs. Through the RFP, OUC endeavored to attract all proposals that might offer lower cost 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 proposers that the terms of their proposals will be kept confidential. To this end, OUC included a confidentiality provision in the RFP (as stated above). The purpose behind include the confidentiality provision in the RFP was to provide respondents the assurance that the terms of their proposals would be kept confidential and would not be publicly disclosed.

5. If such assurances are not provided, and potential respondents know that the terms of their proposals are subject to public disclosure, they might withhold sensitive engineering, construction, cost or other information necessary for the utility to fully understand and accurately access the costs and benefits of their proposals. Or, persons or companies who otherwise would have submitted proposals in response to the RFP 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.Stats.)

6. For all of these reasons, OUC declared its intent in its RFP to keep the terms of the respondents' proposals in response to the RFP confidential. Furthermore, OUC has treated the proposals 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 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 respondents. OUC has at all times treated and continues to treat, the respondents' proposals as confidential.

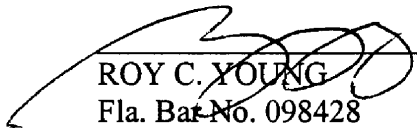
8. OUC attaches hereto and incorporates by reference the following documents in support of this request:

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

Attachment B: Confidential Volume C 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 Power Supply RFP and explanation of the evaluation of those proposals be classified as confidential for the reasons set forth above.

Respectively, submitted this 5th day of March 2001.



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ATTACHMENT A

DOCUMENT	PAGE / LINE	JUSTIFICATION
Public Service Commission Docket No. 010142 – EM Confidential Exhibit C – Prefiled Exhibits	P. Arsuaga Exhibit No. ____ (PAA-3) Status Report: Orlando Utilities Commission Proposal Evaluation – Stage Two Screening Results August 15, 2000	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.
Public Service Commission Docket No. 010142 – EM Confidential Exhibit C – Prefiled Exhibits	P. Arsuaga Exhibit No. ____ (PAA-4) Status Report: Orlando Utilities Commission Proposal Evaluation Revised Stage Two Screening Results August 23, 2000	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.