

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida  
Public Utilities Company.

DOCKET NO. 080366-GU  
ORDER NO. PSC-09-0236-PCO-GU  
ISSUED: April 16, 2009

TEMPORARY PROTECTIVE ORDER

By its Motion for Protective Order and/or Temporary Protective Order (Motion), filed April 10, 2009, Florida Public Utilities Company (FPUC) has requested, pursuant to Rule 25-22.006, Florida Administrative Code (F.A.C.), and Section 366.093, Florida Statutes (F.S.), that this Commission issue a temporary protective order for materials and information requested by the Office of Public Counsel (OPC or Citizens). OPC has stated that it does not plan to respond to this Motion. FPUC's request is for temporary confidential treatment of information and documents provided pursuant to the following requests:

Citizens' First Request for Production of Documents

OPC Document Request No. 1 states:

Please provide each company monthly and year to date operations report that provides all performance results and performance goals, including reports of variances and explanations of variances, for the state of Florida operations as a whole, regarding all performance goals and measurements including, but not limited to service installations, maintenance and repair, call center and customer service departments. This request seeks all such documents created on or after January 1, 2005, for years 2005, 2006, 2007, 2008, 2009 and 2010 in your possession, custody or control.

OPC Document Request No. 2 states:

Please provide copies of company documents relating to the company's approved and/or authorized Florida statewide full time and contract employee headcounts and budgeted overtime hours for the state of Florida operations as a whole and the departmental organizations responsible for installation, maintenance and repair, meter readers, call centers/customer service and headquarters/administration, were initially budgeted for years 2005, 2006, 2007, 2008, 2009 and 2010. This request seeks all such documents created on or after January 1, 2004, in your possession, custody or control.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

OPC Document Request No. 3 states:

Please provide a copy of company documents that list the total O&M budgeted and actual salary expense for installation, repair and maintenance employees, meter readers and business office/call center employees for years 2005, 2006, 2007, 2008, 2009 and 2010.

OPC Document Request No. 5 states:

Please provide a copy of all Executive and higher management complaints received by the company from customers during year 2007, 2008 and 2009 to date, including all associated documents describing each such complaint and its resolution and any monthly, quarterly or annual summaries of such complaints.

FPUC asserts that portions of the materials and information provided in response to the above requests for production are covered by the definition of "proprietary confidential business information" under Section 366.093, F.S., and are treated as confidential by FPUC. Specifically, FPUC asserts that the following documents should be accorded confidential treatment: (1) Exhibits 1.B-1, 1.F25-74, and 1.B9 filed in response to OPC's POD Request No. 1; (2) Exhibit 2.2 filed in response to OPC's POD Request No. 2; (3) Exhibits 3.8 – 3.10 filed in response to OPC's POD Request No. 3; and (4) Exhibit 5.1 filed in response to OPC's POD Request No. 5. FPUC requests that the materials and information described above and provided in response to OPC's requests for production be granted the protection of a Protective Order and/or a Temporary Protective Order, exempting the identified information from public disclosure and determining that the identified information is confidential.

Based on the foregoing, pursuant to this Commission's authority under Section 366.093, F.S., and Rule 25-22.006, F.A.C., FPUC's Motion for a Temporary Protective Order is hereby granted. Accordingly, the documents and information described above and received by OPC from FPUC shall be kept confidential and exempt from public disclosure under Section 119.07(1), F.S., for the duration of this Temporary Protective Order.

FPUC shall, in accordance with the provisions of Rule 25-22.006, F.A.C., apply for confidential treatment of those portions of the materials and information which are, in its opinion, entitled to such treatment within fourteen days of notification that OPC has identified the documents or information it will use. This Temporary Protective Order shall remain in effect no longer than fourteen days after OPC determines which information it intends to use and notifies FPUC, by which time OPC shall return to FPUC all materials and information it does not intend to use in this proceeding. The expiration date of this Order shall be void upon the issuance of an order finding that the information and materials herein are not proprietary and confidential business information. This Order shall have no effect on the subsequent determination of any request for specified confidential classification of any of these materials and information.

Based on the foregoing, it is

ORDERED by Commissioner Nathan A. Skop, as Prehearing Officer, that the portions of the documents identified in the body of this Order, received by the Office of Public Counsel from Florida Public Utilities Company, in response to Public Counsel's Requests for Production Nos. 1, 2, 3, and 5 shall be treated temporarily as proprietary confidential business information within the meaning of Section 366.093, F.S., and protected from public disclosure as required therein. It is further

ORDERED that once the Office of Public Counsel has notified Florida Public Utilities Company which of the materials the Office of Public Counsel intends to use in this docket, Florida Public Utilities Company, in accordance with Rule 25-22.006, F.A.C., shall file, within fourteen days of such notification, a motion for a permanent protective order requesting proprietary confidential treatment of those portions of the materials and information for which it desires confidential treatment. It is further

ORDERED that the remaining materials that the Office of Public Counsel does not plan to use in this proceeding shall be returned to Florida Public Utilities Company, in accordance with Rule 25-22.006, F.A.C. It is further

ORDERED that the Office of Public Counsel shall take measures to preserve the confidentiality of the documents and information protected by this Order. No disclosure of the documents or information protected by this Order shall be made or permitted. It is further

ORDERED that this Order will be the only notification by Florida Public Service Commission to the parties concerning the expiration of the Temporary Protective Order.

By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 16th day of April, 2009.



NATHAN A. SKOP

Commissioner and Prehearing Officer

( S E A L )

RRJ

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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 25-22.0376, Florida Administrative Code; or (2) 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 Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, 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.