

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 140025-EI
ORDER NO. PSC-14-0385-CFO-EI
ISSUED: July 24, 2014

ORDER GRANTING FLORIDA PUBLIC UTILITIES COMPANY'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION AND MOTION
FOR TEMPORARY PROTECTIVE ORDER (DOCUMENT NO. 01948-14)

On April 28, 2014, pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), Florida Public Utilities Company (FPUC) filed its request (Request) for specified confidential classification of portions of the testimonies of its witnesses Cheryl Martin, Jeffrey Householder, Mark Cutshaw and Drane Shelley, as well as portions of Exhibit No. MC/DS-9 (Document No. 01948-14).

Request for Confidential Classification

FPUC contends that portions of the testimonies of its witnesses Cheryl Martin, Jeffrey Householder, Mark Cutshaw and Drane Shelley, as well as portions of Exhibit MC/DS-9, constitute proprietary confidential business information entitled to protection under Section 366.093, F.S., and Rule 25-22.006, F.A.C.

FPUC asserts that the testimonies of its witnesses Mark Cutshaw and Drane Shelley contain the name of the owners and the specific size and expected output of a qualifying cogeneration facility currently in negotiation with FPUC for the sale of its energy and capacity. FPUC also asserts that Exhibit No. MC/DS-9 contains projections of the net benefits of the cogenerated purchased power to FPUC and other proposed terms and conditions of the cogeneration contract. Additionally, FPUC contends that portions of its witness Cheryl Martin's testimony, as well as that of witness Jeffrey Householder, contain confidential information that includes the terms of the proposed contract, anticipated net benefits, saving projections, size and expected output of the cogeneration facility. Finally, FPUC asserts that this information is intended to be and is treated by both FPUC and the owners of the qualifying cogeneration facility as private, is the subject of a non-disclosure agreement between the parties, and has not been publicly disclosed.

FPUC contends that disclosure of this information would harm FPUC's ability to negotiate reasonable terms with the qualifying cogeneration facility's owners and could impair its ability to negotiate reasonable, least-cost terms with other potential cogeneration facilities. Furthermore, FPUC contends that its ability to negotiate the lowest prices for replacement energy and capacity from the market would be impaired should current negotiations with the cogeneration facility ultimately fail.

Ruling

Section 366.093(1), F.S., provides that records the Florida Public Service Commission (Commission) has found to contain proprietary confidential business information shall be kept confidential and shall be exempt from Chapter 119, F.S. Section 366.093(3), F.S., defines proprietary confidential business information as information that is intended to be and is treated by the company as private, in that disclosure of the information would cause harm to the company's ratepayers or business operations, and that has not been voluntarily disclosed to the public. Section 366.093(3), F.S., provides that proprietary confidential business information includes, but is not limited to:

(d) Information concerning bids and other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods and services on favorable terms.

(e) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

Upon review, it appears the above-referenced information satisfies the criteria set forth in Sections 366.093(3)(d) and (e), F.S., for classification as proprietary confidential business information. The information at issue appears to contain information concerning bids or other contractual data, the disclosure of which would impair the efforts of FPUC or its affiliates to contract for goods or services on favorable terms and information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information. Thus, the information identified in Document No. 01948-14 shall be granted confidential classification.

Pursuant to Section 366.093(4), F.S., the information for which confidential classification is granted herein shall remain protected from disclosure for a period of 18 up to months from the date of the issuance of this Order. At the conclusion of the 18-month period, the confidential information will no longer be exempt from Section 119.07(1), F.S., unless FPUC or another affected person shows, and the Commission finds, that the records continue to contain proprietary confidential business information.

Motion for Temporary Protective Order

FPUC also seeks protection of the documents as provided in Section 366.093(2), F.S., and Rule 25-22.006(6), F.A.C., while the material is in the possession of the Office of Public Counsel (OPC). Section 366.093(2), F.S., directs that all records produced pursuant to a discovery request for which proprietary confidential status is requested shall be treated by any party subject to the public records law as confidential and exempt from the public records law, Section 119.07(1), F.S. Rule 25-22.006(6), F.A.C., codifies the Commission's policy regarding the protection of confidential information from public disclosure during the discovery process in a manner that is not overly burdensome to both parties. Rule 25-22.006(6)(a), F.A.C., in pertinent part, states:

In any formal proceeding before the Commission, any utility or other person may request a protective order protecting proprietary confidential business information from discovery. Upon a showing by a utility or other person and a finding by the Commission that the material is entitled to protection, the Commission shall enter a protective order limiting discovery in the manner provided for in Rule 1.280, Florida Rules of Civil Procedure.

In addition, Rule 25-22.006(6)(c), F.A.C., states that if a party allows OPC to inspect or take possession of utility information, then that “utility may request a temporary protective order exempting the information from section 119.07(1), F.S.”

Upon consideration of FPUC’s assertions of the confidential nature of the information contained in portions of the testimonies of its witnesses Cheryl Martin, Jeffry Householder, Mark Cutshaw and Drane Shelley, as well as portions of Exhibit No. MC/DS-9, FPUC’s Motion for Temporary Protective Order is hereby granted. As a result, this information shall be protected from disclosure pursuant to Rule 25-22.006(6)(c), F.A.C.

Based on the foregoing, it is hereby

ORDERED by Commissioner Julie I. Brown as Prehearing Officer, that Florida Public Utilities Company’s Request for Confidential Classification of the materials contained in Document No. 01948-14 is granted. It is further

ORDERED that the information in Document No. 01948-14 for which confidential classification has been granted, shall remain protected from disclosure for a period of up to 18 months from the date of issuance of this Order. It is further

ORDERED that the Motion for Temporary Protective Order filed by Florida Public Utilities Company is granted. It is further

ORDERED that this Order shall be the only notification by the Commission to the parties of the date of declassification of the materials discussed herein.

By ORDER of Commissioner Julie I. Brown, as Prehearing Officer, this 24th day of
July, 2014.



JULIE I. BROWN
Commissioner and Prehearing Officer
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

SBr

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.

Attachment A

DOCUMENT/TESTIMONY	DESCRIPTION
Direct testimony of Cutshaw/Shelley	Page 37, lines 1-7, 17, 21-22 Page 38, lines 1-18 Page 55, lines 9-20
Cutshaw/Shelley, Exhibit MC/DS 9	Page 1 in its entirety
Direct testimony of Martin	Page 62, line 24 Page 63, lines 1,8, 11 Page 64, line 1
Direct testimony of Householder	Page 16, lines 9-21, 23 Page 17, lines 1-6, 14