

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 001064-EI
ORDER NO. PSC-00-1881-CFO-EI
ISSUED: October 16, 2000

ORDER GRANTING CONFIDENTIAL CLASSIFICATION TO PORTIONS OF FLORIDA
POWER CORPORATION'S DIRECT TESTIMONY OF JOHN B. CRISP WITH
ATTACHED NEED STUDY (DOCUMENT NO. 09534-00) AND TO PORTIONS OF
THE SUPPLEMENTAL DIRECT TESTIMONY OF ALAN S. TAYLOR
(DOCUMENT NO. 09535-00)

Pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, Florida Power Corporation (FPC or Company) has requested specified confidential treatment for certain information contained in portions of its direct testimony of John B. Crisp, with attached need study, and to portions of the Supplemental Direct Testimony of Alan S. Taylor. This request for confidential classification was filed on August 7, 2000. The confidential information is located in Documents Nos. 09534-00 and 09535-00, respectively.

FPC asserts that the information contained in the need study relates to proposals FPC received in response to the Company's Request for Proposals (RFP) issued January 26, 2000, pursuant to Rule 25-22.082, Florida Administrative Code, and FPC's evaluation of them. FPC maintains that these documents meet the requirements of Section 366.093(3)(d), Florida Statutes, as information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms. FPC asserts that this information is proprietary, confidential business information and as such, is entitled to protection from disclosure under Sections 366.093(1), and (3)(d), Florida Statutes.

INFORMATION FOR WHICH CONFIDENTIAL CLASSIFICATION IS SOUGHT

FPC requests that the information contained in the following tables be granted confidential classification:

DOCUMENT NUMBER-DATE

13090 OCT 16 8

FPSC-RECORDS/REPORTING

ORDER NO. PSC-00-1881-CFO-EI
DOCKET NO. 001064-EI
PAGE 2

CONFIDENTIAL DIRECT TESTIMONY OF JOHN B. CRISP

<u>PAGE</u>	<u>LINE(S)</u>
2	5-7
3	1-2, 11-12, 15-18, 20, 23-25
4	1-13, 16-23
5	1-19
6	11, 14-23
7	1-23
8	1-22
9	18-20, 22-23
10	2-3, 7-23
11	1-12
12	3-4, 9, 12-13, 15-16
14	7-15
15	5-9, 20-23
16	1-6
17	6, 8-22
18	1-23
19	1-3, 7

APPENDIX ITEMS TO CONFIDENTIAL SECTION OF NEED STUDY

<u>DOCUMENT</u>	<u>PAGE/LINE</u>
APPENDIX 1 (Confidential Request for Proposal Response from Bidder A)	ALL
APPENDIX 2 (Confidential Request for Proposal Response from Bidder B)	ALL
APPENDIX 3 (Confidential FPC Requests for Required Information and the Bidders' Responses)	ALL
APPENDIX 4 (Confidential FPC Requests for Supplemental Information and the Bidders' Responses)	ALL
APPENDIX 5 (Confidential FPC Initial Screening Evaluation of RFP Responses)	ALL
APPENDIX 6 (Confidential FPC Supplemental Screening Evaluation of RFP Responses)	ALL
APPENDIX 7 (Confidential FPC Non-Price Evaluation of Bidder A's Response to FPC's RFP)	ALL
APPENDIX 8 (Confidential FPC Non-Price Evaluation of Bidder B's Response to FPC's RFP)	ALL

ATTACHMENT A: CONFIDENTIAL SECTION OF NEED STUDY

<u>PAGE(S)</u>	<u>LINE(S)</u>
1, 2, 4, 6, 13, 14, 15	ALL
3	1-7, 14, 17-22
7	1-5, 7, 9, 22
8	17, 21-23
9	1-3
10	11-20, 22
11	2, 7-8, 17-23
12	1-2, 8, 14, 16-22

CONFIDENTIAL SUPPLEMENTAL DIRECT TESTIMONY OF ALAN S. TAYLOR

<u>PAGE</u>	<u>LINE(S)</u>
1	20-23
2	1-3, 11-14, 20-23
3	1-3, 13-15, 17-18, 20
4	1, 11-15, 23
5	1-6

FPC asserts that it provided, in its RFP, 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.

Two bidders submitted proposals for FPC's consideration. Both bidders asked FPC to keep the terms of their proposals confidential. As a result, the Company states it has treated the bidders' proposals as private, confidential information and the Company has not disclosed them to the public.

Section 366.093(1), Florida Statutes, 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), Florida Statutes. 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. Section 366.093(3)(d), Florida Statutes. FPC maintains that the terms of the bidders' proposals in response to the Company's RFP fit this statutory definition of proprietary confidential business information. Accordingly, FPC believes the proposals (and FPC's evaluation and explanation of them) are entitled to protection under Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code.

FPC contends that 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), Florida Administrative Code. 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 maintains that it 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 asserts that it 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. 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.

FPC maintains that if such assurances are not provided, and potential bidders know 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. FPC asserts that persons or companies who otherwise would submit 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. FPC alleges, 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. Section 366.093(3), Florida Statutes.

FPC contends that 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. According to FPC, at no time since receiving the bids has the Company publicly disclosed the terms of the proposals, even to

the other bidders. The Company maintains that it has treated and continues to treat the bidders' proposals as confidential.

Therefore, FPC 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 granted confidential classification.

CONCLUSION

Upon review, the information described above appears to be "information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms." Section 366.093(3)(d), Florida Statutes. Therefore, I find that FPC's request for confidential classification, of portions of the direct testimony of John B. Crisp with attached need study (Document No. 09534-00) and of portions of the supplemental direct testimony of Alan S. Taylor (Document No. 09535-00), is granted.

Section 366.093(4), Florida Statutes, provides that "any finding by the Commission that records contain proprietary confidential business information is effective for a period not to exceed 18 months, unless good cause is shown for a specified longer period." The Company did not specify a time period in its request. Therefore, this information shall be granted confidential classification for a period of 18 months from the date of issuance of this Order.

It is therefore

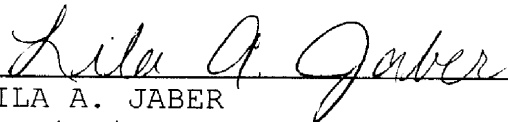
ORDERED by Commissioner Lila A. Jaber, as Prehearing Officer, that the request by Florida Power Corporation that certain portions of the direct testimony of John B. Crisp with attached need study (Document No. 09534-00) and of the supplemental direct testimony of Alan S. Taylor (Document No. 09535-00) be granted confidential classification, is approved. It is further

ORDERED that the information described within the body of this Order and contained in Documents Nos. 09534-00 and 09535-00 shall be granted confidential classification for a period of 18 months from the date of the issuance of this Order. It is further

ORDER NO. PSC-00-1881-CFO-EI
DOCKET NO. 001064-EI
PAGE 7

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 Lila A. Jaber, as Prehearing Officer, this 16th day of October, 2000.



LILA A. JABER
Commissioner and Prehearing Officer

(S E A L)

KDW

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.

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 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) 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 Director, Division of

ORDER NO. PSC-00-1881-CFO-EI
DOCKET NO. 001064-EI
PAGE 9

Records and Reporting, in the form prescribed by Rule 25-22.060, 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.