

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Commission review of numeric
conservation goals (Orlando Utilities
Commission).

DOCKET NO. 20190019-EG
ORDER NO. PSC-2019-0248-CFO-EG
ISSUED: June 25, 2019

ORDER GRANTING ORLANDO UTILITIES COMMISSION'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION AND
MOTION FOR TEMPORARY PROTECTIVE ORDER
(DOCUMENT NO. 04228-2019)

On May 9, 2019, pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), Orlando Utilities Commission (OUC) filed a Request for Confidential Classification and Motion for Temporary Protective Order (Request). OUC's Request seeks confidential classification of certain information provided in response to the Southern Alliance for Clean Energy's (SACE) First Request for Production of Documents Nos. 1-18. (Document No. 04228-2019). This Request was filed in Docket No. 20190019-EG.

Request for Confidential Classification

OUC contends that certain information contained in its response to SACE's First Request for Production of Documents Nos. 1-18, as more specifically described in Exhibit B attached to its Request, constitutes proprietary and confidential business information entitled to protection under Section 366.093, F.S., and Rule 25-22.006, F.A.C. Exhibit B contains a table that identifies the specific data fields for which OUC is requesting confidential classification. OUC asserts that this information is intended to be and is treated by OUC as private, and has not been publicly disclosed.

OUC contends that the information in its response to SACE's First Request for Production of Documents Nos. 1-18 for which it is requesting confidential classification contains competitively sensitive cost and pricing information, and other competitively sensitive information, the disclosure of which would harm or otherwise adversely impact OUC's competitive business interests. OUC argues that such information is entitled to confidential classification pursuant to Section 366.093, F.S.

Ruling

Section 366.093(1), F.S., provides that records the Florida Public Service Commission (Commission) has found to contain proprietary 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 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:

- (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 Section 366.093(3), F.S., for classification as proprietary confidential business information. The information described above and in OUC's Request appears to contain 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. 04228-2019 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 up to 18 months from the date of 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 OUC or another affected person shows, and the Commission finds, that the records continue to contain proprietary confidential business information.

Motion for Temporary Protective Order

OUC also seeks protection of Document No. 04228-2019 as provided in Section 366.093, F.S., and Rule 25-22.006, F.A.C. 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 Section 119.07(1), F.S., the public records law. 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.

Upon consideration of OUC's assertions of the confidential nature of certain information contained in its response to SACE's First Request for Production of Documents Nos. 1-18, OUC'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), F.A.C.

Based on the foregoing, it is hereby

ORDERED by Commissioner Donald J. Polmann, as Prehearing Officer, that Orlando Utilities Commission's Request for Confidential Classification and Motion for Temporary Protective Order of Document No. 04228-2019 is granted. It is further

ORDERED that the information in Document No. 04228-2019, 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. At the conclusion of the 18-month period, the confidential information will no longer be exempt from Section 119.07(1), F.S., unless Orlando Utilities Commission or another affected person shows, and the Commission finds, that the records continue to contain proprietary confidential business information. It is further

ORDERED that the Temporary Protective Order shall extend not only to the Office of Public Counsel, but also to any consultants or advisors with whom the Office of Public Counsel has contracted for purposes of this proceeding. 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 Donald J. Polmann, as Prehearing Officer, this 25th day of June, 2019.



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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.

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.