

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Consolidated) DOCKET NO. 911103-EI
Minerals, Inc. Against Florida) ORDER NO. PSC-92-0077-PCO-EI
Power & Light Company For Failure) ISSUED: 3/18/92
to Negotiate Cogeneration)
Contract.)
_____)

ORDER ON CONFIDENTIALITY
REQUESTED BY CONSOLIDATED MINERALS, INC.

BY THE COMMISSION:

Consolidated Minerals, Inc. ("CMI") filed a request for confidential classification pertaining to material CMI provided to Florida Power and Light Company ("FPL") pursuant to a nondisclosure agreement executed January 23, 1992. This material is intended to be and is considered by CMI to be proprietary and has not been publicly disclosed.

Florida law provides, in Section 119.01, Florida Statutes, that documents submitted to governmental agencies shall be public records. The only exceptions to this law are specific statutory exemptions, and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. This law derives from the concept that government should operate in the "sunshine." In the instant matter, the value that all parties would receive by examining and using the information contained in this document must be weighed against the legitimate concerns of CMI regarding disclosure of business information which it considers proprietary. It is our view that parties must meet a very high burden when requesting confidential classification of documents.

Pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, CMI has the burden to show that the material submitted is qualified for confidential classification. Rule 25-22.006, Florida Administrative Code, provides that the Company may fulfill its burden by demonstrating the information falls under one of the statutory examples set out in Section 366.093, Florida Statutes, or by demonstrating that the information is proprietary confidential information, the disclosure of which will cause harm to CMI's business operations.

DOCUMENT NUMBER-DATE

02698 MAR 18 1992

FPC-RECORDS/REPORTING

Section 366.093(3), Florida Statutes, provides several examples of proprietary confidential business information. Included in this list are "trade secrets" and "information relating to competitive interests." CMI argues that both of these provisions are applicable here.

Chapter 688, Florida Statutes, is the Uniform Trade Secrets Act. Section 688.002(4) states that:

"Trade secret" means information . . . that

- (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Chapter 812, Florida Statutes, addresses Theft, Robbery, and Related Crimes. Section 812.081(1)(c) states that ". . . a trade secret is considered to be: 1. Secret; 2. Of value; 3. For use or in use by the business; and 4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes."

To establish that material is proprietary confidential business information under Section 366.093(3)(d), Florida Statutes, a utility must demonstrate (1) that the information is contractual data, and (2) that the disclosure of the data would impair the efforts of the utility to contract for goods or services on favorable terms. Likewise, Section 366.093(3)(e), Florida Statutes, provides that a utility must demonstrate (1) that the information relates to competitive interests and (2) that the disclosure of the data would impair the efforts of the utility to contract for goods or services on favorable terms. We have previously recognized that this latter requirement does not necessitate the showing of actual impairment, or the more demanding standard of actual adverse results; instead, it must simply be shown that disclosure is "reasonably likely" to impair the company's contracting for goods or services on favorable terms.

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CMI requests the following information in the documents listed below be afforded confidential treatment pursuant to Section 366.093(3), Florida Statutes, and Rule 25-22.006(4)(a)-(g), Florida Administrative Code.

<u>DOCUMENT</u>	<u>REQUESTED LINES</u>
Document A-1, CMI Bates stamp #BC00659 (Ecophos Flow Diagram)	ALL
Document A-2, CMI Bates stamp #BC02559 (Work in Progress) and	03-16
Document A-3, CMI Bates stamp #BC02561 (Work in Progress)	01-26
Document A-4, CMI Bates stamp #BC00241 (Memorandum of Understanding)	07-46
Document A-5, CMI Bates stamp #BC00242 (Memorandum of Understanding)	01-05, 07-19, 21-38
Document A-6, CMI Bates stamp #BC00243 (Memorandum of Understanding)	02-35
Document A-7, CMI Bates stamp #BC00244 (Memorandum of Understanding)	01-25

CMI requests confidential treatment of Document A-1, and argues that the information contained in A-1 describes a detailed, highly secretive process that CMI developed and which may be patented by CMI. CMI argues that this information is proprietary, confidential business information, because it is a "trade secret" and/or because it contains "information relating to competitive interests, the disclosure of which would impair the competitive business" of CMI, the provider of the information. Section 366.093(3)(a) and (e), Florida Statutes.

We find that the information in Document A-1, the Ecophos Flow Diagram, to be in the nature of a trade secret because the information is secret, it is of value, it is for use in CMI's business, and it could be of advantage to CMI over those who do not possess it. Further, CMI takes strict measures to prevent its disclosure.

CMI argues that lines 3-16 of Document A-2 and lines 1-26 of Document A-3 describes CMI's confidential work in progress activities not related to this docket. The disclosure of this information, CMI contends, would impair CMI's efforts to contract for goods and services on favorable terms and would also impair the competitive business of CMI. Section 366.093(3)(d) and (e), Florida Statutes. CMI asserts that public knowledge of current and future CMI activities would give competing entities unfair economic advantage by alerting them to CMI's future projects and by allowing them to contact CMI's vendors and prospective business partners.

Also, CMI contends that the information in lines 7-46 of Document A-4; lines 1-5, 7-19, and 21-38 of Document A-5; lines 2-35 of Document A-6; and lines 1-25 of Document A-7 reflects information of a highly sensitive contractual arrangement between CMI and its financier. If disclosed to the public, it would "impair the competitive business" of CMI as it relates to future negotiations in contracting for financing of its business operations.

We find that the information contained in lines 3-16 of Document A-2; lines 1-26 of Document A-3; lines 7-46 of Document A-4; lines 1-5, 7-19, and 21-38 of Document A-5; lines 2-35 of Document A-6; and lines 1-25 of Document A-7 to be proprietary confidential business information.

CMI requests that the information for which is seeks confidential classification not be declassified until September 1, 1993 as provided in Section 366.04(4), Florida Statutes. CMI contends this time is necessary to allow it to remain competitive in its business arena, because giving the public access to these documents would allow CMI's competitors inside information into CMI's secretive processes and future projects, as well as impede CMI in negotiations with prospective business partners and financiers.

At the end of the classified period, CMI requests that the Commission order the return of records containing proprietary confidential business information if such records are no longer necessary in order for the Commission to conduct its business. At that time, CMI requests that the Commission then order any other person holding such records to return them to CMI.

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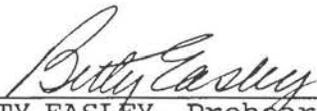
It is, therefore,

ORDERED by the Florida Public Service Commission that the proprietary confidential business information in Document No. 92-02621 referred to as "Document A-1," the Ecophos Flow Diagram, as discussed in the body of this Order, is in the nature of a trade secret and that it will be treated as such. It is further

ORDERED that the confidential information in Document No. 92-02621 contained in lines 3-16 of Document A-2; lines 1-26 of Document A-3; lines 7-46 of Document A-4; lines 1-5, 7-19, and 21-38 of Document A-5; lines 2-35 of Document A-6; and lines 1-25 of Document A-7 discussed in the body of this Order is proprietary confidential business information and will be afforded confidential treatment. It is further

ORDERED that the proprietary confidential business information shall be afforded confidential treatment for a period of 18 months until September 1, 1993.

By ORDER of Commissioner Betty Easley, as Prehearing Officer, this 18th day of MARCH, 1992.


BETTY EASLEY, Prehearing Officer
and Commissioner

(S E A L)

DLC:bmi

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

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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 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.