

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Consolidated) DOCKET NO. 911103-EI
Minerals, Inc. Against Florida) ORDER NO. PSC-92-0078-PCO-EI
Power & Light Company For Failure) ISSUED: 3/18/92
to Negotiate Cogeneration)
Contract.)
_____)

ORDER ON CONFIDENTIALITY
REQUESTED BY FLORIDA POWER & LIGHT COMPANY

BY THE COMMISSION:

Florida Power & Light Company ("FPL") filed an original and an amended request for confidential classification pertaining to material it provided to Consolidated Minerals, Inc. ("CMI") pursuant to a nondisclosure agreement executed January 23, 1992. FPL seeks confidential treatment for certain information contained in "Exhibit A" and "Exhibit B" attached to FPL's request. This material is intended to be and is considered by FPL 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 FPL 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, FPL 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 the Company or its ratepayers harm.

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

DOCUMENT NUMBER-DATE

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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.

"Exhibit A" is entitled "FPL -- Large QF/IPP Evaluation Results -- Confidential; dated August 13, 1991. FPL contends that "Exhibit A" contains information that it used to evaluate proposals, including CMI's, during FPL's 1991 evaluation process. FPL argues that "exhibit A reflects that there were three steps to the evaluation process. First, FPL had to determine what weight it was going to attribute to each criterion. Second, FPL had to evaluate each proposal and assign the proposal an unweighted or "raw" score for each criterion between zero and the perfect score for that criterion. Third, FPL had to multiply the weighing factor for each criterion by the proposals' raw scores for each criterion in order to obtain the weighted scores used to complete the evaluation.

The document contains (1) the criteria, including sub-criteria, used to evaluate each proposal ("the criteria"); (2) the weights attributed to each criterion ("the weights"); (3) the perfect score, both on a weighted and unweighted basis, for each criterion ("the perfect scores"); (4) the "raw" or unweighted score earned by each proposal for each criterion ("the weighted scores"). FPL seeks confidential classification of the weights, the perfect scores, the raw scores and the weighted scores that appear in the confidential version of columns 2 and 4-11 on pages 2-7 of "Exhibit A" and in columns 2-9 on page 8. Also, FPL seeks confidential classification of the same information that appears in graphic form on lines 5-11 on page 1 of "Exhibit A."

The criteria are not confidential. FPL seeks confidential treatment for the weights, the perfect scores, the raw scores and the weighted scores, and the utility states that none of this information was disclosed to any project developer in an effort to ensure that all proposals were evaluated in an unbiased manner. FPL argues that it is critical that developers submit comprehensive proposals to FPL that address all the criteria used to evaluate a project without knowing what weight FPL has assigned to each criterion. This forces developers to present a more accurate overall assessment of their project, reducing the risk of a

developer masking a fundamental weakness in its proposal. In contrast, FPL maintains, disclosure of either the weights, the perfect scores, the raw scores or the weighted scores will enable developers to (1) determine which criteria are more important, and (2) tailor their proposals accordingly without regard to the overall viability of their projects. The result will be, FPL maintains, that future evaluations of QF and IPP proposals submitted independently or in response to a competitive bidding process will be impaired, and FPL and its customers could be harmed in the process.

Specifically, for "Exhibit A," FPL requests confidential treatment of columns 2 and columns 4-11 on pages 2-7; and columns 2-9 on page 8. The numbers in these columns represent the weights, the perfect scores, the raw scores and the weighted scores mentioned in the preceding paragraph. Since the "total" lines under column 4 on pages 2-7 have not been edited out, they are to remain public information. Similarly, for columns 3-9 on page 8, the "grand total" line will remain public information since it has not been edited out. With these exceptions noted, we find the lines mentioned above to be treated as proprietary confidential business information.

In addition, the graph on page one of "Exhibit A" contains the same confidential information in graph form in lines 5-11. Further, the weighted scores for each of the six projects are graphically depicted in lines 5-10. Unless the graph bars for each project and the graph bar depicting the perfect weighted scores are completely edited out, one could use the key contained in lines 14 and 15 to determine the weights assigned to each of the identified general criteria and then approximate the weighted scores achieved for each criteria for each of the six projects. Accordingly, lines 5-11 on the bar graph will be treated as proprietary confidential business information.

FPL argues that disclosing the information it requested as confidential in "Exhibit A" would impair FPL's efforts to contract for goods and services on favorable terms in the future; it will impair FPL's efforts to use competitive bidding processes; it will impair FPL's efforts to conduct meaningful evaluations of QF and IPP proposals and disclosure will thereby cause harm to FPL and its customers. FPL maintains that it has treated this information as private and confidential and has not disclosed it to any other person or entity. In addition, FPL states that it would like to use the same criteria weighing factors to evaluate future proposals, since this methodology was developed at significant expense to FPL and involved a great deal of effort on the part of FPL management.

"Exhibit B" is entitled "FPL memorandum from D.L. Christian to R.A. Hevia concerning FPL's Evaluation of Large QF/IPP Projects File: GPR-371; dated July 25, 1991. Regarding "Exhibit B," FPL contends that the confidential information it contains is the exact type of confidential information contained in "Exhibit A" as well as project specific information pertinent to the Cypress Energy proposal submitted to FPL. Furthermore, FPL maintains that it treats this information as private and confidential and has not disclosed this information to any other person or entity, and FPL provided a copy of this document to CMI only after it had executed the nondisclosure agreement previously filed with the Commission.

For the reasons discussed with regards to "Exhibit A," the information in "Exhibit B" for columns 3-5 on page 2; lines 8-22 on page 3, excluding the criteria; as well as the scores contained on lines 9, 14, 19, 23 and 27 on page 4; and the scores contained on lines 4, 8, 11, 14, 20, 23, and 28 on page 5, concerns the weights and scores specifically attributed to the Cypress Energy proposal for certain criteria. Based on the foregoing, we find these lines to be proprietary confidential business information.

Cogeneration is a competitive industry and we find that public disclosure of this project specific information could impair FPL's ability to get the best deal for its ratepayers. FPL agreed to disclose this information to CMI only after FPL entered into a nondisclosure agreement with CMI in its effort to prepare for its case. Accordingly, we find that lines 4-8, 11-13, 17-18, 21-22 and 25-26 on page 4; and lines 2-3, 6-7, 10, 13, 16-19, 22 and 25-27 on page 5 of "Exhibit B" to be project specific information received by FPL from Cypress Energy relevant to the specific criteria identified on those pages, including the names of the third-parties provided to FPL on a confidential basis. If FPL is required to publicly disclose such project specific information, it could be placed in the position of having to disclose project specific information concerning all the proposals it received which could impair FPL's efforts to contract for goods and services on favorable terms in the future, which could impair FPL's efforts to use competitive bidding processes and which could ultimately harm FPL's ratepayers.

We find the aforementioned portions of "Exhibit B" to be proprietary confidential business information pursuant to Section 366.093(3)(d) and (e), Florida Statutes.

FPL requests that the Commission order CMI to return to FPL all copies of the confidential documents not entered into the record in accordance with the terms of the nondisclosure agreement at the times set forth in Section 366.093(2), Florida Statutes.

ORDER NO. PSC-92-0078-PCO-EI
DOCKET NO. 911103-EI
PAGE 5

If, as FPL requests, any of the confidential documents are entered into the record in this proceeding, the documents shall remain confidential for 18 months from the date of the order as provided in Section 366.093, Florida Statutes.

It is, therefore,

ORDERED by the Florida Public Service Commission that for "Exhibit A" in Document No. 02591-92 and as amended in Document No. 02641-92, the information in columns 2 and columns 4-11 on pages 2-7; and the information in columns 2-9 on page 8, as discussed within the body of this Order is proprietary confidential business information and that it will be treated as such. However, since the "total" lines under column 4 on pages 2-7; and the "grand total" line for columns 3-9 on page 8 have not been edited out, they will remain public information. It is further

ORDERED that for Document No. 02591-92 and as amended in Document No. 02641-92, the information in "Exhibit B" discussed above is proprietary confidential business information, and that it will be treated as such by the Florida Public Service Commission. It is further

ORDERED that should any proprietary confidential business information that is discussed in the body of this Order be admitted into evidence in the course of this proceeding, that information will remain confidential for a period of 18 months from the date this Order is issued.

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



BETTY EASLEY, Prehearing Officer
and Commissioner

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ORDER NO. PSC-92-0078-PCO-EI
DOCKET NO. 911103-EI
PAGE 6

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.

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.