

.BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for a limited proceeding to recover incremental storm restoration costs, capital costs, revenue reduction for permanently lost customers, and regulatory assets related to Hurricane Michael, by Florida Public Utilities Company.

DOCKET NO. 20190156-EI
ORDER NO. PSC-2020-0179-CFO-EI
ISSUED: June 9, 2020

ORDER GRANTING FLORIDA PUBLIC UTILITIES COMPANY'S
REQUESTS FOR CONFIDENTIAL CLASSIFICATION AND
MOTIONS FOR TEMPORARY PROTECTIVE ORDER
(DOCUMENT NOS. 01402-2020 & 02036-2020)

On March 13, 2020, 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 or Company) filed a Request for Confidential Classification and Motion for Temporary Protective Order (First Request). FPUC's First Request seeks confidential classification of certain information contained in the Company's responses to the Office of Public Counsel's (OPC) Fourth Request for Production of Documents, Nos. 24-29, and Seventh Set of Interrogatories, Nos. 229-271 (Document No. 01402-2020). This Request was filed in Docket No. 20190156-EI.

On April 16, 2020, also pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., FPUC filed a Request for Confidential Classification and Motion for Temporary Protective Order (Second Request). FPUC's Second Request seeks confidential classification of portions of the Company's responses to OPC's Fifth Request for Production of Documents, Nos. 30-34 (Document No. 02036-2020). This Request was also filed in Docket No. 20190156-EI.

First Request for Confidential Classification

FPUC contends that certain information in the Company's responses to OPC's Fourth Request for Production of Documents, Nos. 24-29, and information in both the interrogatories and responses to OPC's Seventh Set of Interrogatories, Nos. 229-271, as more specifically described in the Company's First Request, constitutes proprietary and confidential business information entitled to protection under Section 366.093, F.S., and Rule 25-22.006, F.A.C. FPUC asserts that this information is intended to be and is treated by FPUC as private, and has not been publicly disclosed.

FPUC further contends that the information in the Company's responses to OPC's Fourth Request for Production of Documents, Nos. 24-29, and the information in both the interrogatories and responses to OPC's Seventh Set of Interrogatories, Nos. 229-271, for which it is requesting confidential classification, is information regarding rates and terms in contracts with the Company's vendors, the disclosure of which could harm the Company's business

interests. FPUC argues that such information is entitled to confidential classification pursuant to Section 366.093(3), F.S.

Second Request for Confidential Classification

FPUC contends that portions of the Company's responses to OPC's Fifth Request for Production of Documents, Nos. 30-34, as more specifically described in the Company's Second Request, constitutes proprietary and confidential business information entitled to protection under Section 366.093, F.S., and Rule 25-22.006, F.A.C. FPUC asserts that this information is intended to be and is treated by FPUC as private, and has not been publicly disclosed.

FPUC further contends that the information in the Company's responses to OPC's Fifth Request for Production of Documents, Nos. 30-34, for which it is requesting confidential classification, is information regarding rates and terms in contracts with the Company's vendors, the disclosure of which could harm the Company's business interests. FPUC argues that such information is entitled to confidential classification pursuant to Section 366.093(3), 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:

(d) 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.

(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 FPUC's First Request 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. Specifically, the information constitutes details about payments made by FPUC pursuant to contract, which the parties treat as confidential in accordance with the terms of those contracts. The information described above and in FPUC's Second Request 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. Thus, the information identified in Document Nos. 01402-2020 and 02036-2020 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 FPUC or another affected person shows, and the Commission finds, that the records continue to contain proprietary confidential business information.

Motions for Temporary Protective Order

FPUC also seeks protection of Document Nos. 01402-2020 and 02036-2020, 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 FPUC's assertions of the confidential nature of certain information in the Company's responses to OPC's Fourth Requests for Production of Documents, Nos. 24-29, information in both the interrogatories and responses to OPC's Seventh Set of Interrogatories, Nos. 229-271, and portions of the Company's responses to OPC's Fifth Request for Production of Documents, Nos. 30-34, FPUC's Motions for Temporary Protective Order are hereby granted. As a result, the above-referenced 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 Andrew Giles Fay, as Prehearing Officer, that Florida Public Utilities Company's Requests for Confidential Classification of Document Nos. 01402-2020 and 02036-2020 are granted. It is further

ORDERED that the information in Document Nos. 01402-2020 and 02036-2020, 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 Florida Public Utilities Company 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 Orders 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 Andrew Giles Fay, as Prehearing Officer, this 9th day of June, 2020.



ANDREW GILES FAY
Commissioner and Prehearing Officer
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

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

AJW

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.