

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for limited proceeding for recovery of incremental storm restoration costs related to Hurricanes Irma and Nate, by Duke Energy Florida, LLC.

DOCKET NO. 20170272-EI
ORDER NO. PSC-2019-0097-CFO-EI
ISSUED: March 11, 2019

ORDER GRANTING DUKE ENERGY FLORIDA, LLC'S
MOTIONS FOR TEMPORARY PROTECTIVE ORDERS
(DOCUMENT NOS. 00315-2019 AND 00533-2019)

On January 22, 2019, pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006(6), Florida Administrative Code (F.A.C.), Duke Energy Florida, LLC filed a Motion for Temporary Protective Order (Document No. 00315-2019) to exempt from Section 119.07(1), F.S., certain confidential information pertaining to information sought in Office of Public Counsel's (OPC) Third Request for Production of Documents, specifically No. 16, while the material is in the possession of OPC. On January 31, 2019, DEF filed another Motion for Temporary Protective Order (Document No. 00533-2019), for certain confidential information pertaining to supplemental documents produced in response to OPC's Third Request for Production of Documents, No. 16, while the material is in the possession of OPC.

Motions for Temporary Protective Order

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.

In addition, Rule 25-22.006(6)(c), F.A.C., states that if a party allows OPC to inspect or take possession of utility information, then that "utility may request a temporary protective order exempting the information from Section 119.07(1), F.S." The rule further requires the utility to file a specific request for a protective order under paragraph (a) of the rule if the information is to be used in the proceeding before the Commission.

DEF is seeking protection of information included in portions of its responses to OPC's Third Request for Production of Documents, No. 16 and the supplemental response to OPC's Third Request for Production of Documents, No. 16 (the discovery responses). The discovery responses contain confidential contracts, mutual aid agreements, contractor rates, and payment terms. DEF contends that the disclosure of this information could adversely affect its ability to negotiate future contracts, thereby harming the competitive business of DEF, and ultimately having a detrimental impact on DEF's customers.

Ruling

Upon consideration of DEF's assertions of the confidential nature of the information contained in portions of the discovery responses, DEF's Motions for Temporary Protective Orders are hereby granted. Accordingly, 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 Julie I. Brown, as Prehearing Officer, that Duke Energy Florida, LLC's Motions for Temporary Protective Orders are granted, pursuant to the terms and conditions set forth in this Order.

By ORDER of Commissioner Julie I. Brown, as Prehearing Officer, this 11th day of March, 2019.



JULIE I. BROWN
Commissioner and Prehearing Officer
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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.