

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery  
clause with generating performance incentive  
factor.

DOCKET NO. 060001-EI  
ORDER NO. PSC-06-1075-PCO-EI  
ISSUED: December 29, 2006

ORDER GRANTING FLORIDA POWER & LIGHT COMPANY'S  
MOTION FOR TEMPORARY PROTECTIVE ORDER  
DOCUMENT NO. 08767-06 [X-REF. DOCUMENT NOS. 08057-06 and 08058-06]

Florida Power & Light Company ("FPL") states the Office of Public Counsel ("OPC") has requested that it be permitted to take possession of all of FPL's confidential documents filed with the Florida Public Service Commission in this docket. On September 1, 2006, FPL filed testimony and exhibits in this docket and concurrently filed a Notice of Intent to seek confidential classification of Schedule E12, page 7, of Exhibit KMD-6 to the prefiled direct testimony of FPL witness K. M. Dubin and Exhibits GJY-3, GJY-4, GJY-5, and GJY-6 to the prefiled direct testimony of FPL witness Gerard J. Yupp (Document No. 08767-06) [x-ref. Document Nos. 08057-06 and 08058-06]. FPL subsequently filed a Request for Confidential Classification of these same documents, which request was granted as stated below. On September 6, 2006, FPL filed a Motion for Temporary Protective Order, pursuant to Rule 25-22.006(6), Florida Administrative Code, covering Document No. 08767-06 [x-ref. Document Nos. 08057-06 and 08058-06] which were sought in discovery by the OPC.

In Order No. PSC-06-0986-CFO-EI the Commission granted confidential classification of Document No. 08767-06 [x-ref. Document Nos. 08058-06 and 08057-06], finding that the material appeared to contain proprietary confidential business information, the disclosure of which would impair the efforts of FPL or its affiliates to contract for goods on favorable terms. The utility seeks exemption from the Public Records Law, Section 119.07(1), Florida Statutes, for these documents. No party filed a response to FPL's motion and FPL states OPC has no objection to the granting of this motion.

FPL asserts that it is seeking protection of the documents as provided in Section 366.093(2), Florida Statutes, and Rule 25-22.006(6), Florida Administrative Code. FPL contends that by following this procedure it is not waiving its rights to seek further relief as necessary to make certain that this information is not publicly disclosed.

Section 366.093(2), Florida Statutes, 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 public records law as confidential and exempt from the public records law, Section 119.07(1), Florida Statutes. Rule 25-22.006(6), Florida Administrative Code, codifies the Commission's policy protecting confidential information from public disclosure during the discovery process in a manner that is not overly burdensome to both parties. Rule 25-22.006, in pertinent part, states:

(6)(c) In any formal proceeding before the Commission, any utility or other person may request a protective order protecting proprietary confidential business

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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. The protective order shall specify how the confidential information is to be handled during the course of the proceeding and prescribe measures for protecting the information from disclosure outside the proceeding.

In addition, Rule 25-22.006(6)(c), Florida Administrative Code, 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."

Upon consideration, FPL's Motion for Temporary Protective Order of the confidential documents in portions of Schedule E12, page 7 of Exhibit KMD-6 to the prefiled testimony of FPL witness K. M. Dubin and Exhibits GJY-3, GJY-4, GJY-5, and GJY-6 to the prefiled testimony of FPL witness Gerard J. Yupp (Document No. 08767-06) [x-ref. Document Nos. 08057-06 and 08058-06] is granted. The material requested by OPC appears to be proprietary confidential business information. Accordingly, this information will be protected from disclosure pursuant to Rule 25-22.006(6), Florida Administrative Code.

Based on the foregoing, it is

ORDERED by Commissioner Matthew M. Carter II, as Prehearing Officer, that the Motion for Temporary Protective Order filed by Florida Power & Light Company is granted.

By ORDER of Commissioner Matthew M. Carter II, as Prehearing Officer, this 29th day of December, 2006.



MATTHEW M. CARTER II  
Commissioner and Prehearing Officer

( S E A L )

LCB/pz

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 Director, Division of the Commission Clerk and Administrative Services, 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.