

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Florida Power Corporation's earnings, including effects of proposed acquisition of Florida Power Corporation by Carolina Power & Light.

DOCKET NO. 000824-EI  
ORDER NO. PSC-02-0059-PCO-EI  
ISSUED: January 7, 2002

ORDER GRANTING MOTION FOR EXTENSION OF TIME AND  
GRANTING IN PART MOTIONS FOR TEMPORARY PROTECTIVE ORDER

The Office of Public Counsel (OPC) filed a Motion to Extend the Date for Filing Intervenor Testimony on December 18, 2001, requesting that the Prehearing Officer extend the date for filing intervenor testimony from Friday, January 18, 2002, to Tuesday, January 22, 2002. Florida Power Corporation (FPC) responded, on December 20, 2001, in partial opposition to OPC's motion.

On December 21, 2001, FPC filed a Motion for Temporary Protective Order covering certain documents sought by OPC's Eighth Set of Requests for Production of Documents. FPC filed another Motion for Temporary Protective Order on December 28, 2001, pertaining to certain documents provided in response to OPC's Interrogatory No. 56. OPC filed no response to either motion.

Rule 28-106.211, Florida Administrative Code, grants broad authority to "issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case . . . ." Based upon this authority, and having considered the Motions and Response, the rulings are set forth below.

Motion to Extend the Date for Filing Intervenor Testimony

OPC filed a Motion to Extend the Date for Filing Intervenor Testimony on December 18, 2001, requesting that the Prehearing Officer extend the date for the filing of intervenor testimony from Friday, January 18, 2002, to Tuesday, January 22, 2002. OPC states that both FPC and OPC agreed in mid-November of 2001 to the date of January 7, 2002, for the deposition of Mr. Myers. Then, on December 12, 2001, FPC notified OPC that Mr. Myers was no longer

DOCUMENT NUMBER-DATE

00190 JAN-78

FPSC-COMMISSION CLERK

available on January 7. Subsequently, the deposition of Mr. Myers was moved to January 15, 2002, the next date that could accommodate the schedule of Mr. Myers and OPC's consultants.

OPC maintains that Mr. Myers is an important witness for the company as his testimony covers a wide range of topics, including FPC's financial forecasting process, preparation of the minimum filing requirements, proforma adjustments, and changes to the filing in the aftermath of the events of September 11, 2001. OPC argues that the new later date for the deposition of Mr. Myers makes it impossible to incorporate the information gained during his deposition into testimony to meet the currently scheduled date for the filing of intervenor testimony of Friday, January 18, 2002. Consequently, OPC requests that the date for intervenor testimony be extended one business day to Tuesday, January 22, 2002.

On December 20, 2001, FPC responded in partial opposition to OPC's motion. FPC states that it has no objection to granting OPC's requested extension so long as FPC receives a corresponding number of additional calendar days to serve rebuttal testimony. Also, the extension of time should only be granted for OPC to file testimony responsive to Mr. Myers' testimony. However, FPC does oppose the extension of time being granted for other parties or for the remainder of OPC's testimony. OPC is the only party directly requesting Mr. Myers' deposition; thus, an extension for the other parties based on the timing of Mr. Myers' deposition is unnecessary. If OPC's extension of time is granted, FPC argues it would need the same number of additional calendar days to file its rebuttal testimony, moving its filing deadline from February 4, 2002, to February 8, 2002. Additionally, staff's pre-hearing issues identification meeting would need to be moved, as it is scheduled for February 4, 2002, corresponding with the currently set deadline for rebuttal testimony. FPC argues that it would be difficult to have a constructive issues identification meeting in the absence of a majority of the pre-filed testimony.

Upon review of the pleadings and consideration of the arguments, OPC's Motion to Extend the Date for Filing of Intervenor Testimony is hereby granted. OPC's request is reasonable since the revised date set for Mr. Myers deposition is very close to the scheduled date for the filing of intervenor testimony, and the rescheduling of Mr. Myers' deposition was done at the behest of

FPC. OPC's request to extend the date for the filing of intervenor testimony is hereby granted. The new date for the filing of OPC's intervenor testimony shall be January 22, 2002, which adds only one additional working day to the schedule. FPC's request for additional time to file rebuttal testimony is hereby denied.

Motions for Temporary Protective Order

On December 21, 2001, FPC filed a Motion for Temporary Protective Order, pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006(6), Florida Administrative Code, covering certain documents sought by OPC's Eighth Set of Requests for Production of Documents. FPC argues that OPC seeks confidential proprietary information relating confidential strategic business initiatives of FPC, confidential financial information, and the confidential workpapers and analysis of Deloitte & Touche. According to FPC, disclosure of this information would harm the competitive business of FPC. FPC seeks protection for these documents, and objects to providing confidential, proprietary business information, but will provide documents responsive to OPC's requests as long as these documents can be marked confidential and are not publicly disclosed. Additionally, FPC requests that the Commission require OPC to provide FPC with notice of its intent to use these confidential documents in connection with the hearing.

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, Chapter 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)(a) 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. 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.

Specifically, Rule 25-22.006(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 review of the pleadings and consideration of the arguments, FPC's Motion for Temporary Protective Order, filed on December 21, 2001, shall be granted in part. FPC has demonstrated that the material requested by OPC is proprietary confidential business information relating strategic business initiatives of FPC, confidential financial information, and the confidential workpapers and analysis of Deloitte & Touche. Accordingly, this information will be granted temporary confidential status pursuant to Section 366.093(2), Florida Statutes, and Rule 25-22.006(6), Florida Administrative Code.

No ruling is necessary on FPC's request that OPC be ordered to provide FPC with notice of its intent to use these confidential documents in connection with the hearing. Order No. PSC-01-2114-PCO-EI, the Order Establishing Procedure, provides for a seven day notice requirement concerning the use of confidential information at hearing. As such, OPC is already required to provide FPC with seven days notice of its intent to use any confidential information at the hearing. Therefore, no ruling is required.

FPC filed another Motion for Temporary Protective Order, on December 28, 2001, pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006(6), Florida Administrative Code, pertaining to documents provided in response to OPC's Interrogatory No. 56. FPC argues that OPC seeks confidential proprietary information including the income statement and balance sheets of non-regulated and non-public affiliates of FPC. If disclosed, FPC argues this

ORDER NO. PSC-02-0059-PCO-EI  
DOCKET NO. 000824-EI  
PAGE 5

information would harm the competitive business of these non-regulated and non-public companies. FPC seeks protection for these documents, and objects to providing confidential, proprietary business information, but will provide documents responsive to OPC's requests as long as these documents can be marked confidential and are not publicly disclosed. Additionally, FPC requests that the Commission require OPC to provide FPC with notice of its intent to use these confidential documents in connection with the hearing.

Upon review of the pleadings and consideration of the arguments, FPC's Motion for Temporary Protective Order, filed on December 28, 2001, shall be granted in part. FPC has demonstrated that the material requested by OPC is proprietary confidential business information including the income statement and balance sheets of non-regulated and non-public affiliates of FPC. Accordingly, this information will be granted temporary confidential status pursuant to Section 366.093(2), Florida Statutes, and Rule 25-22.006(6), Florida Administrative Code.

For the reasons discussed above concerning FPC's Motion for Temporary Protective Order, filed December 21, 2001, no ruling is necessary on FPC's request that OPC be ordered to provide FPC with notice of its intent to use these confidential documents in connection with the hearing.

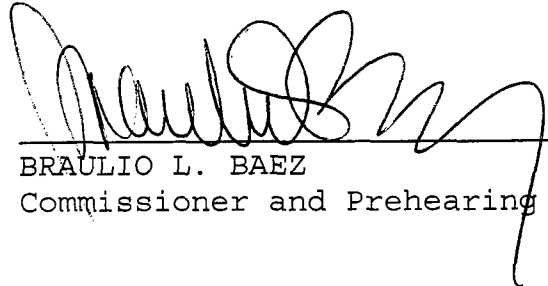
Based on the foregoing, it is

ORDERED by Commissioner Braulio L. Baez, as Prehearing Officer, that the Office of Public Counsel's Motion to Extend the Date for Filing of Intervenor Testimony is hereby granted. It is further

ORDERED that Florida Power Corporation's Motions for Temporary Protective Order, filed December 21, 2001, and December 28, 2001, are granted in part, as set forth in the body of this Order.

ORDER NO. PSC-02-0059-PCO-EI  
DOCKET NO. 000824-EI  
PAGE 6

By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 7th day of January, 2002.



\_\_\_\_\_  
BRAULIO L. BAEZ  
Commissioner and Prehearing Officer

( S E A L )

AEV

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, 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 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

ORDER NO. PSC-02-0059-PCO-EI  
DOCKET NO. 000824-EI  
PAGE 7

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.