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Timolyn Henry*****1

Timolyn Henry

From: mark.sajer@sep-llc.com
Sent: Wednesday, May 05, 2004 4:17 PM
To: Filings@psc.state.fl.us
Subject: Motion for Protective Order - Docket No. 040206-EL



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Dear Sir/Madam,

MAY -5 PM 4:21
COMMISSION
CLERK

Attached please find SEP Homestead, LLC's "Motion of Non-Party SEP For Protective Order" in respect of Docket No. 040206-EL.

The Motion requests the FPSC to prohibit FPL from disclosing SEP's confidential bid proposal information to intervenors (including intervenor and competitor, Calpine). The Motion also requests that Summit Energy Partners, LLC, the parent company of SEP Homestead, LLC, be qualified representative in respect of this Motion.

Below please find our contact information:

Summit Energy Partners, LLC
c/o SEP Homestead, LLC
99 Summit Avenue, Suite 9C
Summit, NJ 07901
tel: 908 918 9151
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The attached document is a MS Word document of three (3) pages

Thank you,

s/ Mark S. Sajer
Managing Director
Summit Energy Partners, LLC

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DOCUMENT NUMBER-DATE
05243 MAY-5 04
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**In re: Petition to Determine Need for)
An Electrical Power Plant in Dade County)
(Turkey Point Unit 5) by Florida Power)
& Light Company)**

**Docket No. 040206-EL
Dated May5, 2004
Filed Electronically**

MOTION OF NON-PARTY SEP FOR PROTECTIVE ORDER

1. Non-Party SEP Homestead, LLC ("SEP"), pursuant to Rule 1.280(c), Florida Rules of Civil Procedure, Sections 366.093 and 812.081, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, respectfully requests the Florida Public Service Commission ("Commission") to grant a protective order prohibiting Florida Power & Light Company ("FPL") from disclosing SEP's bid proposal to the intervenors in these docket proceedings (the "Motion").

INTRODUCTION

- 2. On October 23, 2003, SEP submitted its proposal (together with supplementary information, "SEP's Proposal") to supply 50 MWs in response to FPL's 2003 Request for Proposals ("2003 RFP"). By correspondence dated January 15, 2004, FPL advised SEP that SEP's Proposal was not selected to its short list.
- 3. Via e-mail, FPL advised SEP that Calpine Energy Services, L.P. ("Calpine") has been granted leave to intervene in the above noted docket proceedings, and that Calpine's discovery requested the disclosure of SEP's confidential information contained in the SEP Proposal. FPL further advised that it was prepared to provide SEP's confidential information to Calpine subject to a confidentiality agreement.

REASONS FOR PROTECTIVE ORDER

- 4. SEP requests that the Commission grant it a protective order for the following reasons:
 - (a) Calpine is a direct competitor of SEP in the State of Florida. SEP is engaged in ongoing efforts to sell additional output from its planned power plant, including in another ongoing RFP and through other efforts. SEP will suffer irreparable harm if its proprietary and confidential information is disclosed to Calpine.
 - (b) Disclosure to Calpine (or other competitor intervenors) is highly prejudicial, and would give intervenors an unfair competitive advantage in any future RFP. Further, there is precedent that docketed proceedings can lead to supplemental RFPs in the future, and therefore, while this proceeding is ongoing, any disclosure of SEP's Proposal to a competitor would create an unfair situation.
 - (c) The scope of Calpine's motion to intervene in these proceedings did not identify any merits as to why Calpine needs to know the information contained in SEP's Proposal. Further, Calpine's motion did not identify any purpose as to how SEP's 50 MW Proposal, being less than 5% of the total need identified by FPL in its 2003 RFP, would have any material effect on it's intervention or the proceedings. In addition, it would be unfair for an intervenor to obtain confidential bidder information while non-intervenors do not.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

(d) The confidentiality agreement between FPL, Calpine (and possibly others) does not protect the interests of SEP. As noted in paragraph 4(c) above, the basic tenets of a confidentiality agreement, the need to know and purpose, are not supported in this instance. Further, SEP would be unduly burdened in having to monitor FPL (including verbal disclosure) or to cause FPL to monitor and/or enforce a confidentiality agreement on SEP's behalf.

QUALIFIED REPRESENTATIVE

SEP's requests that the Commission allow its parent company, Summit Energy Partners, LLC, to be its qualified representative in these proceedings for the limited purpose of this Motion and the related efforts to prevent the disclosure of SEP's Proposal to intervenors in this docketed proceeding.

SUMMARY

SEP respectfully requests that the Commission grant its Motion as requested herein, that FPL be prohibited from disclosing SEP's Proposal (or any of its confidential information) to intervenors, and specifically prohibit such disclosure to Calpine, and to allow Summit Energy Partners, LLC to act as SEP's qualified representative in the matters of this Motion.

Respectfully submitted,

Summit Energy Partners, LLC
c/o SEP Homestead, LLC
99 Summit Avenue, Suite 9C
Summit, NJ 07901

By: s/ Mark S. Sajer
Managing Director
Summit Energy Partners

By: s/ Mark S. Sajer
Member – President
SEP Homestead, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy was served electronically via e-mail to filings@psc.state.fl.us on this 5th day of May, 2004 to the Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-9850, and by US Mail, to the following persons:

Mr. Harold McClean, Esq.
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By: s/ Mark S. Sajer
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