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From: Ann Bassett [abassett@lawfla.com]  
Sent: Monday, November 07, 2005 9:13 AM  
To: Filings@psc.state.fl.us  
Subject: Docket 050001-EI  
Attachments: 2005-11-07, FPUC's Motion for Temporary Protective Order.pdf

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The Docket No. is 050001-EI - Fuel and Purchased Power Cost Recovery Clause

This is being filed on behalf of Florida Public Utilities Company

Total Number of Pages is 5  
Florida Public Utilities Company's Motion for Temporary Protective Order

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November 7, 2005

**BY ELECTRONIC FILING**

Ms. Blanca Bayo, Director  
Commission Clerk and Administrative Services  
Room 110, Easley Building  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

Re: Docket No. 050001-EI

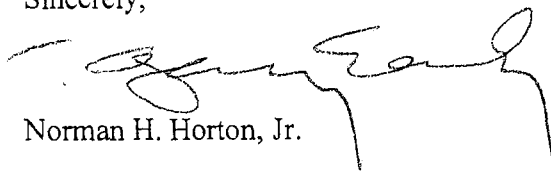
Dear Ms. Bayo:

Pursuant to the requirements of Order No. PSC-05-1108-PCO-EI and consultation with Staff and the Office of Public Counsel, FPUC has arranged to make available for review by Staff and OPC the responses to RFPs received by FPUC.

In that Order, the Prehearing Officer agreed that the discovery sought by Staff is considered confidential business information and would be provided to Staff and OPC on a confidential basis subject to Section 366.093, Florida Statutes and Rule 25-22.006, Florida Administrative Code. On that basis, FPUC has prepared a Request for Temporary Protective Order with Citizens and a Request for Confidential Treatment for filing in this docket.

Thank you for your assistance in this matter.

Sincerely,

  
for Norman H. Horton, Jr.

NHH:amb  
Enclosures  
cc: Parties of Record

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and Purchased Power Cost )  
Recovery Clause )  
\_\_\_\_\_)

Docket No. 050001-EI  
Filed: November 7, 2005

MOTION FOR TEMPORARY PROTECTIVE ORDER

Florida Public Utilities Company ("FPUC" or the "Company"), pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006(6)(c), Florida Administrative Code, hereby requests the Florida Public Service Commission (the "Commission" or "FPSC"), for a temporary protective order to safeguard and protect from public disclosure certain confidential information that FPUC is making available for review to Office of Public Counsel ("OPC") in response to Citizens' Second Request for Production of Documents. In support, FPUC states:

1. On September 23, 2005, Staff served its Fourth Set of Interrogatories and Second Request for Production of Documents on FPUC requesting responses and documents as to RFPs for replacement fuel contracts. OPC thereafter filed its request seeking the same documents. FPUC sought a protective order as to portions of the interrogatories and documents, which was denied by Order issued November 3, 2005. Consistent with this Order, FPUC will provide responses to Interrogatories 13 and 15 as soon as possible and make available for review by OPC copies of the RFPs which have been received.

2. The responses to interrogatories contain information relative to the RFPs which if disclosed would impair the efforts of the Company to contract for services on favorable terms. Disclosure of the number of proposals, whether transmission facilities would need to be built or upgraded and similar information would provide bidders with information that could impair

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negotiations. Such information is considered proprietary confidential business information by the Company exempt from disclosure pursuant to Section 366.09(3)(d), Florida Statutes.

3. The documents to be made available consist of the responses to the RFP received by the Company. These responses contain offers and terms for the provision of power to FPUC beginning in 2008 and the information is deemed and treated as proprietary confidential business information. The requested responses contain pricing and supply information prepared and furnished by parties interested in contacting with FPUC for the provision of power. Such information is valuable to the respondents and to FPUC and disclosure of the contents of the RFPs would benefit the competing respondents and impair the ability of FPUC to negotiate the most favorable contract for its customers.

4. The information in the RFP responses have economic value to competitors and in order to ensure a range of responses FPUC had to assure responding providers that their proposals would be kept confidential. The contents of the responses are particularly critical to the responding parties as they represent their information and offers and some will not result in a contract with FPUC. To this end, FPUC and each responding party have a confidentiality agreement precluding public disclosure of the contents of the response. FPUC has not publicly disclosed any of the proposed terms, arrangements or contents of the responses. Without such arrangements, FPUC may not be able to receive the variety of responses or may not be able to engage in future requests and negotiations for services from providers.

5. The RFP responses contain information which constitutes “proprietary confidential business information” which is exempt from disclosure under the Public Records Act pursuant to Section 366.093(a), Florida Statutes. FPUC is willing to provide the requested information for


review by OPC, so long as the confidential information is protected from the harm that would result from public disclosure. To this end subsection (6)(c) of the Commission's confidentiality rule 25-22.006, states:

When a utility or other person agrees to allow Public Counsel to inspect or take possession of utility information for the purpose of determining what information is to be used in a proceeding before the Commission, the utility may request a temporary protective order exempting the information from section 119.07(1), F.S. If the information is to be used in a proceeding before the Commission, then the utility must file a specific request for a protective order under paragraph (a) above. If the information is not to be used in a proceeding before the Commission, then Public Counsel shall return the information to the utility in accordance with the record retention requirements of the Department of State.

Entry of a temporary protective order provided for by subsection (6)(c) would afford the protection needed by the Company in these circumstances.

WHEREFORE, Florida Public Utilities Company respectfully requests entry of a temporary protective order protecting against public disclosure the confidential information that FPUC is making available to OPC in partial response to Citizens' Second Request for Production of Documents.

Respectfully submitted this 7<sup>th</sup> day of November, 2005.

  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing have been served by electronic mail (\*) and/or U. S. Mail this 7<sup>th</sup> day of November, 2005 upon the following:

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