

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Power & Light Company for approval of cogeneration agreement with AES Cedar Bay, Inc.) DOCKET NO. 881570-EQ
) ORDER NO. 20672
) ISSUED: 1-30-89

ORDER ON CONFIDENTIALITY

On December 13, 1988, Florida Power and Light Company (FPL) filed a petition requesting that its negotiated contract of November 9, 1988, for the purchase of electricity from AES Cedar Bay, Inc.'s (AES) proposed qualifying facility be approved. Simultaneous with its petition requesting contract approval, FPL also filed a petition requesting that portions of its negotiated contract with AES be found to be "specified confidential information" pursuant to Rule 25-22.006, Florida Administrative Code and Section 366.093, Florida Statutes.

Rule 25-22.006(1)(j), Florida Administrative Code, defines "specified confidential information" as "material that has been determined, pursuant to this rule, to be proprietary confidential business information under Section 350.121, 364.183, 366.093, or 367.156, F.S." "Proprietary confidential business information" is defined in Section 366.093, Florida Statutes, as including, but not limited to: trade secrets; internal auditing controls and reports of internal auditors; security measures, systems or procedures; information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility to contract for services on favorable terms; and employee personnel information unrelated to compensation, duties, qualifications, or responsibilities.

Other Florida laws offer further guidance as to what constitutes confidential information. Section 163.01(15)(m), Florida Statutes, defines "proprietary confidential business information" to include the items found in Section 367.093 and "formulas, patterns, devices, combinations of devices, contract costs, or other information the disclosure of which would injure the affected entity in the marketplace." Finally, "trade secret" is defined in Section 442.102(22), Florida Statutes, as "any confidential formula, pattern, process, device information or compilation of information, including a chemical name or other unique chemical identifier, that is used in an employer's business and that gives the employer an opportunity to obtain an advantage over competitors who do not know or use the formula, pattern, process, device, information, or compilation of information."

FPL has sought to keep confidential specific contract terms in the following areas: the capacity factors on which FPL will make capacity payments; avoided energy payments; actual delivered capacity to FPL over the term of the contract; scheduled maintenance times; the dollar amounts of workers' compensation and employers' liability insurance and commercial general liability insurance; the impact on capacity payments of force majeure; default and termination terms and the payments associated with the same; the extent of FPL's access to the facility and control over the planning and operation of the facility; the specifics of certain FPL-mandated project

DOCUMENT NUMBER-DATE

01072 JAN 30 1989

FPSC-RECORDS/REPORTING

ORDER NO. 20672
DOCKET NO. 881570-EQ
PAGE 2

financing requirements; and certain FPL-mandated guarantees on the part of AES Cedar Bay's parent.

As the grounds for its request, FPL has alleged that the above information for which it has requested specified confidential information falls under Section 366.093(3)(d), Florida Statutes. Section 366.093(3)(d), covers "[i]nformation concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility to contract for services on favorable terms." [Emphasis added.] The gist of FPL's argument is that if these contract terms are revealed, they will necessarily form the starting point from which FPL will have to negotiate with other cogenerators in the future. Thus, FPL's ability to negotiate similar "good" deals for the purchase of cogenerated power will be compromised. FPL also asserts that it is requesting confidentiality for these terms because this information could harm the ability of AES to negotiate a subsequent contract for the sale of cogenerated power with another Florida utility on more favorable terms to AES. Further, FPL argues that the revelation of the financing and default/termination terms of the contract could reveal AES' financial status to its cogeneration competitors.

Having reviewed the negotiated contract between FPL and AES and the specific terms for which confidentiality has been requested, we find FPL's arguments to be unpersuasive. The terms found in this contract are so tailored to the type and timing of the proposed cogeneration facility to be built by AES Cedar Bay, Inc. that it is hard to imagine that any other cogenerator would realistically expect FPL to repeat them. That is not to say that when these terms are made available to the public, a subsequent cogenerator will not request these same terms from FPL. However, FPL can always refuse, leaving the QF to take FPL's outstanding standard offer contract or come back to the bargaining table with a set of more realistic requests. This reasoning also applies to AES' ability to negotiate subsequent contracts with other Florida utilities. All investor-owned Florida utilities are required to pay the same capacity payments under the currently operative standard offer contract. AES always has that "floor" capacity price available to it.

Likewise, we find the contention that AES' financial status will be revealed to its detriment to be unfounded. Neither FPL nor AES has indicated exactly which terms would wreck this havoc or exactly by what mechanism this would be accomplished. Without that type of elucidation, we find that, on its face, the revelation of this material will not cause such harm.


Based on the above, it is

ORDERED by Chairman Michael McK. Wilson, Prehearing Officer, that the request of Florida Power and Light Company for specified confidentiality is denied, without prejudice to refile, as discussed above. It is further

ORDERED that if a protest is filed within 14 days of the date of this order, it will be resolved by the appropriate Commission panel pursuant to Rule 25-22.006(3)(d), Florida Administrative Code.

ORDER NO. 20672
DOCKET NO. 881570-EQ
PAGE 3

BY ORDER of Chairman Michael McK. Wilson, Prehearing
Officer, this 30th day of JANUARY, 1989.



MICHAEL McK. WILSON, Chairman
and Prehearing Officer

(S E A L)

SBr