

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Consol-) DOCKET NO. 911103-EI
idated Minerals, Inc. against) ORDER NO. PSC-92-0035-PCO-EI
Florida Power and Light) ISSUED: 3/10/92
Company for failure to nego-)
tiate cogeneration contract)

ORDER REGARDING CMI'S
MOTION TO COMPEL DISCOVERY BY FPL

BY THE COMMISSION:

On October 31, 1991, Consolidated Minerals, Inc. (CMI), by way of a Request for Production of Documents, asked FPL to produce documents "reflecting or relating to the criteria or other evaluation processes used by or for FPL in selecting the 'short list' of developers from which FPL would attempt to reach final agreements for the purchase of firm capacity and energy." FPL responded to the Request for Production of Documents on December 16, 1991, stating that "the documents that are responsive to [the request] and that are neither privileged nor confidential are available for inspection and copying." Accordingly, FPL redacted all references that would reveal the identity of the developers and detailed project-specific information from the documents it gave to CMI in response to the discovery request.

Because CMI believed it necessary to know the identity of the projects evaluated by FPL, it filed a Motion to Compel Discovery by FPL on February 21, 1992. In its motion, CMI stated that "any information which would shed light upon FPL's relationship with, and motives toward, CMI, as well as its basis for selection, is essential in resolving this issue and arriving at the truth. FPL did not evaluate these proposals on an anonymous basis.... CMI only asks to be placed on the same footing as FPL in order to determine whether FPL negotiated in good faith with it and objectively evaluated CMI's project." This motion was directed at the Request for Production of Documents discussed above, and towards unanswered deposition questions concerning the identity of the other cogeneration projects evaluated by FPL.

On February 28, 1992, FPL responded to CMI's Motion to Compel and requested that it be denied. In its response, FPL stated "to encourage maximum participation in a future process, FPL must be in a position to offer confidentiality as to project and developer specific information during the selection process. (Emphasis supplied). If a disappointed developer can force disclosure of

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project-specific information of other unsuccessful developers, participation in a future capacity supply selection process will be discouraged, and it would have a chilling effect on the competitive environment FPL seeks to foster."

On March 5, CMI wrote FPL a letter suggesting a compromise in order to resolve the discovery dispute. In the letter, CMI stated it was willing to receive information concerning the projects on the short list only, and that it would no longer seek to have its unanswered deposition questions answered. However, FPL still maintains the position that the identities of all other cogenerators, except Cypress Energy Partners, Ltd. with whom FPL has signed a negotiated contract, should remain confidential.

I find that FPL shall provide CMI with the documents responsive to CMI's Production of Documents Request which pertain to the second and third cogenerators on the short list with only the project name, the project developer, and the project location redacted. Furthermore, FPL shall identify which information relates to the second cogenerator on the "short list," and which cogenerator relates to the third cogenerator on the "short list." FPL can do this by either assigning a number or letter to these projects, and by labeling the pertinent information in the documents with the appropriate number or letter. FPL shall file these documents by Thursday, March 12, 1992. CMI can ascertain the information it needs to present its case with such a labeling system, and this procedure will not harm the confidential nature of these projects, particularly since the documents can be produced to CMI under FPL's and CMI's existing confidentiality agreement, and since the documents concern a selection process that has been completed.

As stated above, CMI has suggested that if FPL would provide the requested documents, it could proceed without answers to its deposition questions concerning the identity of the other cogenerators. I deny CMI's motion as it relates to the deposition questions.

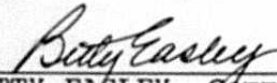
It is therefore,

ORDERED by Commissioner Betty Easley, as Prehearing Officer, that CMI's Motion to Compel is granted in so far as FPL shall file the documents as discussed in the body of this order by Thursday, March 12, 1992. It is further

ORDER NO. PSC-92-0035-PCO-EI
DOCKET NO. 911103-EI
PAGE 3

ORDERED that CMI's Motion to Compel as it relates to deposition questions is denied.

By ORDER of Commissioner Betty Easley, as Prehearing Officer,
this 10th day of March, 1992.



BETTY EASLEY, Commissioner
and Prehearing Officer

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