

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for issuance of a storm recovery financing order, by Florida Power & Light Company.

DOCKET NO. 060038-EI
ORDER NO. PSC-06-0780-PCO-EI
ISSUED: September 19, 2006

PROTECTIVE ORDER

Background

On May 30, 2006, the Commission issued Order No. PSC-06-0464-FOF-EI in this docket ("Financing Order"), parts of which were clarified in the Commission's Order on Reconsideration and Clarification, Order No. PSC-06-0626-FOF-EI, issued July 21, 2006. The Financing Order authorized the issuance of storm-recovery bonds and the imposition of related storm-recovery charges to finance the recovery of Florida Power & Light Company's ("FPL") reasonable and prudently incurred storm-recovery costs, the replenishment of FPL's storm reserve, and related financing costs.

The Commission established a "Bond Team" through the Financing Order to provide for meaningful and substantive cooperation between FPL and the Commission, through their respective designated representatives, to ensure that the structuring, marketing, and pricing of the storm-recovery bonds will result in the lowest storm-recovery charges consistent with the terms of the Financing Order and applicable law and with prevailing market conditions at the time of pricing. (Financing Order, pp. 6-7) The Commission's representatives on the Bond Team include a designated Commissioner, Commission staff, the Commission's financial advisor, and the Commission's outside legal counsel. The Financing Order provides that the Commission's representatives on the Bond Team "will have an active and integral role in, and will participate fully and in advance in all plans and decisions relating to, the structuring, marketing, and pricing of the storm-recovery bonds . . ." (Financing Order, p. 56)

FPL's Motion for Protective Order

On August 4, 2006, FPL filed a motion for protective order by which it requests that proprietary confidential business information exchanged among Bond Team members would be protected from public disclosure. In its motion, FPL notes that Bond Team members, in fulfilling their duties pursuant to the Financing Order, are and will continue to be required to exchange documents and information, including documents and information that constitute proprietary confidential business information as defined in Section 366.093(3), Florida Statutes. FPL stated that these documents and information include, but are not limited to, drafts of rating agency presentations, drafts of the prospectus and offering materials, drafts of marketing presentations, drafts of the request for information from underwriters, drafts of financial documents, proprietary models related to the structuring of the bonds, and indicative pricing presentations provided by underwriters. FPL asserts that this proprietary confidential business

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information includes information, the disclosure of which would harm the competitive interests of the provider of the information, could trigger Securities and Exchange Commission disclosure requirements and other legal obligations, and could adversely affect the interests of FPL's customers in achieving the lowest storm-recovery charges as required by the Financing Order.

FPL asserts that a protective order will facilitate the free and timely flow of comments and information between and among members of the Bond Team to help ensure timely issuance of the storm-recovery bonds. To that end, FPL requests that a protective order be issued to exempt proprietary confidential business information exchanged between and among Bond Team members, regardless of format, from Section 119.07(1), Florida Statutes, until the activities of the Bond Team are complete and any such information has been returned to its source or destroyed. FPL asks that the protective order protect such information from public disclosure regardless of whether the information is exchanged electronically, verbally, or through any other means of communication.

FPL requests that the protective order extend to other parties to this docket that are subject to the public records provisions of the Florida Statutes, to the extent such parties wish to have access to proprietary confidential business information related to Bond Team activities. FPL indicates that parties to this docket who are not subject to the public records provisions of the Florida Statutes could, if they so desired, gain access to such confidential documents and information pursuant to bilateral nondisclosure agreements. No party filed a response to FPL's motion.

Decision

Rule 28-106.211, Florida Administrative Code, provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case. Pursuant to this authority, FPL's motion is hereby granted.

As noted in FPL's motion, the role of the Bond Team established in the Financing Order requires Bond Team members to exchange numerous documents and data that constitute proprietary confidential business information, as defined in Section 366.093(3), Florida Statutes. These documents and data may be provided in various formats to ensure efficient handling, including, but not limited to, hard copy by mail or hand delivery and/or electronic file by e-mail or through a secured web database. In addition, Bond Team members must be able to provide on an almost daily basis both written and verbal feedback concerning confidential draft documents, including, but not limited to, markups of electronic documents, handwritten markups and comments on hard copies of documents, comments provided by e-mail or through a secured web database, and/or verbal comments provided by phone and in meetings of the Bond Team. A protective order governing the exchange of these documents and information, regardless of format, will allow for the free flow of information necessary to prevent substantial delay in the structuring, marketing, and pricing of the storm-recovery bonds and thereby help achieve the lowest cost objective described in the Financing Order.


The following terms and conditions shall govern access to all proprietary confidential business information exchanged between and among members of the Bond Team:

1. All documents and communications containing proprietary confidential business information shall be clearly identified as confidential;
2. Those to whom access is provided shall take stringent measures to preserve the confidentiality of the protected information;
3. Those to whom access is provided shall use the confidential information only for the purposes of participating in this docket;
4. Confidential information shall be disclosed only to those persons who have a need to know the information for purposes of participation in this docket;
5. Those to whom access is provided shall limit the number of copies made of the information to that necessary for participation in this docket;
6. Confidential information that is no longer needed by the Bond Team to conduct its business shall be returned to its source or destroyed or maintained as agreed by those persons to whom access has been provided, taking into account any retention requirements normally imposed on the Commission; and
7. The obligation to not disclose confidential information shall be continuing and survive the conclusion of this docket, except to the extent that documents provided to the Commission and containing such information become publicly available under applicable law.

Based on the foregoing, it is

ORDERED that Florida Power & Light Company's motion for protective order is hereby granted as described in the body of this Order.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 19th day of September, 2006.


J. TERRY DEASON
Commissioner and Prehearing Officer

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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; or (2) 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 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.