

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery
clause with generating performance incentive
factor.

DOCKET NO. 070001-EI
ORDER NO. PSC-07-0103-CFO-EI
ISSUED: February 6, 2007

ORDER GRANTING FLORIDA POWER & LIGHT'S MOTION FOR
TEMPORARY PROTECTIVE ORDER FILED IN DOCKET NO. 060001-EI
(DOCUMENT NOS. 00596-06, 01406-06, 01682-06, 01798-06, 01888-06, 02955-06,
03767-06, 03770-06, 04418-06, AND 04988-06)

On July 21, 2006, Florida Power & Light ("FPL") filed a Motion for Temporary Protective Order, pursuant to Rule 25-22.006(6), Florida Administrative Code, covering certain documents sought in discovery by the Office of Public Counsel ("OPC"). FPL states OPC has requested that it be permitted to take possession of FPL's confidential documents filed with the Commission listed on Attachment A ("Confidential Filings"). The documents mentioned in FPL's Motion for Temporary Protective Order have been granted confidential classification by the Commission, the Order numbers for which and dates of issuance are listed on Attachment A. The utility seeks exemption from Public Records Law, Section 119.07(1), Florida Statutes, for those documents to be provided to the OPC. No party filed a response to FPL's motion. The Motion was filed in Docket No. 060001-EI.

FPL asserts that it is seeking protection of the documents as provided in Section 366.093(2), Florida Statutes, and Rule 25-22.006(6), Florida Administrative Code. FPL contends that by following this procedure it is not waiving its rights to seek further relief as necessary to make certain that this information is not publicly disclosed.

Section 366.093(2), Florida Statutes, directs that all records produced pursuant to a discovery request for which proprietary confidential status is requested shall be treated by any party subject to public records law as confidential and exempt from the public records law, Section 119.07(1), Florida Statutes. Rule 25-22.006(6), Florida Administrative Code, codifies the Commission's policy protecting confidential information from public disclosure during the discovery process in a manner that is not overly burdensome to both parties. Rule 25-22.006, in pertinent part, states:

(6)(c) In any formal proceeding before the Commission, any utility or other person may request a protective order protecting proprietary confidential business information from discovery. Upon a showing by a utility or other person and a finding by the Commission that the material is entitled to protection, the Commission shall enter a protective order limiting discovery in the manner provided for in Rule 1.280, Florida Rules of Civil Procedure. The protective order shall specify how the confidential information is to be handled during the course of the proceeding and prescribe measures for protecting the information from disclosure outside the proceeding.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK


In addition, Rule 25-22.006(6)(c), Florida Administrative Code, states that if a party allows OPC to inspect or take possession of utility information, then that "utility may request a temporary protective order exempting the information from section 119.07(1), F.S."

Upon consideration, FPL's Motion for Temporary Protective Order of the confidential documents listed on Attachment A, is granted. FPL has demonstrated that the material requested by the OPC is proprietary confidential business information, since orders have already been issued finding the information to be proprietary confidential business information. Accordingly, this information will be protected from disclosure pursuant to Rule 25-22.006(6), Florida Administrative Code.

Based on the foregoing, it is

ORDERED by Commissioner Matthew M. Carter II, as Prehearing Officer, that the Motion for Temporary Protective Order filed by Florida Power & Light is granted.

By ORDER of Commissioner Matthew M. Carter II, as Prehearing Officer, this 6th day of February, 2007.


MATTHEW M. CARTER II
Commissioner and Prehearing Officer

(S E A L)

LCB/pz

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.

CONFIDENTIAL DOCUMENTS FILED BY FPL

Order PSC-06-0312-CFO-EI was issued April 20, 2006, granting confidential treatment to FPL's responses to staff's 10th set of interrogatories (Nos. 85, 86, 88, 89, 90, 92, and 93) filed January 23, 2006 (Document No. 00596-06).

Order No. PSC-06-0566-CFO-EI was issued June 30, 2006, granting confidential treatment to certain information on Forms 423-1(a), 2, 2(a), and 2(b) for month 10/05, filed February 17, 2006 (Document No. 01406-06).

Order No. PSC-06-0797-CFO-EI was issued September 25, 2006, granting confidential treatment to certain information on Forms 423-1(a), 2(a), and 2(b) for 11/05, filed February 27, 2006 (Document No. 01682-06).

Order No. PSC-06-0318-CFO-EI was issued April 20, 2006, granting confidential treatment to certain information on short-term capacity payments contained in Schedule A12 of Appendix II to prefiled testimony of K.M. Dubin, filed March 1, 2006 (Document No. 01798-06).

Order No. PSC-06-0639-CFO-EI was issued July 28, 2006, granting confidential treatment to certain portions of staff's fuel cost recovery clause audit report and working papers (Audit No. 04-023-4-1). [See documents 04848-04 and 05637-04], filed March 3, 2006 (Document No. 01888-06).

Order No. PSC-06-0564-CFO-EI was issued June 30, 2006, granting confidential treatment to certain information on fuel hedging activities and market comparisons contained in documents GJY-1 and GJY-2 to prepared testimony of Gerard Yupp, filed April 3, 2006 (Document No. 02955-06).

Order No. PSC-06-0880-CFO-EI was issued October 25, 2006, granting confidential treatment to Attachment A, which is FPL's 12/05 Form 423-1(a) and SJRPP's 12/05 Forms 423-2, 2(a), and 2(b), filed April 28, 2006 (Document No. 03767-06).

Order No. PSC-06-0877-CFO-EI was issued October 25, 2006, granting confidential treatment to Attachment A, which is FPL's 1/06 Form 423-1(a) and SJRPP's 1/06 Forms 423-2, 2(a), and 423-2(b), filed April 28, 2006 (Document No. 03770-06).

Order No. PSC-06-0879-CFO-EI was issued October 25, 2006, granting confidential treatment to Attachment A, Form 423-1(a) for 2/06; and Forms 423-2, 2(a) and 2(b) for SJRPP for 2/06, filed May 19, 2006 (Document No. 04418-06).

Order No. PSC-06-0878-CFO-EI was issued October 25, 2006, granting confidential treatment to Attachment A; Form 423-1(a) for 3/06; and Forms 423-2, 2(a) and 2(b) for SJRPP for 3/06, filed June 9, 2006 (Document No. 04988-06).