

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In re: Proposal to extend plan
for recording of certain
expenses for years 1998 and 1999
for Florida Power & Light
Company.

DOCKET NO. 970410-EI

FILED: SEPTEMBER 8, 1997

STAFF'S OBJECTION TO AMERISTEEL'S FIRST SET OF INTERROGATORIES AND
REQUEST FOR PRODUCTION OF DOCUMENTS PROPOUNDED TO THE STAFF OF THE
FLORIDA PUBLIC SERVICE COMMISSION AND REQUEST FOR PROTECTIVE ORDER

The Staff of the Florida Public Service Commission, pursuant to Rule 25-22.034, Florida Administrative Code, and Rules 1.280(c), 1.340(a), and 1.350(b), Florida Rules of Civil Procedure, by and through its undersigned attorney, hereby objects to Ameristeel's First Set of Interrogatories (Nos. 1-15) and Ameristeel's Request for Production of Documents (Nos. 1-6) Propounded to the Staff of the Florida Public Service Commission and requests that the Prehearing Officer issue a protective order relieving staff from the responsibility of responding to the interrogatories. As

ACK _____ grounds therefore, Staff states:

AFA _____
APP _____ 1. On August 28, 1997, Ameristeel filed its First Set of
CAF _____ interrogatories (Nos. 1-15) and its Request for Production of
CMU _____ Documents (Nos. 1-6) propounded to Staff, purporting to seek
CTR _____ information relevant to this proceeding.

BAG _____
LEG _____
LIN 5 2. Pursuant to Rule 25-22.034, Florida Administrative Code,
OPC _____ parties may obtain discovery through the means and in the manner
RLE _____ provided in the Florida Rules of Civil Procedure. Rule 1.280(a),
SEC 1

WAS _____
OTH _____

DOCUMENT NUMBER-DATE

09001 SEP-86

FPSC RECORDS REPORTING

Fla.R.Civ.P., provides that parties may obtain discovery regarding any relevant matter, as long as the information sought appears to be "reasonably calculated to lead to the discovery of admissible evidence." However, Rule 1.280(c), Fla.R.Civ.P., allows persons from whom discovery is sought to move for a protective order to protect them "from annoyance, embarrassment, oppression, or undue burden or expense"

3. Ameristeel's discovery requests essentially ask for Staff's strategies, workpapers, mental impressions, analysis, and conclusions concerning the case at bar and the underlying PAA proceeding.

4. Staff objects to Ameristeel's discovery requests on the grounds that they cause an undue burden on Staff by impinging upon Staff's role as an advisor to the Commission, improperly seek analysis and conclusions from Staff on a pending matter, and seek information irrelevant to this proceeding.

5. Pursuant to Rule 25-22.026(3), Staff's duty is to "represent the public interest and see that all relevant facts and issues are clearly brought before the Commission for its consideration." However, Staff is not a real party in interest in any proceeding before the Commission. South Florida Natural Gas Co. v. Public Service Commission, 534 So. 2d 695 (Fla. 1988). One of Staff's primary functions is to provide legal and technical advice on matters pending before the Commission. The Commission

uses its staff to "test the validity, credibility, and competence of the evidence presented." South Florida Natural Gas, at 698.

6. Rule 25-22.033(5), Florida Administrative Code, prohibits a staff member who testifies in a case from discussing the merits of that case with any Commissioner during the pendency of that case. This prohibition extends to participating in the preparation of recommendations and at the agenda conference. Further, Section 120.66(1), Florida Statutes, permits only advisory staff members who do not testify on behalf of the Commission in a formal proceeding to communicate with the Commissioners.

7. Ameristeel's discovery requests are aimed to require Staff to explain and justify the basis of its recommendation approved by the Commission in the underlying PAA proceeding. If Staff is required to respond to these discovery requests and Staff's responses are introduced as evidence, those Staff members responding could not perform their advisory function because they would be excluded from further participation in analysis of the case and preparation of Staff's recommendation. In addition, subjecting Staff to these discovery requests could have a chilling effect in that Staff members might become hesitant to form any kind of opinion in future cases if their opinions would subject them to compelled discovery or testimony.

8. Ameristeel's discovery requests seek information irrelevant to this proceeding. When an agency has issued an order,

the order represents the decision of the agency. The order speaks for itself; the impressions, analysis, workpapers, and conclusions that led to Staff's recommendation are irrelevant to subsequent proceedings. Further, Ameristeel's protest in this docket rendered the Commission's PAA Order a nullity and established a *de novo* proceeding. The impressions, analysis, workpapers, and conclusions that led to Staff's recommendations in the underlying PAA proceeding are not relevant to this formal *de novo* proceeding. Consistent with its advisory role in this formal proceeding, Staff has not reached any conclusions on this matter.

10. Staff has not filed testimony in this proceeding. If the parties' prefiled testimony does not provide an adequate record basis for comprehensive consideration of the matters at issue, Staff may file appropriate testimony to assure an adequate record. In the event Staff files testimony in this proceeding, discovery requests may be properly served upon those individuals who file testimony.

11. Staff is unaware of any Commission orders or statements specifically concerning interrogatories or requests for production of documents propounded on Staff. However, the Commission has recognized the concerns raised in this pleading by Staff in past orders protecting non-testifying members of Staff from other forms of discovery, i.e., depositions and requests for admissions. See Order No. PSC-94-1562-PCO-WS, issued December 14, 1994, in Docket

NO. 930945-WS; Order No. PSC-95-0137-PCO-SU, issued January 27, 1995, in Docket No. 940963-SU; Order No. PSC-94-0425-PCO-WS, issued April 11, 1994, in Docket No. 930880-WS; and Order No. 17910, issued July 27, 1987, in Docket No. 860960-WS. Staff recently raised similar concerns as grounds for an objection to interrogatories propounded on Staff in Docket No. 961184-EQ. The Commission has not yet made a ruling on that objection.

WHEREFORE, the Staff of the Florida Public Service Commission requests that the Prehearing Officer issue a protective order relieving Staff from the undue burden and annoyance of responding to Ameristeel's First Set of Interrogatories and its Request for Production of Documents propounded on Staff.

Respectfully submitted this 8th
day of September 1997.


WM. COCHRAN KEATING IV
Staff Counsel

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that one true and correct copy of Staff's Objection to Ameristeel's First Set of Interrogatories and Request for Production of Documents Propounded to the Staff of the Florida Public Service Commission and Request for Protective Order has been furnished by U.S. Mail this 8th day of September, 1997, to the following:

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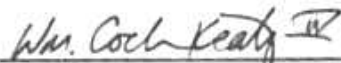
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