



Public Service Commission

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REPORTING AND RECORDS

DATE: FEBRUARY 28, 2000

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF ELECTRIC AND GAS (HAFF, BREMAN, GOAD, MAKIN)
DIVISION OF AUDITING AND FINANCIAL ANALYSIS (LESTER)
DIVISION OF LEGAL SERVICES (C. KEATING) WCK RVE

Handwritten initials and signatures: MHA, TB, JG, RG, ALM, JOY

RE: DOCKET NO. 991462-EU - PETITION FOR DETERMINATION OF NEED FOR AN ELECTRICAL POWER PLANT IN OKEECHOBEE COUNTY BY OKEECHOBEE GENERATING COMPANY, L.L.C.

AGENDA: 02/29/00 - REGULAR AGENDA - MOTION FOR RECONSIDERATION OF PREHEARING OFFICER'S ORDER - PRIOR TO HEARING - INTERESTED PERSONS MAY PARTICIPATE AT THE DISCRETION OF THE COMMISSION

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\EAG\WP\991462.RCM

CASE BACKGROUND

In preparing responses to various discovery requests from Florida Power & Light Company (FPL) and Florida Power Corporation (FPC) in this docket, Okeechobee Generating Company, L.L.C., (OGC) identified certain responsive documents and data that constituted or contained confidential proprietary business information. The responsive information includes the following: (1) a PG&E Generating Project Pro Forma for the Okeechobee Generating Project ("PG&E Pro Forma") and a memorandum from Doug Egan to PG&E Generating's department heads dated August 18, 1999 ("memorandum"); (2) redacted portions of OGC's Precedent Agreement with Gulfstream Natural Gas System ("Gulfstream Precedent Agreement"); (3) an ABB Bid Summary for gas turbines dated June 8, 1999, and related adjustment sheet ("ABB Bid Summary"); and (4) certain project cost data, including cost of capital, development costs, and detailed

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project construction costs. FPL and FPC filed motions to compel production of these documents and data. OGC filed a motion to protect the documents and data from disclosure in their entirety.

On February 7, 2000, the Prehearing Officer heard Oral Argument concerning these motions. On February 11, 2000, the Prehearing Officer issued Order No. PSC-00-0291-PCO-EU, finding, among other things, that the confidential documents and data listed above should be protected in their entirety from disclosure. The Prehearing Officer did not make a finding with regard to the memorandum, which was to be provided at a later date for an in camera inspection.

On February 21, 2000, FPL filed a motion for reconsideration of those portions of Order No. PSC-00-0291-PCO-EU concerning protection of the confidential documents and data listed above. FPC joined in FPL's motion. On February 25, 2000, OGC filed its response to FPL's motion for reconsideration. No party has requested oral argument on FPL's motion for reconsideration.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Florida Power & Light Company's Motion for Reconsideration of Portions of Order No. PSC-00-0291-PCO-EU?

RECOMMENDATION: No. Florida Power & Light Company's Motion for Reconsideration of Portions of Order No. PSC-00-0291-PCO-EU should be denied because it fails to satisfy the standard of review for a motion for reconsideration. The motion fails to identify any point of fact or law overlooked or not considered by the Prehearing Officer.

STAFF ANALYSIS: The applicable standard of review for a motion for reconsideration is whether the motion identifies some point of fact or law that was overlooked or not considered by the decision maker in rendering its order. Diamond Cab Co. v. King, 146 So.2d 889 (Fla. 1962). The mere fact that a party disagrees with the order is not a valid basis for reconsideration. Id. Further, reweighing of the evidence is not a sufficient basis for reconsideration. State v. Green, 104 So.2d 817 (Fla. 1st DCA 1958).

Order No. PSC-00-0291-PCO-EU, at page 10, states:

Upon consideration of the parties' pleadings and the arguments provided at Oral Argument, I find that the PG&E Pro Forma and the project cost data described above constitute proprietary confidential business information pursuant to Section 366.093(3), Florida Statutes. Further, I find that FPL and FPC do not have a reasonable necessity for use of these documents and data at hearing. Therefore, this information shall be protected from disclosure in this proceeding in its entirety. In addition to the data provided to support witness Nesbitt's analysis, substantial information from both outside and internal sources is available to FPL and FPC for purposes of testing the economic viability of the proposed project. The potential economic harms that could result from disclosure of these documents and data are not justified in light of the fact that FPL and FPC have other avenues available to test the economic viability of the proposed plant in this docket.

At pages 11 and 12, the Order goes on to state:

Upon consideration of the arguments presented, I find that the [redacted portions of the Gulfstream Precedent Agreement and the ABB Bid Summary and related adjustment sheet] constitute proprietary confidential business information pursuant to Section 366.093(3), Florida Statutes. Specifically, I find that these negotiated contract terms, if disclosed, would impair the competitive business interests of OGC, Gulfstream, and ABB. Further, I find that FPL and FPC do not have a reasonable necessity for use of these documents and data at hearing. As stated above, substantial information from both outside and internal sources is available to FPL and FPC for purposes of testing the economic viability of the proposed project. The potential economic harms that could result from disclosure of these documents and data are not justified in light of the fact that FPL and FPC have other avenues available to test the economic viability of the proposed plant in this docket. Accordingly, OGC shall not be compelled to disclose the redacted portions of the Gulfstream Precedent Agreement, the ABB Bid Summary, and the adjustment sheet related to the ABB Bid Summary.

In its motion for reconsideration, FPL asks the Commission to reconsider the Prehearing Officer's decision to protect these documents and data from disclosure in their entirety. FPL does not dispute the findings that these documents and data constitute proprietary confidential business information. Rather, FPL asserts that the Prehearing Officer "erred" in concluding that FPL and FPC do not have a reasonable necessity for use of these documents and data at hearing. FPL contends that it has a reasonable necessity for the use of these documents and data at hearing to test the economic viability of OGC's proposed power plant. Further, FPL asserts that limited disclosure of these documents and data to FPL's outside counsel and outside consultants under protective agreements would address OGC's concern that FPL or its affiliates could use this information to gain an unfair competitive advantage over OGC or its affiliates.

The arguments presented in FPL's motion for reconsideration are simply a restatement of the arguments presented in its pleadings and at oral argument. FPL does not attempt to identify any point of fact or law overlooked or not considered by the Prehearing Officer in rendering his decision. In fact, FPL agrees that the appropriate legal standard was applied by the Prehearing Officer in determining whether the documents should be protected from disclosure. Simply put, FPL is asking the Commission to reweigh the arguments already considered by the Prehearing Officer and overturn the Prehearing Officer's finding that FPL and FPC do not have a reasonable necessity for use of the subject documents and data at hearing. Accordingly, FPL's motion fails to satisfy the standard of review for a motion for reconsideration and should be denied. Further, because Order No. PSC-00-0291-PCO-EU does not address whether the August 18, 1999, memorandum should be disclosed, there is no ruling for the Commission to reconsider with respect to the memorandum.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. This docket should remain open pending resolution of Okeechobee Generating Company, L.L.C.'s petition for determination of need for an electrical power plant.

STAFF ANALYSIS: This docket should remain open pending resolution of Okeechobee Generating Company, L.L.C.'s petition for determination of need for an electrical power plant.