

SUZANNE BROWNLESS, P. A.
ATTORNEY AT LAW
1311-B Paul Russell Road, Suite 201
Tallahassee, Florida 32301

ORIGINAL

ADMINISTRATIVE LAW
GOVERNMENTAL LAW
PUBLIC UTILITY LAW

TELEPHONE (850) 877-5200
TELECOPIER (850) 878-0090

October 18, 2000

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RECORDS AND REPORTING
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Blanca Bayo
Director, Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Docket No. 001064-EI
In re: Petition for Determination of Need by Florida Power
Corporation for Hines Unit 2 Power Plant

Dear Ms. Bayo:

Enclosed for filing are the original and fifteen copies of Expedited Motion to Produce Confidential Information and Confidentiality Agreement.

Please stamp a copy and return to us for our files. If you should have any questions please contact me at 850-877-5200.

Very truly yours,



Lewis J. Barwick
Legal Assistant to Suzanne Brownless

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination)
of Need by Florida Power) DOCKET NO. 001064-EI
Corporation for Hines Unit 2)
Power Plant)
_____)

EXPEDITED MOTION TO PRODUCE CONFIDENTIAL INFORMATION

Panda Energy International, Inc. (PEII) through its undersigned attorney files this Expedited Motion to Produce Confidential Information pursuant to Rule 28-106.204, Florida Administrative Code, and in support thereof states as follows:

1. PEII files its Petition For Leave To Intervene and Expedited Ruling in this proceeding on October 12, 2000. Florida Power Corporation (FPC) has indicated by letter dated October 13, 2000 that it objects to PEII's intervention and will file written objections on October 19, 2000.

2. The PEII's substantial interest in this docket is the fact that it was a timely but unsuccessful participant in the RFP which resulted in FPC's selection of its own self-build option, Hines Unit 2, as the most cost-effective alternative to meet the electric need at issue in this docket.

3. Discovery in this docket is currently scheduled to end on Friday, October 20, 2000.¹

4. Notice that Commission Staff will depose John J. Flynn, the FPC witness offering testimony concerning the RFP and FPC's bid

¹ In re: Petition for Determination of Need by Florida Power Corporation for Hines Unit 2 Power Plant, Docket No. 001064-EI, Order PSC-00-1561-PCO-EI, issued on August 30, 2000.

DOCUMENT NUMBER-DATE

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evaluation process, and Charles J. Cicchetti, the FPC witness rebutting the testimony of Staff's witness Billy Dickens, was filed yesterday, October 17, 2000.

5. PEII assumes that the Staff will question Mr. Flynn concerning the details of FPC's evaluation of the RFP bids contained in both his prefiled testimony and in responses to Staff's discovery requests. Virtually all of this information has been identified by FPC as confidential material and FPC has requested protection for this material pursuant to Rule 25-22.082, Florida Administrative Code. Although there was some discussion of FPC's requests for confidentiality discussed at the Prehearing Conference held on October 11th in this docket, PEII is unclear of the disposition of such requests at this time. For the purposes of this motion, PEII assumes that FPC's requests have been completely granted with regard to all material for which FPC sought confidentiality.

6. As more fully argued in its Petition For Leave to Intervene², PEII has a right to contest the rejection of its bid in this need determination proceeding. PEII cannot effectively do so unless it can review the materials which have been classified as confidential and question Mr. Flynn regarding those materials prior to hearing.

7. PEII is prepared to execute the attached Confidentiality Agreement which was provided to Staff and FPC on Monday, October 16th in order to continue to protect the confidentiality of these

² Petition For Leave To Intervene and Expedited Ruling at ¶¶ 4-12.

materials. Under this Agreement, PEII will: 1) treat these materials as confidential; 2) only provide them to PEII's employees and experts, not to exceed 10 persons, associated with evaluating them in connection with this need determination proceeding and 3) promptly return all copies to FPC once this docket and all appeals, if any, have been fully completed.

8. To deny PEII access to the materials identified by FPC as confidential and the opportunity to participate in the deposition of both Mr. Cicchetti and Mr. Flynn is to deny PEII its right as a substantially affected party to adequately litigate its position in this proceeding and is violative of PEII's due process rights.

9. Granting PEII the opportunity to participate in these depositions will not harm FPC. PEII, as stated in the attached Confidentiality Agreement, will treat all materials identified by FPC as confidential and will return all materials to FPC at the conclusion of this proceeding including appeals. In fact, 1/3 of the information identified by FPC as confidential is that belonging to PEII. Surely FPC does not need to protect PEII's own bidding data from PEII itself.

10. With regard to Mr. Cicchetti, to the extent that the Staff of the FPSC is conducting these depositions in a public building, the Florida Government in the Sunshine Law³ would allow

³ §286.011, Florida Statutes. Further, §199.07(5), Florida Statutes, states that: "An exemption from this section [Public Records Law] does not imply an exemption from or exception to s. 286.011. The exemption from or exception to s. 286.011 must be expressly provided." There is no express provision in §366.093, Florida Statutes, the statutory authority on which the Commission's

the general public to attend, not to mention a party whose substantial interests are at issue in the docket.

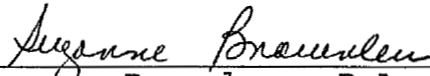
11. Should the Commission determine that PEII can not participate in the deposition of Mr. Flynn and can not receive immediate access to the confidential materials associated with this docket, PEII would request that it be allowed to depose Mr. Flynn telephonically prior to the hearing now set for October 26 and 27, 2000 and that these materials be made available to PEII upon the execution of the attached Confidentiality Agreement or its equivalent.

12. PEII has contacted the counsel for FPC regarding this motion and FPC opposes the attendance and participation of PEII at the Staff's depositions.

WHEREFORE, PEII requests that this Commission: 1) allow PEII to attend and participate in the deposition of Mr. Flynn and Mr. Cicchetti or in the alternative, allow PEII to depose telephonically Mr. Flynn prior to the hearing and 2) allow PEII to have immediate access to the materials identified as confidential in this docket upon the execution of the attached Confidentiality Agreement and tender to FPC.

ability to grant FPC's request for confidentiality is based, which exempts a deposition or Commission hearing from the requirements of §286.011, Florida Statutes, when privileged material is discussed. City of Miami Beach v. Berns, 245 So.2d 38 (Fla. 1971).

Respectfully submitted this 18th day of October, 2000 by:


Suzanne Brownless, P.A.
1311-B Paul Russell Road
Suite 201
Tallahassee, Florida 32301
Phone: (850) 877-5200
FAX: (850) 878-0090

Attorney for Panda Energy
International, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was provided by U.S. Mail to all parties listed below and also by (*)Hand Delivery and/or (**) Facsimile as indicated on this 18th day of October, 2000:

(**) Gary L. Sasso, Esq.
James Michael Walls
Carlton Fields Law Firm
One Progress Plaza, Suite 2300
200 Central Avenue
St. Petersburg, FL 33701
FAX: (727) 822-3768

(**) Robert A. Glenn, Esq.
Director, Regulatory
Counsel Group
Florida Power Corporation
One Progress Plaza, Suite 1500
200 Central Avenue
St. Petersburg, Florida 33701
FAX: (727) 820-5519

(*) Deboarh D. Hart, Esq.
Katrina D. Walker, Esq.
Florida Public Service Comm.
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850


Suzanne Brownless, Esq.

c: 3249

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination)
of Need by Florida Power) DOCKET NO. 001064-EI
Corporation for Hines Unit 2)
Power Plant)
_____)

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is entered into by and between Florida Power Corporation (FPC) and Panda Energy International, Inc. (PEII), by and through their respective counsel.

RECITALS

Due to the nature of the above-styled and captioned docket, it is necessary for FPC to include certain confidential information in its testimony, discovery responses and exhibits filed with the Florida Public Service Commission (FPSC).

The FPSC has adopted a rule for dealing with proprietary confidential business information provided pursuant to discovery, Rule 25-22.006, Florida Administrative Code, (Rule). Under the Rule, the party claiming that information is proprietary confidential business information must file a Request for Confidential Classification before such information is submitted to the FPSC. FPC has done so in this proceeding with regard to portions of the testimony of John B. Crisp, Alan S. Taylor, FPC's Need Study and certain discovery responses.

Under paragraph 7(b) of the Rule, the FPSC has encouraged parties to seek mutual agreement regarding access to confidential documents prior to bringing a controversy over such access to the

FPSC for decision. Under the Rule, such agreements do not constitute a waiver to any claim of/or objection to confidentiality a party may otherwise have a right to make.

AGREEMENT

In accord with paragraph 7(b) of the Rule, and to facilitate the timely review of the information that FPC has included in its testimony and discovery responses, PEII and FPC promise and agree as follows:

1. Applicability. The terms of this Agreement shall cover all information deemed confidential pursuant to Rule 25-22.006, Florida Administrative Code, and § 366.093(3), Florida Statutes, or to which FPC believes a colorable claim of confidentiality attaches (Confidential Information), whether included in prefiled testimony, applications, or exhibits or produced in response to discovery in this proceeding (Confidential Documents). This Agreement only covers the Confidential Information and Confidential Documents associated with this proceeding, Docket No. 001064-EI, Hines Unit 2 Need Determination.

2. Procedure for Production of Confidential Information.

a. All Confidential Documents provided to the FPSC in the form of discovery responses, prefiled testimony and exhibits have been clearly marked by FPC as "Confidential". FPC shall likewise mark all documents or information subsequently provided to the FPSC or the Undersigned Party to which it wishes the terms of this Agreement to apply as "Confidential".

b. All of the "Confidential Documents" which have been

provided to the FPSC shall be furnished to the Undersigned Party's counsel or other designated persons if such have complied with the provisions of Section 3 of this Agreement. For the purposes of the Confidential Documents on file at the FPSC as of the date of this Agreement, "furnished" means granting the Undersigned Party's counsel the right to secure one copy of these documents from the Clerk or Staff of the FPSC.

c. Any Confidential Information or Confidential Document supplied to the FPSC after the date of this Agreement shall be furnished directly to the Undersigned Party's counsel by express delivery service or FAX, at the Undersigned Party's expense.

3. Procedure for Review of Confidential Information.

a. Before anyone reviews Confidential Documents for the Undersigned Party, such person shall sign a written acknowledgment that he or she has read this Agreement and agrees to abide by its terms. (Exhibit "A", Non-Disclosure Agreement). The total number of persons who may review the confidential documents by the Undersigned Party shall not exceed ten (10), without the express written permission of FPC. Each person shall sign the acknowledgement attached to this Agreement.

b. The Undersigned Party's counsel, subject matter experts/consultants and expert witnesses who have signed the Non-Disclosure Agreement may review all documents containing Confidential Information which have been so designated by FPC and all Confidential Documents. The Undersigned Party's counsel, subject matter experts/consultants and expert witnesses who have

signed the Non-Disclosure Agreement shall not disclose any Confidential Information or the contents of any Confidential Document to anyone other than said counsel, subject matter expert/consultants and expert witnesses without the prior written consent of FPC. The Confidential Documents and Information shall only be reviewed and/or disclosed to counsel, subject matter experts/consultants and expert witnesses who have a need to review the information in connection with this proceeding and have signed the Non-Disclosure Agreement attached to this Agreement.

c. The Undersigned Party may reproduce the Confidential Documents only to the extent necessary to provide a copy to counsel, subject matter experts/consultants and expert witnesses who have executed a Non-Disclosure Agreement.

d. While any Confidential Information or Confidential Document is in the possession of the Undersigned Party, its counsel, subject matter experts/consultants and expert witnesses, they shall individually and collectively implement procedures that are adequate to ensure that documents stamped "Confidential" and any Confidential Information contained therein, shall not be disclosed to anyone other than those persons covered by this Agreement.

e. The Confidential Information, including Third-Party Confidential Information, and copies of Confidential Documents provided by FPC pursuant to this Agreement shall remain the property of FPC. Such Confidential Information and Documents, including copies thereof, shall not be used for any purposes

unrelated to this proceeding.

4. Term. This Agreement shall be effective from the date it is executed by the parties until the date the FPSC issues its final decision or order in the final phase of this proceeding, unless any decision of the FPSC in docket No. 001064-EI is appealed, in which case the Agreement shall continue until all appellate review is completed. At the end of the term of this Agreement, or before, the Undersigned Party shall return all Confidential Documents remaining in its possession to the undersigned counsel for FPC.

5. Remedies. In the event that the Undersigned Party discloses, disseminates or releases any Confidential Documents or Confidential Information contained in Confidential Documents, including Third-Party Confidential Information, without proper authorization, FPC may refuse to provide any further Confidential Information or Documents and may demand prompt return of all Confidential Information or Documents or information previously provided by FPC. The Undersigned Party agrees that: a) divulgence or unauthorized use of the Confidential Information could damage FPC or the owner of the information; b) the amount of resulting damages could be difficult to ascertain; c) FPC or the owner of the information may not reasonably or adequately be compensated for the loss of such information in damages alone; and d) FPC or the owner of the information shall be entitled to injunctive or other equitable relief to prevent or remedy a breach of this Agreement or any part of it. Furthermore, nothing herein is intended to

restrict any remedies available to FPC, or the owner of the Third-Party Confidential Information, for the Undersigned Party's unauthorized disclosure, dissemination or release of proprietary information.

6. Authority. The undersigned counsel acknowledge and represent that they have actual authority to enter into this Agreement on behalf of their respective clients.

7. Modifications. This Agreement can be modified by further written agreement of the parties. FPC acknowledges that the Undersigned Party may seek to negotiate a modification to this Agreement before Confidential Information or Documents are made available hereunder to any person other than the undersigned counsel for the Undersigned Party. If the parties are unable to agree on a mutually acceptable modification, either party may petition the FPSC to determine the basis on which such documents will be made available for review by the Undersigned Party's counsel, subject matter experts/consultants and expert witnesses.

Dated this 18th day of October, 2000.

By: Suzanne Brownless
Suzanne Brownless, Esq.

Attorney for Panda Energy
International, Inc.

Gary L. Sasso, Esq.
Carlton Fields Law Firm
P.O. Box 2861
St. Petersburg, FL 33731-2861

Robert A. Glenn, Esq.
Regulatory Counsel Group
Florida Power Corporation
P.O. Box 14042
St. Petersburg, FL 33733

Attorneys for Florida Power

Corporation

EXHIBIT "A"

NON-DISCLOSURE ACKNOWLEDGMENT

Each of the undersigned hereby certifies that prior to the disclosure to him or her of certain information and documents belonging to, or in the possession of, or made available through the offices of FPC's counsel, which are considered by FPC or the owner of such information or documents, to be of a trade secret, privileged or confidential nature, the undersigned has read the Non-Disclosure Agreement for the purposes of Docket No. 001064-EI, and agrees to be bound by its terms.

Suzanne Brownless

c: 3248