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ORIGINAL

April 25, 2002

BY HAND DELIVERY

Ms. Blanca S. Bayo, Director
Division of Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

RECEIVED FPSC
02 APR 25 PM 2:42
COMMISSION
CLERK

Re: Docket No. 020262-EI and 020263-EI

Dear Ms. Bayo:

Enclosed for filing in the above consolidated dockets are the original and fifteen (15) copies of Tampa Electric's Motion for a Protective Order. The faxed version of the Affidavit of W. Lynn Brown will be replaced with the original of his Affidavit tomorrow.

We are providing all participants in the April 24, 2002 meeting at the Commission with electronic versions of the endorsed filing as well as serving by hand delivery or mail the remaining parties.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning the same to this writer.

Thank you for your assistance in connection with this matter.

Sincerely,

James D. Beasley

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition To Determine Need For An) DOCKET NO. 020262-EI
Electrical Power Plant in Martin County)
By Florida Power & Light Company.) DATED: April 25, 2002
_____)

In re: Petition To Determine Need For An) DOCKET NO. 020263-EI
Electrical Power Plant in Manatee County)
By Florida Power & Light Company.) DATED: April 25, 2002
_____)

**TAMPA ELECTRIC COMPANY'S
MOTION FOR A PROTECTIVE ORDER**

Tampa Electric Company ("Tampa Electric" or "the company"), pursuant to Rule 1.280(c) Florida Rules of Civil Procedure, Sections 366.093 and 812.081, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, respectfully moves the Florida Public Service Commission ("Commission") for a protective order prohibiting Florida Power & Light ("FPL") from disclosing the highlighted confidential information contained in Tampa Electric's bid proposals to the Intervenor in these consolidated docket proceedings.

Introduction

FPL should be prohibited from producing the highlighted confidential portions ("Confidential Information") of Tampa Electric's bid proposals to Intervenor because: (1) Tampa Electric's Confidential Information is highly confidential proprietary business information, disclosure of which will cause irreparable harm to Tampa Electric and its business interests; (2) Tampa Electric's Confidential Information is not relevant in any way to Intervenor's challenge in these docket proceedings, and are being sought only to give Intervenor an unfair competitive advantage since non-intervening bidders will not be given similar access to

bid proposals; (3) FPL has already provided any arguably relevant information by its filing of the evaluations of the bid proposals and its Need Study Document; (4) production of Tampa Electric's Confidential Information may further be unnecessary in light of the dispositive motion for summary final order pending and set for argument on May 3, 2002; and (5) the proposed confidentiality agreement has been agreed to by FPL and Intervenors *only*, and does *not* protect the interests of Tampa Electric and other non-intervening bidders. The Commission has the authority and discretion to grant the relief requested herein. See Florida Society of Newspaper Editors v. Florida Public Service Commission, 543 So.2d 1262, 1264-66 (Fla. 1st DCA 1989).

Memorandum

Tampa Electric's Standing as a Non-Party

Tampa Electric has standing as a Non-Party to seek a protective order against providing intervenors with Tampa Electric's Confidential Information. Commission Rule 25-22.006(6)(a), Florida Administrative Code, provides that 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. . . . (emphasis supplied)

Indeed, Section 366.093, Florida Statutes, which governs the Commission's treatment of confidential information, uses the same terminology (a showing by a utility or other person). This contemplates protection of the provider of the information regardless of whether that provider is a utility or other party to a proceeding before the Commission. Section 366.093, Florida Statutes, also includes within the definition of proprietary confidential business information the following:

(e) information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information. (emphasis supplied)

Thus, Section 366.093, Florida Statutes, clearly contemplates a non-party who is a provider of information having the opportunity to seek protection of that information.

Note that in Rule 1.280, Florida Rules of Civil Procedure, a protective order may be granted: “upon motion by a party or by the person from whom discovery is sought, . . .” (emphasis supplied). If the person seeking a protective order has to be a “party” to a proceeding, there would be no need for Rule 1.280 to include the underscored portion of the above quote.

Thus, it is very clear Tampa Electric has standing to protect its Confidential Information from disclosure to intervenors who directly compete with Tampa Electric in the wholesale power market.

Tampa Electric’s Bid Proposals

Tampa Electric submitted detailed bid proposals (Tampa Electric’s Bid Proposals”) in response to FPL’s Request for Proposals issued on August 13, 2001 (“RFP”). FPL’s RFP requested capacity proposals for 1,150 MW of capacity to meet FPL’s 2005 needs, and an additional 600 MW of capacity for FPL’s 2006 needs. Tampa Electric’s Bid Proposals were deemed responsive to the RFP, and, like all other responsive bids, were evaluated both by FP&L and by an independent third-party evaluator, Sedway Consulting, Inc. (the “Evaluations”).

As a result of the Evaluations, FPL determined that the FPL self-build portfolio of Manatee Unit 3 and Martin Unit 8 was the most cost-effective alternative to meet FPL’s 2005 and 2006 capacity needs. FPL thus rejected all of the bids submitted in response to the RFP, including Tampa Electric’s Bid Proposals.

Consistent with its determination to self-build, FPL filed petitions for determinations of need for electrical power plants (“Petitions”), which Petitions are the subjects of these pending consolidated docket proceedings. FPL also filed a detailed Need Study Document with appendices, discussing the Evaluations, final costs comparisons and evaluation of non-price attributes allegedly supporting FPL’s determination to self-build.

Certain bidders such as Reliant Energy Power Generation, Inc. (“Reliant”), Calpine Energy Services, L.P. (“Calpine”) and others have been granted permission to intervene in these docket proceedings (collectively, “Intervenors”). Tampa Electric, however, has *not* sought permission to intervene, and is *not* party to these proceedings.

Intervenors are challenging FPL’s Petitions on grounds that FPL violated Rule 25-11.082, Fla. Admin. Code (the “Bid Rule”). Intervenors specifically allege that FPL understated the costs of its self-build options in violation of the Bid Rule; placed onerous and commercially infeasible terms in the RFP; and improperly changed its self-build option. Intervenors seek an order from this Commission requiring FPL to issue a new Request for Proposals that complies with the Bid Rule.

Intervenors Calpine and Reliant have also filed a Joint Motion for Summary Final Order in these docket proceedings, alleging that there are *no* disputed issues of material fact relative to FPL’s failure to comply with the Bid Rule, and that dismissal of FPL’s Petitions is required as a matter of law. Intervenors have requested oral argument and expedited consideration of their Joint Motion. Oral Argument on this dispositive motion is set for May 3, 2002.

Notwithstanding the pending dispositive Joint Motion for Summary Final Order, various Intervenors have served requests for production of documents upon FPL. These requests

demand, inter alia, all bid proposals submitted in response to the RFP, including Tampa Electric's Bid Proposals.

On April 18, 2002, FPL notified all RFP bidders, including Tampa Electric, that it intended to produce all bid proposals to the Intervenors. FPL announced that it was working with Intervenors to draft a confidentiality and non-disclosure agreement acceptable to FPL and the Intervenors, and that an agreement would be finalized at a meeting to be held the following day. Non-intervenor bidders such as Tampa Electric were invited to attend the meeting.

FPL and the Intervenors in attendance at an April 19, 2002 meeting made minor revisions and signed a marked-up copy of the draft agreement. Intervenors announced their intent to file a joint motion with FPL seeking approval of the confidentiality agreement by the Pre-Hearing Officer on the morning of April 22, 2002.

FPL has advised Tampa Electric and the other non-intervenor bidders that once the confidentiality agreement has been approved by the Pre-Hearing Officer, all bid proposals, including Tampa Electric's Bid Proposals, will be produced to the Intervenors. Tampa Electric and other non-intervening bidders will *not*, however, be given access to *any* of the bid proposals.

Tampa Electric's Bid Proposals contain highly proprietary confidential business information. Tampa Electric's Bid Proposals contain trade secrets as defined in Section 812.081, Florida Statutes, highly proprietary technology descriptions, and technical/patented information owned and used by Tampa Electric in its business ventures. Tampa Electric will suffer irreparable harm if its Confidential Information, contained in its Bid Proposals, is disclosed to Intervenors, all of whom are competitors of Tampa Electric and the other non-intervening bidders. Disclosure of Tampa Electric's Confidential Information at this time is also highly prejudicial, and would give Intervenors an unfair competitive advantage in any future request for

proposals. The confidentiality agreement proposed by FPL and the Intervenors is completely insufficient, and does not protect the interests of Tampa Electric and the other non-intervening bidders.

Attached hereto as Exhibit "A" is an Affidavit of Mr. W. Lynn Brown, Tampa Electric's Director Wholesale Marketing and Sales, describing the nature of the Confidential Information, why it is confidential and how disclosure of the Confidential Information would harm Tampa Electric's competitive interests and the interests of its general body of ratepayers.

Moreover, Tampa Electric's Confidential Information should not be produced to Intervenors because it is simply *not relevant* to these docket proceedings, and will not lead to any discovery admissible at the hearing on the Petitions. As evidenced by their motions seeking intervention, the Intervenors are challenging *only FPL's compliance with the Bid Rule*, not any bidder's compliance with the Rule. Tampa Electric's Bid Proposals are simply not at all relevant to any such challenge. Without some showing by Intervenors why Tampa Electric's Bid Proposals are relevant to these docket proceedings, no access to these documents should be permitted.

Tampa Electric thus seeks a protective order prohibiting FPL from producing any of Tampa Electric's highlighted Confidential Information to any of the Intervenors. The harm to Tampa Electric and its general body of ratepayers that would flow from any such disclosure far outweighs any benefit such disclosure would provide Intervenors in their challenge to FPL's need determination Petitions. Tampa Electric does not object to FPL providing Intervenors those portions of its Bid Proposals not highlighted as Confidential Information so long as the Confidential Information is redacted.

Representation Under Rule 28-106.204, Fla. Admin. Code

Undersigned counsel believes that this motion will be opposed by the various Intervenors who also opposed suggested revisions to the confidentiality agreement at the April 19, 2002 meeting.

Request for Oral Argument

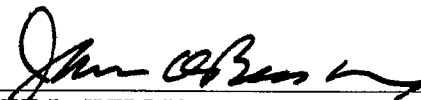
Tampa Electric respectfully suggests that oral argument on this motion may well be helpful to an understanding of the issues, and thus requests the opportunity to be heard.

Conclusion

For the foregoing reasons, Tampa Electric requests that its motion for protective order be granted as requested herein, and that FPL be prohibited from producing to Intervenors the highlighted Confidential Information in Tampa Electric's Bid Proposals to FPL.

DATED this 25th day of April 2002.

Respectfully submitted,



LEE L. WILLIS
JAMES D. BEASLEY
Ausley & McMullen
Post Office Box 391
Tallahassee, FL 32302
(850) 224-9115

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was furnished by hand delivery*,
by e-mail ** or U. S. Mail on this 25th day of April 2002 to the following:

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ATTORNEY

AFFIDAVIT

State of Florida

County of Hillsborough

BEFORE ME, the undersigned authority, personally appeared WILLIAM L. BROWN III, who first being duly sworn, deposed and said that he is Director Wholesale Marketing and Sales of Tampa Electric Company ("Tampa Electric" or "the company"), and that the information below is true and correct to the best of his knowledge, information and belief.

Confidential Treatment of Highlighted Information in Tampa Electric's Bid Proposals to Florida Power & Light Company (FPL)

I have been responsible for the purchase and sale of wholesale power for Tampa Electric since April 1997. I personally witnessed and participated in the development of the wholesale market within peninsular Florida and throughout the country.

I have read the Motion of Tampa Electric for a Protective Order to which my Affidavit is appended as Exhibit "A". I verify that the factual matters asserted therein regarding the sensitive competitive nature of the Confidential Information that is the subject of such Motion and the harm that Tampa Electric and its general body of ratepayers would suffer if the Confidential Information (as defined in Tampa Electric's Motion) is supplied to any of the intervenors in the FPL need determination docket (Docket Nos. 020262-EI and 020263-EI) that compete with Tampa Electric in the wholesale market are true and correct.

Florida's wholesale market is entirely bilateral, i.e. all transactions are one-on-one and treated confidentially. Other regions (hubs) such as Entergy and Cinergy have developed wholesale power price indices which are updated hourly and published on a daily basis. Deal details are generically published, i.e. the parties are not identified. These indices represent average prices for standard products which are bought and sold into/out of these hubs. Deals within Florida, however, are not normally published. Past, present and future market price discovery within Florida is accomplished via extensive and costly personal inquiry and research. Tampa Electric invests considerable time and resources "defining the market" each hour of each day. Historical price information is invaluable since the market is typically cyclical. Purchased power quantities and actual prices paid for wholesale power by a market participant are invaluable information and are basic building blocks for future market price forecasting models.

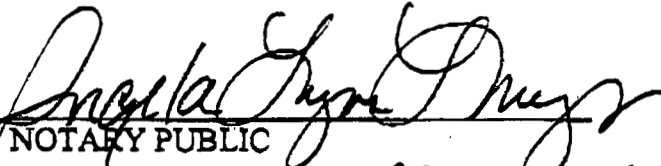
The intervenors' knowledge of the Confidential Information contained in Tampa Electric's bid proposals to FPL would severely harm Tampa Electric and its ability to effectively compete for new wholesale sales in this and other RFP processes. The Confidential Information

consists of specific price proposals Tampa Electric made to FPL, including fuel, capacity and variable O & M pricing. Disclosure of such information to Intervenors would enable them to more effectively compete against Tampa Electric and thereby subject Tampa Electric and its retail customers to a significant threat of losing the benefit of wholesale revenues. All of the Confidential Information highlighted in Tampa Electric's bid proposals to FPL reflect bidding decisions and pricing proposals that are based on Tampa Electric's current costs. That is to say, the information is not stale and could be utilized to Tampa Electric's significant disadvantage by other parties in bid proceedings for the foreseeable future.

Dated at Tampa, Florida this 25th day of April 2002.


WILLIAM L. BROWN III

Sworn to and subscribed before me this 25th day of April 2002, with the Affiant being personally known to the undersigned.


NOTARY PUBLIC

My Commission expires: MARCH 24, 2006

