

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of investor-owned
electric utilities' risk
management policies and
procedures.

DOCKET NO. 011605-EI
ORDER NO. PSC-02-0603-PCO-EI
ISSUED: May 2, 2002

ORDER GRANTING MOTION FOR TEMPORARY PROTECTIVE ORDER

On March 6, 2002, the Office of Public Counsel (OPC) served its First Request for Production of Documents to Florida Power & Light Company (FPL), in which OPC requested FPL produce a document referred to as the "Dean Study." On April 10, 2002, FPL filed a Motion for Temporary Protective Order, pursuant to Rule 25-22.006(6), Florida Administrative Code, to protect this document from disclosure while OPC determines whether it will use the information in a Commission proceeding.

In its motion, FPL asserts that the Dean Study contains confidential, proprietary business information related to FPL's fuel procurement strategies, the disclosure of which would impair FPL's ability to contract for fuel on favorable terms. FPL further asserts that it intends to, and does, treat this information as confidential. FPL asserts that it is seeking protection of the document as provided in Section 366.093(2), Florida Statutes, Rule 25-22.006(6), Florida Administrative Code, and Order No. PSC-01-2392-PCO-EI, issued December 11, 2001, in Docket No. 010949-EI. FPL notes that in Order No. PSC-01-2392-PCO-EI, the Commission found that if OPC decided to use at hearing confidential material provided under a temporary protective order, the material would be treated as confidential for 21 days following the conclusion of the hearing so that the utility could file a request for confidential classification in that time. FPL states 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 disclosed. FPL indicates that it contacted OPC, which stated that it has no objection to this motion.

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

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public records law, Chapter 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)(a) 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.

Specifically, 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 is granted. As provided in Order No. PSC-02-0192-PCO-EI, the Order Establishing Procedure for this docket, OPC is required to provide FPL and all other parties seven days notice of its intent to use any confidential information at the hearing. Consistent with Order No. PSC-01-2392-PCO-EI, cited above, if OPC decides to use at hearing that material which is the subject of this Order, the material shall be treated as confidential. In order to maintain confidential treatment of the material thereafter, FPL must file a request for confidential classification within 21 days of the conclusion of the hearing.

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It is therefore,

ORDERED by Commissioner Michael A. Palecki, as Prehearing Officer, that Florida Power & Light Company's Motion for Temporary Protective Order is granted, as set forth in the body of this Order.

By ORDER of Commissioner Michael A. Palecki, as Prehearing Officer, this 2nd day of May, 2002.



MICHAEL A. PALECKI
Commissioner and Prehearing Officer

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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.

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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, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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.