

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to determine need for an electrical power plant in Martin County by Florida Power & Light Company.

DOCKET NO. 020262-EI

In re: Petition to determine need for an electrical power plant in Manatee County by Florida Power & Light Company.

DOCKET NO. 020263-EI  
ORDER NO. PSC-02-0611-PCO-EI  
ISSUED: May 3, 2002

ORDER GRANTING MOTIONS FOR PROTECTIVE ORDER AND GRANTING JOINT MOTION FOR ENTRY OF ORDER GOVERNING HANDLING AND DISCLOSURE OF INFORMATION ASSERTED TO BE CONFIDENTIAL

The Commission has received motions for a protective order from three participants in Florida Power & Light Company's (FPL) August, 2001, Request for Proposals (RFP) to supply its projected generating capacity needs in 2005 and 2006. In their motions, the three participants, AES Coral (AES), Tampa Electric Company (TECO), and Progress Ventures, Inc. (PVI) have asked that the confidential information they submitted in response to FPL's August, 2001, RFP be protected from disclosure to the intervenors in these need determination dockets during the course of discovery.<sup>1</sup> Those intervenors, several other participants in FPL's August, 2001, RFP, have requested disclosure from FPL of all confidential RFP information, including their own information and that of AES, TECO, PVI and other non-party bidders. AES, TECO and PVI claim that their competitive business interests will be seriously harmed if

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<sup>1</sup> The movants have not intervened in these dockets, but request a protective order pursuant to Section 366.093, Florida Statutes, Commission Rule 25-22.006(6)(a), Florida Administrative Code, and Rule 1.280, Florida Rules of Civil Procedure. Those provisions generally provide that the owner or provider of confidential information that is sought in discovery may seek a protective order governing disclosure of the information whether or not they are a party to the proceeding.

DOCUMENT NUMBER-DATE

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their bid information is revealed to the intervenors, primarily because the intervenors are their competitors, and release of the information would give them an unfair advantage in any future RFP.

In fact, on April 26, 2002, FPL did issue a supplemental RFP to supply its capacity needs in 2005 and 2006,<sup>2</sup> and at the Oral Argument held May 3, 2002, to address their motions, AES, TECO and PVI argued that this new development in the case made protection of their confidential bidding information more imperative.

All the intervenor bidders who responded to the motions for protective order<sup>3</sup> agreed in their responses and in oral argument that disclosure of the information in question was no longer necessary for the adequate preparation of their cases in light of the new RFP, and therefore they did not object to the motions. They asserted that they and FPL had agreed to disclose their own August, 2001, bidding information to each other under the protections afforded by the Confidentiality Agreement they have negotiated. That agreement is the subject of their Joint Motion for Entry of an Order Governing Handling and Disclosure of Information Asserted to be Confidential. According to the respondents, the information that will be provided to each other pursuant to that agreement will be sufficient to prepare their case while the new RFP is pending.

The respondents and FPL believe that the issues raised by these non-party motions for protective order are likely to arise again at the conclusion of the new RFP. To avoid delay in the production of discovery regarding the new RFP, they asked the Commission to emphasize to participants in FPL's new RFP that information submitted in response to the RFP may very well be subject to disclosure in discovery to the parties to these need determinations under limited and controlled circumstances.

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<sup>2</sup> On April 26, 2002, an Interim Order on Procedure, ORDER NO. PSC-02-0571-PCO-EI, was issued to suspend the procedural schedule in these dockets while FPL issued the new RFP.

<sup>3</sup> Reliant Energy power Generation, Inc., Calpine Energy Services, L.P., Mirant Corporation, and South Pond Energy Park, LLC responded to the motions for protective order.

ORDER NO. PSC-02-0611-PCO-EI  
DOCKETS NOS. 020262-EI, 020263-EI  
PAGE 3

The Motions for Protective Order are granted. FPL shall not disclose to the intervenors in these dockets the August, 2001, bid information that AES, TECO and PVI assert is confidential. The Joint Motion for Entry of Order Governing Handling and Disclosure of Information Asserted to be Confidential is also granted. The Confidentiality Agreement attached to the Joint Motion is approved. At this time FPL will only provide to the intervenors the August, 2001, bid information of the signatories to the Confidentiality Agreement approved herein. Upon execution of the sublicense agreement by an Intervenor, FPL may immediately provide that Intervenor with a copy of the EGEAS model used by FPL in its evaluation of the RFP proposals.


With regard to the probability that the issues discussed above may arise again when FPL concludes its supplemental RFP, all entities who respond to FPL's supplemental RFP should do so with the clear understanding that confidential information submitted in response to the RFP may very well be subject to disclosure in discovery to the parties to these dockets.

It is therefore,

ORDERED BY Commissioner J. Terry Deason as Prehearing Officer that the Motions for Protective Order and the Joint Motion for Entry of Order Governing Handling and Disclosure of Information Asserted to be Confidential are granted, to the extent described in the body of this Order.

ORDER NO. PSC-02-0611-PCO-EI  
DOCKETS NOS. 020262-EI, 020263-EI  
PAGE 4

By ORDER of Commissioner J. Terry Deason as Prehearing Officer, this 3rd Day of May, 2002.

  
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J. TERRY DEASON  
Commissioner and Prehearing Officer

( S E A L )

MCB

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.

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

ORDER NO. PSC-02-0611-PCO-EI  
DOCKETS NOS. 020262-EI, 020263-EI  
PAGE 5

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.