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ORIGINAL

November 22, 2002

HAND DELIVERED

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COMMISSION
CLERK

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

Re: Petition to determine need for Hines Unit 3 in Polk County by Florida Power Corporation; FPSC Docket No. 020953-EI

Dear Ms. Bayo:

Enclosed for filing are the original and fifteen (15) copies of Tampa Electric Company's Motion for a Protective Order. We will supplement this filing on Monday, November 25, 2002, with the original of the Affidavit of Benjamin Smith which appears in facsimile form in the enclosed Motion.

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

Thank you for your assistance in connection with this matter.

Sincerely,



James D. Beasley

AUS _____
CAF _____
CMP _____
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CTR _____
ECR _____
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OPC _____
MMS _____
SEC _____
OTH _____

JDB/pp
Enclosures

cc: Prehearing Officer Braulio Baez (w/enc.)
All Parties of Record (w/enc.)

RECEIVED & FILED

R. V. P.

FPSC-BUREAU OF RECORDS

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to Determine Need for)
Hines Unit 3 in Polk County by)
Florida Power Corporation)
_____)

DOCKET NO. 020953-EI
DATED: November 22, 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 Corporation ("FPC") from disclosing the confidential information contained in Tampa Electric's bid proposals ("Bid Proposals") to the Intervenor in this proceeding.

Introduction

FPC should be prohibited from producing Tampa Electric's Bid Proposals to Intervenor because: (1) Tampa Electric's information provided to FPC 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 this proceeding, 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) FPC has already provided any arguably relevant information by its filing of the evaluations of the bid proposals and its Need Study Document; and (4) this Commission on November 19, 2002 in consideration of Florida Power & Light's need determination in Dockets Nos. 020262-EI and 020263-EI determined that Issue 11(g) addressing Tampa Electric's bid in

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FPSC-COMMISSION CLERK

that proceeding was irrelevant and moot and took no vote on the issue. Consideration of Tampa Electric's bid in this case is, likewise, irrelevant and moot.

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 intervenor with Tampa Electric's Bid Proposals. 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 intervenor who directly competes with Tampa Electric in the wholesale power market.

Tampa Electric’s Bid Proposals

Tampa Electric submitted detailed Bid Proposals in response to FPC’s Request for Proposals (“RFP”).

As a result of the evaluations, FPC determined that the FPC self-build portfolio of Hines Unit 3 in Polk County was the most cost-effective alternative to meet FPC’s capacity needs. FPC 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, FPC filed its petition for a determination of need for electrical power plants (“Petition”), which petition is the subject of this proceeding. FPC also filed a detailed Need Study Document with appendices, discussing the evaluations, final costs comparisons and evaluation of non-price attributes allegedly supporting FPC’s determination to self-build.

Florida Partnership for Affordable Competitive Energy (“PACE”) was granted permission to intervene on November 21, 2002 in this docket. Tampa Electric, however, has *not* sought permission to intervene, and is *not* party to these proceedings.

PACE’s members are Calpine Energy Corporation, Competitive Ventures, Inc., Constellation Power, Inc., Mirant Americas Development, Inc., PG&E Natural Energy Group and Reliant Energy Power Generation, Inc. None of those entities appeared individually at the Prehearing Conference.

On November 22, 2002, FPC notified Tampa Electric that PACE had been allowed to intervene and that PACE had a pending Request for Production (“RFP”) which call for the production of Tampa Electric’s Bid Proposals by Wednesday, November 27, 2002 and that FPC’s objection to that discovery are due November 22, 2002 and that the Prehearing Officer would rule on objections by November 25, 2002.

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 the confidential information contained in its Bid Proposals is disclosed to Intervenor, which comprises a group of competitors of Tampa Electric which have not intervened individually in this case. Disclosure of the confidential information contained in Tampa Electric’s Bid Proposals at this time would also be highly prejudicial, and would give Intervenor an unfair competitive advantage in any future request for proposals. This attempted discovery of Tampa Electric’s confidential information is nothing more than a fishing expedition which is not designed to lead to relevant information in this proceeding. Tampa Electric is not

an intervenor, is no longer pursuing its proposal to FPC and is completely irrelevant to this proceeding.

Attached hereto as Exhibit "A" is an Affidavit of Mr. Benjamin Smith, Tampa Electric's Manager Wholesale Marketing and Fuels, describing the nature of the confidential information contained in Tampa Electric's Bid Proposals, why it is confidential and how disclosure of this 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 Intervenor because it is simply *not relevant* to these docket proceedings, and will not lead to any discovery admissible at the hearing on the petition in this docket. Without some showing by Intervenor 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 FPC from producing any of Tampa Electric's confidential information contained in its Bid Proposals to Intervenor. 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 Intervenor in its challenge to FPC's need determination petition.

This Commission on November 19, 2002 in consideration of Florida Power & Light's need determination in Dockets Nos. 020262-EI and 020263-EI determined that Issue 11(g) addressing Tampa Electric's bid in that proceeding was irrelevant and moot and took no vote on the issue. Consideration of Tampa Electric's bid in this case is, likewise, irrelevant and moot.

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

Undersigned counsel believes that this motion will be opposed by Intervenor.

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 FPC be prohibited from producing to Intervenor Tampa Electric's Bid Proposals to FPC.

DATED this 22nd day of November 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 Motion for Protective Order, filed on behalf of Tampa Electric Company was furnished by hand delivery*, e-mail** and U. S. Mail on this 22nd day of November 2002 to the following:

Mr. Lawrence Harris*
Ms. Marlene Stern
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

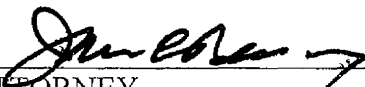
Mr. Gary L. Sasso**
Ms. Jill H. Bowman
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St. Petersburg, FL 33731-2861

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Mr. James A. McGee**
Associate General Counsel
Progress Energy Service Company, LLC
100 Central Avenue
St. Petersburg, FL 33701

Mr. Paul Lewis, Jr.**
Florida Power Corporation
106 East College Avenue, Suite 800
Tallahassee, FL 32301-7740

Mr. Jon C. Moyle, Jr.**
Ms. Cathy M. Sellers
Moyle, Flanigan, Katz, Raymond et al.
The Perkins House
118 North Gadsden Street
Tallahassee, FL 32301



ATTORNEY

AFFIDAVIT

State of Florida

County of Hillsborough

BEFORE ME, the undersigned authority, personally appeared BENJAMIN SMITH, who first being duly sworn, deposed and said that he is Manager Wholesale Marketing and Fuels of Tampa Electric 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 Corporation (FPC)**

I have been responsible for the purchase and sale of wholesale power for Tampa Electric Company since January 2000. 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 Company 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 contained in Tampa Electric's Bid Proposals to FPC is supplied to any of the intervenors in the FPC need determination docket (Docket No. 020953-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 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 FPC would severely harm Tampa Electric and its ability to effectively compete for new wholesale sales in this and other RFP processes. The confidential information

Exhibit "A"

consists of specific price proposals Tampa Electric made to FPC, 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. Tampa Electric's Bid Proposals to FPC reflects 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 22nd day of November 2002.

Benjamin Smith
BENJAMIN SMITH

Sworn to and subscribed before me this 22nd day of November 2002, with the Affiant being personally known to the undersigned.

Angela Lynn Llewellyn
NOTARY PUBLIC

My Commission expires: (Notary Stamp)

