

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to Determine Need)
for Turkey Point Unit 5 Electrical)
Power Plant by Florida Power and)
Light Company)
_____)

DOCKET NO. 040206-EI

**GENERAL ELECTRIC COMPANY'S MOTION FOR
PROTECTIVE ORDER BASED UPON CONFIDENTIALITY**

General Electric Company ("GE"), pursuant to Section 366.093, F.S. and Rule 25-22.006, F.A.C., hereby moves the Florida Public Service Commission (the "Commission") for a protective order prohibiting Florida Power & Light Company ("FPL") from disclosing to any Intervenor in this proceeding, or any member of the public, the Master Purchase Agreement for the Supply of Combustion Turbines ("the Agreement") and documents related to the Agreement in FPL's possession. In support of this motion, GE adopts by reference FPL's Motion for Protective Order, submitted to the Commission on May 6, 2004 (the "FPL Motion").

On April 16, 2004, Calpine Energy Services, L.P., an affiliate of Calpine Corporation (collectively, "Calpine"), filed its First Request for Production of Documents to FPL, which included requests for (i) "all documents, including any contractual arrangements, between you and any supplier of combustion turbines for FPL's Turkey Point Unit 5." The Agreement and documents and agreements related to the Agreement would be encompassed by this request.

The information in the Agreement constitutes proprietary confidential business information as defined in Section 366.093(3), Florida Statutes, including trade secrets, as defined in Section 812.081(1)(c), Florida Statutes.

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GE has standing as a non-party to seek a protective order preventing the disclosure of its proprietary confidential business information to Calpine. Rule 25-22.006(6)(a) provides in relevant part as follows:

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 Appellate Procedure.

(Emphasis supplied).

Section 366.093, which is one of the statutes implemented by Rule 25-22.006, provides that “[u]pon a showing by a utility or other person and a finding by the commission that discovery will require the disclosure of proprietary confidential business information, the commission shall issue appropriate protective orders” (Emphasis supplied). Section 366.093(3)(e), which is included within the definition of “proprietary confidential business information,” makes clear that the definition applies to “the provider of the information.” (Emphasis supplied).

Finally, Rule 1.280 of the Florida Rules of Civil Procedure, with which Florida Public Service Commission (“Commission”) protective orders must conform, provides that a protective order may be granted “upon motion by a party or by the person from whom discovery is sought” *See* R. 1.280(c), Fla. R. Civ. P.

Thus, GE has standing as a non-party to protect its proprietary confidential business information from discovery by filing this Motion for Protective Order.

Under the two-part test for a motion for protective order involving commercial information, once the movant demonstrates that the information sought is confidential commercial information, the burden shifts to the propounding party to establish that its need for the information outweighs the countervailing interest in withholding production. See FPL Motion, pp. 6-7 for citations.

Here, the Agreement itself expressly provides that its terms and conditions are to be maintained as confidential. (Affidavit of Stanley S. Smith dated May 12, 2004 (“Smith Aff.”), attached hereto, at Paragraph 4). The reason for the inclusion of this express provision is that the terms and conditions of the Agreement, including but not limited to pricing, delivery, performance, and technical specifications, under which GE agreed to provide combustion turbines to FPL contain highly sensitive commercial and technical information of GE. (Smith Aff., Paragraphs 4, 7).

Disclosure of the Agreement would have a serious detrimental effect on GE’s position in negotiations with current and future customers for the purchase and sale of combustion turbines. (Smith Aff., Paragraph 4-5). To the extent that the terms and conditions of the Agreement include favorable pricing and other commercial terms, GE’s agreement to these terms and conditions was based upon a number of factors, including but not limited to manufacturing capacity, projected costs at the time of contracting, the size of the order, demand for the equipment, and GE’s business relationship with FPL. (Smith Aff., Paragraph 4-5). These same factors, among others, affect the terms and conditions of the combustion turbine contracts GE enters into with other customers. Disclosure of the terms and conditions of the FPL Agreement would significantly disadvantage GE in negotiations with other customers. (Smith Aff., Paragraph 4-5). Further, that FPL’s Agreements could be subject to such disclosure could well

affect GE's willingness to offer favorable terms and conditions to FPL in the future. (Smith Aff., Paragraph 4-5).

Moreover, disclosure of the Agreement could allow GE's competitors to obtain information regarding GE's pricing and other commercial terms, which would disadvantage GE in competing for future business. (Smith Aff., Paragraph 6). The Agreement also contains proprietary technical information, the disclosure of which would damage GE. (Smith Aff., Paragraph 7).

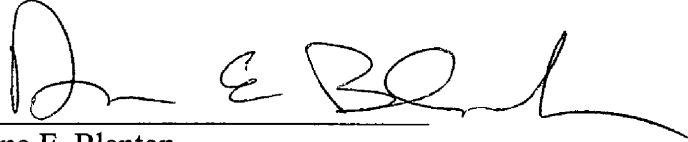
The need for a protective order here is heightened by the fact that the party requesting disclosure, Calpine, has purchased and may well in the future purchase combustion turbines from GE. One or more Calpine affiliates also compete with GE in the sale of parts and services for GE combustion turbines. (Smith Aff., Paragraph 9). Even more important, Calpine has recently competed with GE for the sale of new GE combustion turbines, which Calpine is seeking to sell from its inventory of unused combustion turbines previously purchased from GE. (Smith Aff., Paragraph 9). In short, as a customer and competitor of GE, Calpine is particularly situated to take improper commercial advantage of disclosure of GE's highly sensitive commercial information.

Because the GE information in question is commercially sensitive and confidential, the burden falls upon Calpine to establish that its need for such information in this proceeding outweighs GE's and FPL's significant commercial interests in maintaining the confidentiality of such information. For all the reasons set forth in the FPL motion, Calpine cannot meet this burden.

Accordingly, GE respectfully requests that the Commission enter a protective order prohibiting discovery by Calpine of the Agreement and related documents.

Respectfully submitted this 13th day of May, 2004.

GENERAL ELECTRIC COMPANY



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CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing was served by U.S. Mail this 13th day of May

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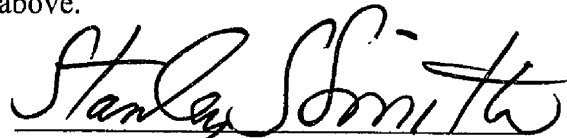
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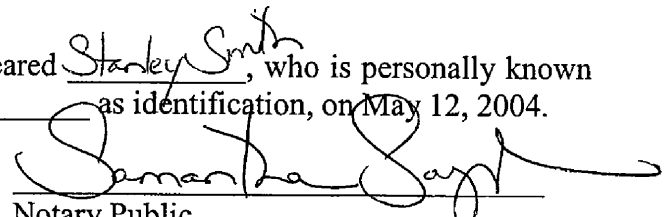
ATTACHMENT

conditions from the standpoint of FPL, GE agreed to such terms and conditions based on GE's assessment of these factors during negotiations, based on FPL long-standing business relationship with GE, and in reliance upon the confidentiality of the Agreement. If GE's other customers obtain this information, GE will be placed in an unfair bargaining position during future negotiations because the factors that existed during negotiations of the Agreement are not the same.

6. Additionally, GE is very concerned that disclosure to third parties would allow GE's confidential, proprietary information to be disclosed to GE's immediate competitors. If GE's competitors obtain this information, GE will be placed in an unfair bargaining position during future negotiations with GE's customers.
7. The Agreement also contains proprietary technical information. For the same reasons as previously stated, disclosure of this information to third parties, especially competitors, will cause serious damage to GE's business.
8. I understand that an affiliate of Calpine Corporation has requested disclosure of the Agreement. Calpine Corporation is a customer of GE, and has purchased significant numbers of combustion turbines from GE.
9. In addition, at least one Calpine affiliate competes with GE for sales of parts and services for GE combustion turbines. Even more important, Calpine has recently begun to compete in the market for the sale of new combustion turbines, which Calpine is seeking to sell from its inventory of unused combustion turbines previously purchased from GE and GE's competitors. Disclosure of the Agreement to Calpine, a customer and competitor of GE, thus would particularly disadvantage GE for all of the reasons identified in the paragraphs above.


Stanley S. Smith

Before me, the undersigned authority, appeared Stanley Smith, who is personally known to me, or has produced driver's license as identification, on May 12, 2004.


Notary Public
State of New York

Printed name and commission number:

Samantha Sayer
No. 01SA6095712

My commission expires on July 14, 2007.