

ORIGINAL

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From: mark.sajer@sep-llc.com  
Sent: Tuesday, October 19, 2004 10:10 AM  
To: Filings@psc.state.fl.us  
Subject: Motion for Protective Order - Docket No. 040001-EL



FLPSCMotion  
nfidProtectO

Please see the attached Motion for Protective Order

Mark S. Sajer  
Managing Director  
Summit Energy Partners, LLC  
c/o SEP Homestead, LLC

Mark S. Sajer  
Member-President  
SEP Homestead, LLC

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Florida Power & Light Company - )  
Cost Recovery Clause and Generating )  
Performance Incentive Factor )

Docket No. 040001-EL  
Dated October 16, 2004  
Filed Electronically

MOTION OF NON-PARTY SEP FOR PROTECTIVE ORDER

1. Non-Party SEP Homestead, LLC ("SEP"), 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 requests the Florida Public Service Commission ("Commission") to grant a protective order prohibiting Florida Power & Light Company ("FPL") from disclosing SEP's bid proposal to the intervenor(s) in these docket proceedings (the "Motion").

INTRODUCTION

- 2. On October 23, 2003, SEP submitted its proposal (together with supplementary information, "SEP's Proposal") to supply 50 MWs in response to FPL's 2003 Request for Proposals ("2003 RFP"). By correspondence dated January 15, 2004, FPL advised SEP that SEP's Proposal was not selected to its short list.
- 3. Via e-mail, FPL advised SEP that Calpine Energy Services, L.P. ("Calpine") has been has served FPL a discovery request: "Para. 63 Any and all documents regarding proposed solid fuel projects, either self-build or from third parties, that would deliver power to you [FPL] during the 2010 to 2015 time frame." SEP's Proposal contemplated a solid fuel project which involved deliveries during the 2010 to 2015 time frame.
- 4. For the reasons stated below, SEP hereby requests a protective order to prevent disclosure of SEP's Proposal. SEP's parent company, Summit Energy Partners, LLC, requests to SEP's Qualified Representative.

REASONS FOR PROTECTIVE ORDER

- 4. SEP requests that the Commission grant it a protective order for the following reasons:
  - (a) Calpine is a direct competitor of SEP in the State of Florida. SEP is engaged in ongoing efforts to sell output from its planned power plant. SEP will suffer irreparable harm if its proprietary and confidential information is disclosed to Calpine.
  - (b) Disclosure to Calpine (or other competitor intervenors) is highly prejudicial, and would give intervenors an unfair competitive advantage in any future RFP. Further, there is precedent that docketed proceedings can lead to supplemental RFPs in the future, and therefore, while this proceeding is ongoing, any disclosure of SEP's Proposal to a competitor would create an unfair situation.
  - (c) The scope of Calpine's motion to intervene in these proceedings did not identify any merits as to why Calpine needs to know the information contained in SEP's Proposal in

its cause for intervention. Calpine's motion did not identify any purpose as to how SEP's 50 MW Proposal, being less than 5% of the total need identified by FPL in its 2003 RFP, would have any material effect on its intervention or the proceedings. In addition, it would be unfair for an intervenor to obtain confidential bidder information while non-intervenors do not.

(d) Any confidentiality agreement between FPL and Calpine (and possibly others) does not protect the interests of SEP. As noted in paragraph 4(c) above, the basic tenets of a confidentiality agreement, the need to know and purpose, are not supported in this instance. Further, SEP would be unduly burdened in having to monitor FPL (including verbal disclosure) or to cause FPL to monitor and/or enforce a confidentiality agreement on SEP's behalf.

### **QUALIFIED REPRESENTATIVE**

5. **SEPs requests that the Commission allow its parent company, Summit Energy Partners, LLC, to be its qualified representative in these proceedings for the limited purpose of this Motion and the related efforts to prevent the disclosure of SEP's Proposal to intervenors in this docketed proceeding.**

### **SUMMARY**

6. **SEP respectfully requests that the Commission grant its Motion as requested herein, that FPL be prohibited from disclosing SEP's Proposal (or any of its confidential information) to intervenors, and specifically prohibit such disclosure to Calpine, and to allow Summit Energy Partners, LLC to act as SEP's qualified representative in the matters of this Motion.**

Respectfully submitted,

Summit Energy Partners, LLC  
c/o SEP Homestead, LLC  
99 Summit Avenue, Suite 9C  
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By: s/ Mark S. Sajer  
Managing Director  
Summit Energy Partners, LLC

By: s/ Mark S. Sajer  
Member – President  
SEP Homestead, LLC

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy was served electronically via e-mail to [filings@psc.state.fl.us](mailto:filings@psc.state.fl.us) on this 5<sup>th</sup> day of May, 2004 to the Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-9850, and by US Mail, to the following persons:

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