

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.

DOCKET NO. 060001-EI

In re: Petition to recover natural gas storage project costs through fuel cost recovery clause, by Florida Power & Light Company.

DOCKET NO. 060362-EI
ORDER NO. PSC-06-0988-PCO-EI
ISSUED: November 28, 2006

ORDER GRANTING FLORIDA POWER & LIGHT COMPANY'S
MOTION FOR TEMPORARY PROTECTIVE ORDER

On June 15, 2006, Florida Power & Light Company ("FPL") filed a Motion for Temporary Protective Order in Docket No. 060362-EI, pursuant to Rule 25-22.006(6), Florida Administrative Code, covering certain documents sought in discovery by the Office of Public Counsel ("OPC"). On June 30, 2006, FPL filed a request for confidential classification of portions of the late-filed data requests (Nos. 2, 3, 4, and 7) provided to the Florida Public Service Commission at the conclusion of the informal meeting held on May 30, 2006, concerning FPL's petition to recover costs through the fuel clause for natural gas storage (Document No. 05877-06 [x-ref. Doc. Nos. 05129-06 and 05273-06]). In Order No. PSC-06-0769-CFO-EI, dated September 13, 2006, the Commission granted confidential classification to portions of the late-filed data requests (Nos. 2, 3, 4, and 7). FPL states OPC has requested that it be permitted to take possession of portions of FPL's responses to the late-filed data requests (Nos. 2, 3, 4, and 7). The utility seeks exemption from Public Records Law, Section 119.07(1), Florida Statutes, for those documents provided to OPC. No party filed a response to FPL's motion.

FPL states that the redacted information described in the Affidavit of Gerard J. Yupp regarding the gas storage project, such as pricing and other terms, payment records, and vendor and supplier rates, is proprietary confidential business information, the disclosure of which would impair the utility's ability to contract for gas storage on favorable terms for FPL and its customers. FPL asserts that the information also relates to the competitive interests of FPL and the suppliers from whom FPL purchases, the disclosure of which would impair the suppliers' competitive businesses. FPL further asserts that portions of the documents and materials contain or relate to the suppliers' security measures, systems, and/or procedures concerning the gas storage project. FPL states that this information is intended to be and is treated by FPL and its suppliers as private and has not been publicly disclosed.

FPL asserts that it is seeking protection of the documents as provided in Section 366.093(2), Florida Statutes, and Rule 25-22.006(6), Florida Administrative Code. FPL contends 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 publicly disclosed.

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

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party subject to public records law as confidential and exempt from the public records law, Section 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)(c) 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.

In addition, 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 of the confidential documents in portions of the late-filed data requests (Nos. 2, 3, 4, and 7) is granted. It appears that FPL has demonstrated that the material requested by OPC is proprietary confidential business information. Accordingly, this information will be protected from disclosure pursuant to Rule 25-22.006(6), Florida Administrative Code.

Based on the foregoing, it is

ORDERED by Commissioner Matthew M. Carter II, as Prehearing Officer, that the Motion for Temporary Protective Order filed by Florida Power & Light Company is granted.

By ORDER of Commissioner Matthew M. Carter II, as Prehearing Officer, this 28th day of November, 2006.



MATTHEW M. CARTER II
Commissioner and Prehearing Officer

(S E A L)

LCB/pz

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; or (2) 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.