

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for issuance of a storm recovery financing order, by Florida Power & Light Company.

DOCKET NO. 060038-EI
ORDER NO. PSC-07-0418-PCO-EI
ISSUED: May 11, 2007

ORDER GRANTING MOTION FOR PROTECTIVE ORDER

Background

On May 30, 2006, the Commission issued Order No. PSC-06-0464-FOF-EI in this docket ("Financing Order"), parts of which were clarified in the Commission's Order on Reconsideration and Clarification, Order No. PSC-06-0626-FOF-EI, issued July 21, 2006. The Financing Order authorized the issuance of storm-recovery bonds and the imposition of related storm-recovery charges to finance the recovery of Florida Power & Light Company's ("FPL") reasonable and prudently incurred storm-recovery costs, the replenishment of FPL's storm reserve, and related financing costs.

The Financing Order authorized the issuance of storm-recovery bonds and the imposition of related storm-recovery charges to finance the recovery of FPL's reasonable and prudently incurred storm-recovery costs, the replenishment of FPL's Reserve, and related financing costs. The Financing Order established standards and procedures to be followed in connection with the issuance of storm-recovery bonds, and recognized the need for some degree of flexibility with regard to the final details of the storm-recovery bond securitization transaction. The standards and procedures included a mechanism to allow for collaboration between FPL, this Commission, and their designated advisors, legal counsel, and representatives through a "Bond Team" to ensure that the structuring, marketing, and pricing of the storm-recovery bonds will result in the lowest storm-recovery charges, consistent with market conditions and the terms of the Financing Order.

Beginning in July of 2006, the Bond Team began meeting to address the details of the storm-recovery bond issuance in accordance with the terms of the Financing Order. In contemplation of a negotiated sale of the bonds, the Bond Team evaluated alternative structures and extensively explored whether the bonds could be issued and sold as corporate securities, whether fixed rate or variable rate bonds should be offered, and the ongoing reporting to be required. After exploring and pursuing these and other alternatives for providing the lowest cost to customers, the Bond Team concluded that customers could most efficiently achieve all of the benefits of those alternatives through use of a competitive sale of storm-recovery bonds as asset-backed securities. Accordingly, the Bond Team is proceeding toward issuance of the storm-recovery bonds through competitive sale, by means of an auction.

On May 8, 2007, FPL filed a Motion for Protective Order, together with a supporting affidavit of FPL's Treasurer. FPL contends that in order to maximize the number of participants and bidders in this first-ever competitive auction of storm-recovery bonds, and thereby secure the

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lowest cost for customers in accordance with the lowest-cost objective of the Financing Order, it is necessary that the losing bids in the competitive auction be granted confidential classification by the Commission.

FPL's Motion for Protective Order

In its motion, FPL cites to Section 366.093(3), Florida Statutes, which defines proprietary confidential business information in relevant part as follows:

(3) Proprietary confidential business information means information, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public. Proprietary confidential business information includes, but is not limited to:

(d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms.

(e) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

FPL contends that the losing bids in the competitive auction process contain or constitute proprietary confidential business information within the meaning of Section 366.093(3), Florida Statutes, and thus are deserving of being treated as confidential and exempt from Section 119.07(1), Florida Statutes. Specifically, the losing bids by definition qualify as "information concerning bids or other contractual data the disclosure of which would impair [FPL's efforts to contract on favorable terms]" within the meaning of Section 366.093(3)(d) and "relate to the competitive interests, the disclosure of which would impair the competitive business of the provider of the information" within the meaning of subsection (3)(e).

As it relates to the losing bids, the specific information that FPL requests that the Commission maintain as confidential is the information submitted by bidders which includes the identity of the bidders and the pricing information related to the bids. In addition, FPL requests that the Commission maintain as confidential any losing bid information that is replicated or contained in any spreadsheets, models, or other lists or compilations of the bid data, regardless of format. FPL also contends that maintaining the confidentiality of this losing bid information is consistent with the confidential treatment afforded to losing bids in the generation supply context in need determination proceedings and consistent with Section 366.093(3), Florida Statutes, as described above.

In the supporting affidavit to FPL's motion, FPL's Treasurer indicates that disclosure of this information would impair FPL's efforts to contract with participating banks on favorable terms and would cause harm to FPL's customers and its business because FPL would achieve greater participation in the bid process and a more favorable interest rate from the banks if the banks know that their bids will not be disclosed. Banks have represented to FPL that they will be more likely to participate and bid aggressively in the competitive auction of storm-recovery bonds if the losing bids are kept confidential and that disclosure of the losing bids and bidders will discourage firms from bidding aggressively or bidding at all. In addition, the disclosure may have the consequence of discouraging bidders from participating in any future storm-recovery bond issuances. FPL contends that maintaining the confidentiality of the losing bids in the competitive auction of storm-recovery bonds will facilitate achieving the lowest cost objective of the Financing Order by expanding the market of possible participants in the auction process.

FPL requests a finding that the information contained in the losing bids is entitled to confidential treatment, and is proprietary confidential business information within the meaning of section 366.093(3), Florida Statutes. Further, pursuant to section 366.093(4), such materials should not be declassified for a period of at least eighteen (18) months and hard copies of any information concerning such bids should be returned to FPL as soon as the information is no longer necessary for the Commission to conduct its business. In addition, FPL requests that the protective order should extend to other parties to Docket No. 060038-EI that are subject to the public records provisions of the Florida Statutes, to the extent such parties wish to have access to proprietary confidential business information concerning the losing bids in the competitive auction of storm-recovery bonds. In the event other parties to this Docket that are not subject to the public records provisions of the Florida Statutes desire access to such confidential documents and information, such access could be accomplished through bi-lateral agreements.

Finally, FPL represents in its motion that it has contacted the parties to Docket No. 060038-EI, and is authorized to represent that the Office of Public Counsel, the Florida Industrial Power Users Group, AARP, the Florida Retail Federation, the Federal Executive Agencies, and the Office of Attorney General are not opposed to the Commission granting FPL's Motion for Protective Order.

Decision

Rule 28-106.211, Florida Administrative Code, provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case. Pursuant to this authority, FPL's motion is granted as set forth herein.

I find that the information contained in the losing bids satisfies the criteria set forth in Section 366.093(3), Florida Statutes, for classification as proprietary confidential business information and, thus, shall be treated as confidential. The information constitutes "[i]nformation concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms" and "[i]nformation relating to competitive interests, the disclosure of which would impair

the competitive business of the provider of the information.” Specifically, if the terms of a bidder’s losing bid is publicly known, the information may be used against that bidder’s interest in future competitive or negotiated deals of a similar nature, and the bidder’s ability to participate in a competitive manner may be compromised.

I agree that the best interests of FPL’s customers will be served by achieving the lowest cost objective of the Financing Order, and that expanding the market of possible participants in the auction process will help achieve that objective. By holding the information contained in the losing bids confidential, a greater number of bidders may be encouraged to participate, and to bid aggressively, without the risk of compromising their ability to compete in future transactions.

Pursuant to Section 366.093(4), Florida Statutes, the information for which confidential classification is granted herein shall remain protected from disclosure for a period of 18 months from the date of issuance of this order. At the conclusion of the 18 month period, the confidential information will no longer be exempt from Section 119.07(1), Florida Statutes, unless FPL or another affected person shows, and the Commission finds, that the records continue to contain proprietary confidential business information.

Based on the foregoing, it is

ORDERED by Commissioner Lisa Polak Edgar, as Presiding Officer, that Florida Power & Light Company’s Motion for Protective Order is hereby granted as set forth in the body of this Order.

By ORDER of Chairman Lisa Polak Edgar, as Prehearing Officer, this 11th day of May, 2007.



LISA POLAK EDGAR
Chairman and Prehearing Officer

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JSB

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 Office of Commission Clerk, 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.