

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for Approval of )  
Arrangement to Mitigate Impact of ) DOCKET NO. 150075-EI  
Unfavorable Cedar Bay Power Purchase )  
Obligation, by Florida Power & ) FILED: August 17, 2015  
Light Company. )  
\_\_\_\_\_)

**CEDAR BAY GENERATING COMPANY'S RESPONSE TO FIPUG'S MOTION TO STRIKE, AS AN UNAUTHORIZED PLEADING, CEDAR BAY'S RESPONSES TO FIPUG'S OBJECTIONS TO CEDAR BAY'S REQUESTS FOR CONFIDENTIAL CLASSIFICATION**

Cedar Bay Generating Company, Limited Partnership ("Cedar Bay"), by and through undersigned counsel, and pursuant to Rule 28-106.204(1), Florida Administrative Code ("F.A.C."), hereby files this brief response to FIPUG's motion to strike ("Motion to Strike") Cedar Bay's responses to FIPUG's objections to Cedar Bay's Seventh, Tenth, and Thirteenth Requests for Confidential Classification in this proceeding ("RFCCs"). (The background and history of Cedar Bay's RFCCs, including Cedar Bay's extensive cooperation in providing confidential documents to FIPUG, Public Counsel, and the Commission Staff in discovery, is fully covered in the earlier pleadings and need not be further addressed here.)

In summary, Cedar Bay's RFCCs were filed in compliance with the Commission's rules and practice applicable to such requests. FIPUG filed objections to Cedar Bay's RFCC's which raise novel, albeit baseless, grounds for denying Cedar Bay's RFCCs. While Rule 25-22.006, F.A.C., does not specifically authorize the filing of responses to objections in this context, the rule does

not prohibit the filing of responses. Cedar Bay asserts that FIPUG's objections are in the nature of a motion to deny or a motion to reject Cedar Bay's RFCCs, and that accordingly, Cedar Bay would normally be afforded the opportunity to respond to FIPUG's fundamental request that the Commission deny Cedar Bay's RFCCs (again, assuming that FIPUG's objections are properly treated as a motion to deny or reject Cedar Bay's RFCCs).

Moreover, as the "requestor" of confidential classification of its proprietary confidential business information, Cedar Bay bears the burden of persuading the Commission to grant its RFCCs, and accordingly, Cedar Bay should, in fairness, have the opportunity to respond to FIPUG's objections. That is, in the normal course of events, the party bearing the burden has the burden to plead a prima facie case for the relief requested, which Cedar Bay did in its original RFCCs. FIPUG made its arguments<sup>1</sup> in its objections, and Cedar Bay has now, simply and equitably, sought to respond to FIPUG's objections. Cedar Bay asserts that this situation, albeit not expressly contemplated by Rule 25-22.006, F.A.C. (that is, responses to objections are neither expressly authorized or expressly prohibited), should be handled as any other general request for relief: Cedar Bay

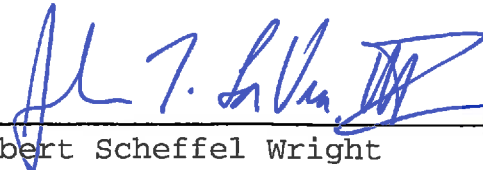
---

<sup>1</sup> Several of FIPUG's arguments are novel and could not have reasonably been anticipated by Cedar Bay. For example, Cedar Bay could not have anticipated FIPUG's novel, but erroneous "materiality" argument and Cedar Bay should have an opportunity to respond.

initially asked for confidential protection, FIPUG responded with objections having the substantive effect of a motion to deny, dismiss, or reject, and Cedar Bay, as the party bearing the burden, should have the opportunity to submit for the Commission's consideration its responses and analysis of FIPUG's objections. See In Re: Investigation of Palm Coast Utility Corporation for Verification of Utility Investment in Water and Sewer Assets in Flagler County, Docket No. 871395-WS, Order No. 21075, (April 20, 1989) (denying, as needlessly formalistic, a motion to strike a response to objections to a motion).

WHEREFORE, Cedar Bay requests that the Commission deny FIPUG's Motion to Strike.

Respectfully submitted this 17th day of August, 2015.



---

Robert Scheffel Wright  
Florida Bar No. 966721  
schef@gbwlegal.com  
John T. LaVia, III  
Florida Bar No. 853666  
jlavia@gbwlegal.com  
Gardner, Bist, Bowden, Bush,  
Dee, LaVia & Wright, P.A.  
1300 Thomaswood Drive  
Tallahassee, Florida 32308  
(850) 385-0070 Telephone  
(850) 385-5416 Facsimile

Attorneys for Cedar Bay  
Generating Company, Limited  
Partnership

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the following, by electronic delivery, on this 17th day of August, 2015.


Martha Barrera  
Florida Public Service Commission  
Division of Legal Services  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399

Jon C. Moyle, Jr./Karen Putnal  
Moyle Law Firm, P.A.  
118 North Gadsden Street  
Tallahassee, Florida 32301

Mr. Ken Hoffman  
Florida Power & Light Company  
215 South Monroe Street, Suite 810  
Tallahassee, Florida 32301

J.R. Kelly / John J. Truitt  
Office of the Public Counsel  
c/o The Florida Legislature  
111 W. Madison Street  
Room 812  
Tallahassee, FL 32399-1400

John T. Butler / Maria J. Moncada  
Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, FL 33408

  
\_\_\_\_\_  
Attorney