

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: September 30, 2015
Light Company.)
_____)

**JOINT MOTION BY CEDAR BAY GENERATING COMPANY AND
FLORIDA POWER & LIGHT COMPANY FOR TEMPORARY PROTECTIVE ORDER**

Pursuant to Sections 350.0611(1) and 366.093(3), Florida Statutes, and Rule 25-22.006(6)(c), Florida Administrative Code, Cedar Bay Generating Company, Limited Partnership ("Cedar Bay") and Florida Power & Light Company ("FPL") hereby move the Florida Public Service Commission (the "Commission"), through the Prehearing Officer, for a temporary protective order to exempt from disclosure under Section 119.07(1), Florida Statutes, confidential information included in certain documents that were originally provided by Cedar Bay or obtained through discovery in this docket to Commission Staff and the other parties, including the Office of Public Counsel ("OPC"), subject to Requests for Confidential Classification, which have been returned by Commission Staff to Cedar Bay but retained by OPC. In support of this Motion, Cedar Bay and FPL state:

1. Cedar Bay is a non-party to this docket, which involves FPL's petition for approval of a transaction through which FPL has purchased the stock of the entities that own the Cedar Bay Generating Facility (the "Transaction"), which Transaction will result in substantial cost savings for FPL's customers. While

Cedar Bay is a non-party, Cedar Bay's counsel was permitted to appear at the hearing for the limited purpose of defending the confidentiality of Cedar Bay's proprietary, confidential business information. On September 18, 2015, the Transaction closed and Cedar Bay is now an indirect subsidiary of FPL.

2. Even though it is a non-party, Cedar Bay has cooperatively furnished literally thousands of pages of documents in discovery in this docket. Many of these documents contain Cedar Bay's proprietary confidential business information, and a number of these documents have been introduced into evidence in the proceeding. In addition, the parties have deposed various witnesses and those depositions involved discussion of Cedar Bay's proprietary, confidential business information. Cedar Bay has filed Requests for Confidential Classification of its documents and of Cedar Bay's proprietary confidential business information that is used or cited in the testimony, depositions, and exhibits of the parties' witnesses. Those Requests for Confidential Classification are pending.

3. By memorandum dated September 1, 2015 (PSC Document No. 05470-15), Commission Staff notified Cedar Bay that certain documents containing confidential information that were subject to pending Requests for Confidential Classification were "not included in the record of the hearing either as part of the

transcripts or exhibits" and would be returned to Cedar Bay (the "Returned Documents"). The Returned Documents include:

- A. Documents Produced in Response to Florida Industrial Power Users Group's ("FIPUG") Request for Production of Documents - (Cedar Bay's First Request for Confidential Classification (PSC Document No. 03048-15)):

DVD containing Bates Number Pages CB0000001 to CB0009578

- B. Documents Produced in Response to Florida Industrial Power Users Group's ("FIPUG") Request for Production of Documents - (Cedar Bay's Second Request for Confidential Classification (PSC Document No. 03158-15)):

DVD containing Bates Number Pages CB0009579 to CB0055321

- C. Documents Produced in Response to Florida Industrial Power Users Group's ("FIPUG") Request for Production of Documents - (Cedar Bay's Third Request for Confidential Classification (PSC Document No. 03205-15)):

DVD containing Bates Number Pages CB0055322 to CB0060139

- D. Documents Produced in Response to Florida Industrial Power Users Group's ("FIPUG") Request for Production of Documents - (Cedar Bay's Fourth Request for Confidential Classification (PSC Document No. 03207-15)):

DVD containing Bates Number Pages CB006140 to CB0095863

- E. Documents Produced in Response to FIPUG's Request for Production of Documents (No. 13) by Florida Power & Light - (FPL's Request for Confidential Classification dated June 2, 2015 (PSC Document No. 03304-15)):

The documents contained in this response included

confidential documents provided to FPL by Cedar Bay,

specifically Bates Nos. CB-15-012936 through CB-15-012953.

- F. Cedar Bay Deposition Exhibits - (Cedar Bay's Revised 7th Request for Confidential Classification (PSC Document No. 04499-15)):

No. 7 - CB0009896 (Income Statement - First Quarter Forecast

2015)

No. 11 - CB0013661 (2014 Business Plan)

No. 12 - e-mail string, beginning 5-7-13

No. 13 - Cedar Bay PPA

No. 23 - Purchase and sale agreement

No. 34 - undated redline document

G. OPC's Responses to FPL's 1st Interrogatories and 1st Request for Production of Documents - (Cedar Bay's 12th Request for Confidential Classification (PSC Document No. 04710-15)):

Interrogatories

No. 7 (Page 9 of 11)

No. 9 (Page 10 of 11)

Documents Produced in response to POD No. 2

OPCRESP-FPLPOD1-2-000015-34

OPCRESP-FPLPOD1-2-000035-54

OPCRESP-FPLPOD1-2-000055-74

OPCRESP-FPLPOD1-2-000075-94

OPCRESP-FPLPOD1-2-000095-114

OPCRESP-FPLPOD1-2-000115-134

OPCRESP-FPLPOD1-2-000135-154

OPCRESP-FPLPOD1-2-000155-174

H. FPL Deposition Transcripts and Deposition Exhibits - (Cedar Bay's 13th Request for Confidential Classification (PSC Document No. 04510-15)):

Robert Barrett - Deposition Transcript & Exhibit No. 1

Thomas Hartman - Deposition Transcript & Exhibit Nos. 1, 2, 3, 4, 6 and 7

David Herr - Deposition Transcript & Exhibit Nos. 1, 2, 3, 4, 6, 7 and 8

Kim Ousdahl - Deposition Transcript and Exhibit No. 1

In addition, Commission staff noted that the Returned Documents would "not require a determination of confidentiality."

4. Cedar Bay has consulted with OPC and determined that certain of the Returned Documents were used by OPC in this proceeding and will be retained by OPC (the "OPC-Retained Documents"). The OPC-Retained Documents are:

E. Documents Produced in Response to FIPUG's Request for Production of Documents (No. 13) by Florida Power & Light - (FPL's Request for Confidential Classification dated June 2, 2015 (PSC Document No. 03304-15)):

The documents contained in this response included confidential documents provided to FPL by Cedar Bay, specifically Bates Nos. CB-15-012936 through CB-15-012953.

F. Cedar Bay Deposition Exhibits - (Cedar Bay's Revised 7th Request for Confidential Classification (PSC Document No. 04499-15)):

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5. OPC's retention of the OPC-Retained Documents necessitates that Cedar Bay and FPL file this motion for temporary protective order.

6. Rule 25-22.006(6)(c), Florida Administrative Code, provides in relevant part as follows with respect to a utility or other person allowing OPC to take possession of confidential utility information:

[T]he utility may request a temporary protective order exempting the information from Section 119.07(1), Florida Statutes. If the information is to be used in a proceeding before the Commission, then the utility must file a specific request for a protective order under paragraph (a) above. If the information is not to be used in a proceeding before the Commission, then Public Counsel shall return the information to the utility in accordance with the record retention requirements of the Department of State.

7. The confidential information in the OPC-Retained Documents includes trade secrets, the disclosure of which would adversely impact Cedar Bay and could adversely impact its existing and former affiliates as well. This information is exempt from the Public Records Act pursuant to Section 366.093(3)(a), Florida Statutes. This information is also related to Cedar Bay's competitive interests, the disclosure of which could harm Cedar Bay's competitive business interests. Such information is exempt from the Public Records Act pursuant to Section 366.093(3)(e), Florida Statutes. Cedar Bay and FPL respectfully request that the Commission enter a temporary protective order affording Cedar Bay and FPL the protection that is needed to allow OPC to retain the

confidential information contained in the OPC-Retained Documents until such time that OPC returns the OPC-Retained Documents to Cedar Bay or otherwise disposes of the OPC-Related Documents in accordance with the record retention requirements of the Department of State.

8. Counsel for Cedar Bay has contacted counsel for the parties in this docket and has been authorized to represent that OPC does not object to the granting of this motion, and the Florida Industrial Power Users Group takes no position on this motion.

WHEREFORE, for the foregoing reasons, Cedar Bay and FPL respectfully request that the Commission enter a temporary protective order protecting against public disclosure the OPC-Retained Documents.

Respectfully submitted this 30th day of September, 2015.

s/John T. LaVia, III

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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 30th day of September, 2015.

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