

Matilda Sanders

From: Elizabeth_Carrero@fpl.com
Sent: Tuesday, April 18, 2006 3:44 PM
To: Filings@psc.state.fl.us
Cc: Wade_Litchfield@fpl.com; Natalie_Smith@fpl.com; Kirk_Gillen@fpl.com; Nanci_Nesmith@fpl.com; Bill_Feaster@fpl.com; Lynne_Adams@fpl.com; Bryan_Anderson@fpl.com; Jack_Leon@fpl.com; Maira_Sanchez@fpl.com; John_Butler@fpl.com
Subject: Electronic Filing for Docket No. 060038-EI - FPL's Motion for Protective Order to Exempt from Fla. Stat. §119.07(1) Confidential Information used at the Formal Hearing

Attachments: Request for Protective Order Confidential Information Used at Hearing.doc



Request for Protective Order

Electronic Filing

a. Person responsible for this electronic filing:

Natalie F. Smith, Esquire
Florida Power & Light Company
700 Universe Blvd.
Juno Beach, FL 33408
(561) 691-7207
natalie_smith@fpl.com

b. Docket No. 060038-EI - Petition for issuance of a storm recovery financing order, by Florida Power & Light Company

c. Document being filed on behalf of Florida Power & Light Company.

d. There are a total of 5 pages.

e. The document attached for electronic filing is Florida Power & Light Company's Florida Power & Light Company's Motion for Protective Order to Exempt from Fla. Stat. §119.07(1) Confidential Information used at the Formal Hearing.

(See attached file: Request for Protective Order Confidential Information Used at Hearing.doc)

Thank you for your attention and cooperation to this request.

Elizabeth Carrero, Legal Asst
Wade Litchfield, Esq. and Natalie Smith, Esq.
Phone: 561-691-7100
Fax: 561-691-7135
email: elizabeth_carrero@fpl.com

CMP _____
COM 5
CTR _____
ECR 1
GCL 1
OPC _____
RCA 1
SCR _____
SGA _____
SEC 1
OTH Kim P. Lockard

ORIGINAL

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Florida Power & Light Company's)
Petition for Issuance of a Storm Recovery)
Financing Order)

Docket No: 060038-EI
Filed: April 18, 2006

**FLORIDA POWER & LIGHT COMPANY'S
MOTION FOR PROTECTIVE ORDER TO EXEMPT FROM FLA. STAT. §119.07(1)
CONFIDENTIAL INFORMATION USED AT THE FORMAL HEARING**

Pursuant to Section 366.093(3), Florida Statutes, Rule 25-22.006(6)(a), Florida Administrative Code, and Rule 1.280(c), Florida Rules of Civil Procedure, Florida Power & Light Company ("FPL"), hereby moves the Florida Public Service Commission (the "PSC" or the "Commission") for a protective order to exempt from Section 119.07(1), Florida Statutes, confidential information that is used at the hearing in Docket No. 060038-EI, and in support states:

(1) In accordance with Rule 25-22.006(6)(c), the Office of Public Counsel ("OPC") has taken possession of certain of FPL's confidential, proprietary business information for the purpose of determining what information is to be used in a proceeding before the Commission, subject to motions for temporary protective orders filed by FPL. Other parties have taken possession of FPL's confidential, proprietary business information pursuant to confidentiality agreements executed with FPL.

(2) Subsection (6)(c) of the Commission's confidentiality rule, 25-22.006, provides in relevant part as follows with respect to a utility allowing OPC to inspect or take possession of utility information:

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.

See Rule 25-22.006(6)(c).

(3) Under subsection (6)(a), a “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.” See Rule 25-22.006(6)(a). Under Rule 1.280(c) of the Florida Rules of Civil Procedure, a protective order may be entered “to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice requires, including ... that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way” To prevent the undue burden of having to file for Commission ruling specific requests for confidential classification for confidential information that may or may not be used at hearing, FPL proposes that the proprietary, confidential business information should be handled in the manner set forth in the Order Establishing Procedure, Order No. PSC-06-0069-PCO-EI, and Procedural Order in Docket No. 060038-EI. In addition, with respect to information that is designated confidential and made available to OPC, the Office of the Attorney General, or the Florida Public Service Commission, FPL requests that such parties and persons be required to safeguard and maintain the confidentiality of the information unless and until the Commission determines that the information is not proprietary, confidential business information. FPL has entered into confidentiality agreements with AARP, the Florida Retail Federation, the Federal Executive Agencies, the Florida Industrial Power Users Group and the OPC witnesses and consultants. FPL offered a confidentiality agreement that would apply to Staff’s expert witnesses and consultants, but that agreement was not signed.

(4) FPL cannot identify with specificity the nature of the confidential information to be used at hearing because FPL has not been notified which confidential information the parties intend to use.¹ Typically, procedural orders require that the source of the confidential information be given notice that the confidential information will be used at hearing. See, e.g., Order No. PSC-05-0347-PCO-EI, issued March 31, 2005 in Docket No. 050045-EI. For example, Order No. PSC-05-0347-PCO-EI, page 5, provided in relevant part as follows:

Any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute. Failure of any party to comply with the seven-day requirement described above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.

Neither Order No. PSC-06-0069-PCO-EI nor the Procedural Order require that FPL be given notice of the confidential information to be used at the hearing, so FPL cannot identify the specific provision of Section 366.093(3), Florida Statutes, which justifies the confidential, proprietary nature of the information and exempts it from disclosure.

(5) If and when confidential information is entered into the record at the hearing, FPL will have 21 days to request confidential classification of the material to the extent it has not already done so. Should the parties contest FPL's claim that information is entitled to confidential treatment, it could oppose FPL's request at that time. As noted above, the standard

¹ OPC identified in its prehearing statement certain confidential information it intended to use at hearing. However, OPC and FPL have agreed that non-confidential versions of that information would be used. It is FPL's understanding that OPC may use other confidential information at hearing. None of the other parties have informed FPL they intend to use confidential information at hearing, but they are not obligated to do so for the reasons addressed above.

for a protective order is different from the standard for approving requests for confidential classification. Thus, by entry of this protective order, the parties are in no way precluded from contesting a claim of confidentiality.

(6) FPL has contacted the Office of Public Counsel and the Office of the Attorney General and is authorized to represent that the Office of Public Counsel does not oppose the entry of this protective order and the Office of Attorney General agrees with OPC.

WHEREFORE, for the foregoing reasons, FPL respectfully requests that the Commission enter a protective order protecting against public disclosure the confidential information used at the formal evidentiary hearing in Docket No. 060038-EI.

Respectfully submitted this 18th day of April, 2006.

R. Wade Litchfield, Esquire
Bryan Anderson, Esquire
John Butler, Esquire
Natalie F. Smith, Esquire
Attorneys for
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408-0420

By: s/ Natalie F. Smith
Natalie F. Smith, Esquire

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail and United States Mail on the 18th day of April, 2006, to the following:

Wm. Cochran Keating, IV, Esquire
Florida Public Service Commission
Division of Legal Services
Gerald L. Gunter Building
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Harold A. McLean, Esquire
Charles J. Beck, Esquire
Joseph A. McGlothlin, Esquire
Patricia A. Christensen, Esquire
Office of Public Counsel
c/o The Florida Legislature
111 W. Madison Street, Room 812
Tallahassee, FL 32399-1400

John W. McWhirter, Esquire
McWhirter, Reeves, & Davidson, P.A.
400 North Tampa Street, Suite 2450
Tampa, Florida 33602
Attorneys for the Florida Industrial Power
Users Group

Timothy J. Perry, Esquire
McWhirter, Reeves, & Davidson, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301
Attorneys for the Florida Industrial Power
Users Group

Michael B. Twomey, Esquire
P.O. Box 5256
Tallahassee, Florida 32314-5256
Attorney for AARP

Robert Scheffel Wright, Esquire
John T. LaVia, III, Esquire
Young van Assenderp, P.A.
225 South Adams Street, Suite 200
Tallahassee, Florida 32301
Attorneys for the Florida Retail Federation

Lieutenant Colonel Karen White
and Captain Damund Williams
AFCESA/ULT
139 Barnes Drive
Tyndall Air Force Base, Florida 32403
Attorneys for the Federal Executive Agencies

Christopher M. Kise, Solicitor General
Jack Shreve, Senior General Counsel
Office of the Attorney General
The Capitol – PL01
Tallahassee, FL 32399-1050
Attorneys for Charles J. Crist, Jr., Attorney
General

By: s/ Natalie F. Smith
Natalie F. Smith, Esquire