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Subject: Docket No. 060038-EI-Motion for Protective Order
Attachments: Motion for Protective Order.doc



MOTION FOR PROTECTIVE ORDER

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket No.: 060038-EI

c. Document being filed on behalf of Florida Power & Light Company: Motion for Protective Order

d. There are 6 pages.

e. The document attached for electronic filing is:

(See attached file: Motion for Protective Order.doc)

Thank you for your attention and cooperation to this request.

Thank you,
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ORIGINAL

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re: Florida Power & Light Company's) Docket No. 060038-EI
Petition for Issuance of a Storm Recovery) Filed: August 4, 2006
Financing Order)

**FLORIDA POWER & LIGHT COMPANY'S
MOTION FOR PROTECTIVE ORDER**

Pursuant to Section 366.093, Florida Statutes, Rules 25-22.006 and 28-106.211, 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"), through the Prehearing Officer, for entry of a protective order and in support states:

1. On May 30, 2006, the Commission issued Order No. PSC-06-0464-FOF-EI in the above-referenced docket ("Order No. 0464" or the "Financing Order"), parts of which were modified or clarified in the Commission's Order on Reconsideration and Clarification, Order No. PSC-06-0626-FOF-EI, issued July 21, 2006. Order No. 0464 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. Recognizing the need for some degree of flexibility with regard to the final details of the storm-recovery bond securitization transaction approved in this Financing Order, the Financing Order established standards and procedures to be followed in connection with the issuance of storm-recovery bonds. 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

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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.

According to the Financing Order, the members of the Bond Team are to “have an active and integral role in” and to “participate fully and in advance in all plans and decisions relating to, the structuring, marketing, and pricing of the storm-recovery bonds as discussed in the body of this Order.” *See Financing Order, p. 56.*

2. The Bond Team began meeting on a regular basis on July 26, 2006. To fulfill its obligations under the Financing Order and in an effort to move forward with the issuance of the bonds in a timely fashion, it is necessary for the Bond Team to exchange documents and information, including certain documents and information that constitute proprietary confidential business information as defined in Section 366.093(3), Florida Statutes.¹ Documents and information that must be exchanged between members of the Bond Team, including Staff and the Commission’s advisors, include, but are not limited to, drafts of rating agency presentations, drafts of the prospectus and offering materials, drafts of marketing presentations, drafts of the request for proposals for underwriters, drafts of financing documents, proprietary models related to structuring of the bonds, and indicative pricing presentations provided by bond underwriters in

¹ Section 366.093(3), Florida Statutes provides in part as follows:

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.

See 366.093(3), Florida Statutes (2006).

accordance with the terms of the Financing Order. This proprietary confidential information includes information the disclosure of which would harm the competitive interests of the provider of the information, could trigger Securities and Exchange Commission disclosure requirements and other legal obligations, and could adversely affect the interests of FPL's customers in achieving the lowest storm-recovery charges consistent with market conditions.

3. To facilitate the free and timely flow of comments and information between and among members of the Bond Team in order to help ensure timely issuance of storm-recovery bonds as contemplated by Order No. 0464, the Commission, through the Prehearing Officer, should enter a protective order exempting proprietary confidential business information exchanged between and among members of the Bond Team, regardless of format, from Section 119.07(1), Florida Statutes, until the activities of the Bond Team are complete and any proprietary confidential business information has been returned to the provider of the information or destroyed.² This protective order would protect proprietary confidential business information exchanged between and among members of the Bond Team whether exchanged electronically, verbally, or through any other means of communication. This 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

² While the information and documents to be exchanged between and among members of the Bond Team will not be provided in response to a discovery request, as the discovery phase of this Docket is complete, it is discovery-type information provided for purposes of allowing members of the Bond Team and other parties as needed the opportunity to review, understand and comment on various aspects of the bond financing. Section 366.093(1), Florida Statutes, affords protection to proprietary confidential business information even outside the discovery process, and the Commission has previously issued protective orders governing the handling of proprietary confidential business information outside the discovery process. *See, e.g.*, Order No. PSC-04-0534-PCO-EI, Docket No. 031033-EI (issued May 25, 2004); Order No. PSC-03-1263-

confidential business information related to Bond Team activities. 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.

4. The following terms and conditions should govern access to all proprietary confidential information:

- a) Those to whom access is provided shall take stringent measures to preserve the confidentiality of the protected information;
- b) Those to whom access is provided shall use the confidential information only for the purposes of participating in this Docket;
- c) Confidential information shall be disclosed only to those persons who have a need to know the information for purposes of participation in this Docket;
- d) Those to whom access is provided shall limit the number of copies made of the information to that necessary for participation in this Docket;
- e) A procedure shall be developed to ensure the return to their source or destruction of all confidential documents and all copies of the confidential documents at the conclusion of this Docket;
- f) The obligation to not disclose confidential information shall be continuing and survive the conclusion of this Docket.

WHEREFORE, for the foregoing reasons, FPL respectfully requests that the Commission enter a protective order mandating the protective measures described above.

Respectfully submitted,
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Bryan Anderson
John T. Butler
Natalie F. Smith
Attorneys for
Florida Power & Light Company
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Juno Beach, Florida 33408-0420

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States Mail this 4th day of August, 2006, to the following:

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By: /s/Natalie F. Smith
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