

Timolyn Henry

From: Nanci_Nesmith@fpl.com
Sent: Tuesday, May 08, 2007 4:34 PM
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Subject: Electronic Filing for Docket No. 060038-EI / FPL's Motion for Protective Order
Attachments: Motion for Protective Order 5.8.07.doc; Affidavit of Paul Cutler.pdf



Motion for Protective Order 5 Cutler.pdf (...)

Electronic Filing

a. Person responsible for this electronic filing:

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

b. Docket No.: 060038-EI - Florida Power & Light Company's Petition for Issuance of a Storm Recovery Financing Order

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

d. There are 7 pages.

e. The document attached for electronic filing is FPL's Motion for Protective Order.

(See attached file: Motion for Protective Order 5.8.07.doc) (See attached file: Affidavit of Paul Cutler.pdf)

Thank you,
 Nanci NeSmith
 Florida Power & Light
 850-521-3900

CMP _____
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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: May 8, 2007
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 Designated Commissioner, 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. In accordance with the Financing Order, the members of the Bond Team have had “an active and integral role in” and “participate[d] 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. 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 what ongoing reporting investors would require. 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.

3. The Bond Team is proceeding expeditiously toward issuance of the storm-recovery bonds through competitive sale of the bonds in the near term. As the Commission is aware, this is the first bond offering of this type under the storm cost recovery legislation, Section 366.8260, Florida Statutes, which was enacted by the Florida Legislature in 2005. In order to maximize the number of participants and bidders in this first-ever competitive auction of storm-recovery bonds, and thereby secure the 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.

4. For the reasons set forth in this motion and in the supporting affidavit of FPL's Treasurer, Paul I. Cutler, FPL requests that the Commission issue a protective order to protect the confidentiality of losing bids in the competitive auction of storm-recovery bonds. Section 366.093(3), Florida Statutes, 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.

Section 366.093(3), Florida Statutes. This 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 they 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).

5. 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 on Appendix B to the Notice of Sale (the "Bid Form"), 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. 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. *See, e.g.*, Order No. PSC-04-0434-CFO-EI, Docket No. 040206-EI (issued April 28, 2004).

6. As Mr. Cutler's affidavit indicates, 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 because they will not suffer embarrassment in the market place if their bids are priced substantially higher than the winning bid. 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. 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. It is important that a

protective order be issued in advance of the competitive auction of storm-recovery bonds so that banks will know that information concerning the losing bids will be kept confidential and so the protective order will achieve its desired result of encouraging participation in the competitive auction process and facilitating achievement of the lowest cost objective.

7. By analogy to competitive bidding in the taxable bond market, only the winning bidder and bid is publicly disclosed in those bond offerings. This has facilitated competitive bidding due to the preference of bidders to preserve their anonymity. Similarly, here, where FPL is the issuer of the bonds and the desire is to achieve the broadest participation and lowest cost for customers, it would be appropriate for the Commission to issue a protective order concerning the losing bids in the auction process.

8. Pursuant to section 366.093, Florida Statutes, information concerning the losing bids in the competitive auction of storm-recovery bonds is entitled to confidential treatment and is exempt from the disclosure provisions of the public records law. Thus, once the Commission determines that the information in question is proprietary confidential business information, the Commission is not required to engage in any further analysis or review such as weighing the harm of disclosure against the public interest in access to the information.. Upon a finding by the Commission that the competitive bids for which FPL seeks confidential treatment is proprietary confidential business information within the meaning of section 366.093(3), 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.

9. 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 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.

10. FPL 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.

WHEREFORE, for the foregoing reasons and for the reasons set forth in the attached affidavit, FPL respectfully requests that the Commission enter a protective order mandating the protective measures described above.

Respectfully submitted,
R. Wade Litchfield
Bryan Anderson
John T. Butler
Natalie F. Smith
Attorneys for
Florida Power & Light Company
700 Universe Boulevard
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 electronic mail and United States Mail this 8th day of May, 2007, to the following:

Jennifer Brubaker, Esquire Florida Public Service Commission Division of Legal Services Gerald L. Gunter Building 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850	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	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	Jack Shreve, Senior General Counsel Office of the Attorney General The Capitol – PL01 Tallahassee, FL 32399-1050 Attorneys for the Attorney General
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	

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

EXHIBIT A
AFFIDAVIT OF PAUL I. CUTLER

STATE OF NEW YORK)
)
NEW YORK CITY)

BEFORE ME, the undersigned authority, this day personally appeared Paul I. Cutler, who, first being duly sworn, deposes and states:

1. My name is Paul I. Cutler. I am employed by Florida Power & Light Company ("FPL") as Treasurer.

2. I have reviewed FPL's Motion for Protective Order filed in connection with the issuance of storm-recovery bonds in accordance with the Commission's Financing Order in Docket No. 060038-EL. The representations FPL makes in its Motion for Protective Order are true and correct. The information that FPL identifies as confidential information is proprietary and confidential, the disclosure of which would be harmful to FPL, its customers and the participants in the competitive auction of storm-recovery bonds. This information is treated by FPL as confidential.

3. FPL seeks to protect information concerning the losing bids in the competitive auction of storm-recovery bonds. 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

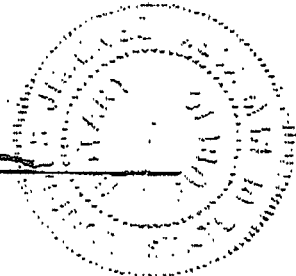
in the competitive auction of storm-recovery bonds if the losing bids are kept confidential because they will not suffer embarrassment in the market place if their bids are priced substantially higher than the winning bid. Disclosure of the losing bids and bidders will discourage firms from bidding aggressively or bidding at all. In addition, the disclosure may have the consequence of discouraging bidders from participating in any future storm-recovery bond issuances. 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. It is important that a protective order be issued in advance of the competitive auction of storm-recovery bonds so that banks will know that information concerning the losing bids will be kept confidential and so the protective order will achieve its desired result of encouraging participation in the competitive auction process and facilitating achievement of the lowest cost objective.

4. By analogy to competitive bidding in the taxable bond market, only the winning bidder and bid is publicly disclosed in those bond offerings. This has facilitated competitive bidding due to the preference of bidders to preserve their anonymity. Similarly, here, where FPL is the issuer of the bonds and the desire is to achieve the broadest participation and lowest cost for customers, it would be appropriate for the Commission to issue a protective order concerning the losing bids in the auction process.

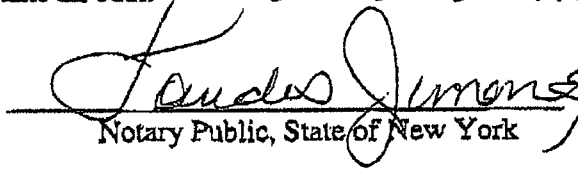
5. Affiant says nothing further.

Paul I. Cutler

 Paul I. Cutler



SWORN TO AND SUBSCRIBED before me this 8 day of May, 2007, by Paul I. Cutler, who is personally known to me or who has produced DRIVER'S LICENSE (type of identification) as identification and who did take an oath. C346-689-59-470


Notary Public, State of New York

My Commission Expires:

LOURDES JIMENEZ
Notary Public, State of New York
No. 4956454 NY
Qualified in ~~Orange~~ NY County
Commission Expires Sept. 25, 2009