

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Florida Power & Light Company's  
Petition for Approval of Arrangement to  
Mitigate Impact of Unfavorable Cedar Bay  
Power Purchase Obligation

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DOCKET NO.: 150075-EI

FILED: July 7, 2015

**NOTICE OF SERVICE OF FLORIDA INDUSTRIAL POWER USERS GROUP'S  
OBJECTIONS TO CEDAR BAY GENERATING COMPANY'S 7<sup>th</sup> REQUEST FOR  
CONFIDENTIAL PROTECTION**

The Florida Industrial Power Users Group (FIPUG), by and through its undersigned counsel, hereby serves its Objections to Cedar Bay Generating Company's 7<sup>th</sup> Request for Confidential Protection. Cedar Bay Generating Company, Limited Partnership ("Cedar Bay") claims that every word of thirty eight (38) exhibits identified and used during the depositions of witnesses Patterson, Neff, Rudolph and Evans should be afforded confidential protection. Cedar Bay's sweeping, overbroad request is procedurally and legally infirm and should be denied for the reasons set forth below. Cedar Bay filed its Request for Confidential Protection pursuant to Rule 25-22.006, and these objections are timely filed pursuant to the rule.

**Introduction**

Florida has a rich history of conducting government business "in the sunshine" so that those interested can watch government proceeding and review records used in those proceedings. Indeed, the Florida citizens voted for a constitutional amendment entitled "Access to Public Records and Meetings" that is embodied in Article I, Section 24 of the state's constitution. Recent comments of the state's chief legal officer, Attorney General Pam Bondi, are instructive:

The benefits of open government are frequently acknowledged – transparency promotes accountability, aids the search for truth, and fosters consistency and fairness in government decision making. Fortunately, though, Florida's laws do not require that open government be justified by

reference to these desirable consequences. We live in a state that values open government for its own sake, and for that we should be thankful.

Introduction to 2015 Government-in-the-Sunshine-Manual, p. xv. This policy should remain front and center when reviewing Cedar Bay's claims of confidentiality, claims for which it has the burden of proof.

Pursuant to Rule 25-22.006(4)(e), "[t]he burden of proof shall be on the utility or other person to show that the material in question contains bona fide proprietary confidential business information. A request for confidential classification that fails to identify the material for which confidential classification is sought in sufficient detail to permit a reasoned analysis or which fails to provide the required justification for classification may be denied as insufficient on its face."

### **Procedural Deficiencies**

1. Cedar Bay has failed to comply with the provisions of the Commission's confidentiality rule, 25-22.006, Florida Administrative Code. (F.A.C.). In particular, Cedar Bay has not detailed with specificity by highlighting or otherwise designating certain provisions for which confidentiality is sought, something required by Rule 25-22.006(4)(a) F.A.C. ("On this copy, the specific information asserted to be confidential shall be highlighted. Along with the highlighted copy, the utility or other person shall file two or more edited copies as required by the type of proceeding, which will be made available for public inspection.")

Cedar Bay seeks to justify its acknowledged failure to comply with Rule 25-22.006(4)(a), F.A.C. because the exhibits "are voluminous (800 pages)".... However, Cedar Bay fails to disclose that majority of the exhibits are comprised of either one or two pages, and that 28 out of the 38 exhibits are less than 10 pages. Thus, even a quick review of the actual exhibits in question

reveals Cedar Bay's claim that "it would be burdensome, impractical and inutile for Cedar Bay to highlight the confidential information" is hollow.

### Argument

2. Cedar Bay has not acted in good faith when asserting its claim that all of the deposition exhibits are confidential. For example, Cedar Bay claims that a document it provided to staff at a duly noticed public meeting, Exhibit 3, is confidential. See, Document No. 02733-15, Notice of Informal Meeting with Cogentrix Energy Power Management, LLC. Cedar Bay claims that a document obtained from the website of the Florida Department of Environmental Protection, Exhibit 4, is confidential. These are but a handful of examples pointing out that Cedar Bay has not acted consistent with the scope and purpose of the statutes and the Commission rule regarding confidentiality. Wholesale claims of confidentiality that frustrate the administration of justice are and should be viewed with disfavor. See, generally, *Allstate Floridian Insurance Company v. Office of Insurance Regulation*, 981 So. 2d 617 (Fla. 1<sup>st</sup> DCA 2008) (claiming wholesale trade secret protection over documents, including public records, effectively obstructed regulatory investigation).

3. The Commission does not have authority to grant Cedar Bay's request for exemption of wholesale portions of the record of this proceeding. The Commission is authorized to determine whether specific information falls within a narrow statutory exemption. The requirement for specificity is consistent with the purpose of the Public Records Act, which legislatively recognizes that all state, county, and municipal records shall - except those that are narrowly excepted from disclosure - at all times must be open for personal inspection by the public. *Downs v. Austin*, 559 So.2d 246, 247 (Fla. 1st DCA), review denied, 574 So.2d 140 (Fla.1990); *S. Bell Tel. & Tel. Co. v. Beard*, 597 So. 2d 873, 876 (Fla. 1st DCA 1992).

4. Moreover, Cedar Bay's assertion that the information is material and "important" to the operations of the company and "Cedar Bay's and/or its affiliates' competitive business interests" is belied by Cedar Bay's apparent conclusion that the information is not sufficiently "important" or material to the operations of the company or the company's competitive position so as to require disclosure of the information to the Securities and Exchange Commission. *See, TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438 (1976) (SEC requires disclosure of information that may be important to an accurate understanding of the company's current and prospective financial position and operating results.). Cedar Bay's request fails to demonstrate that the information at issue contains bona fide proprietary confidential business information that warrants exclusion of the information from the public record.

Wherefore, for the above and foregoing reasons, Cedar Bay Generating Company's 7<sup>th</sup> Request for Confidential Protection should be denied.

*/s/ Jon C. Moyle*

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Jon C. Moyle, Jr.

Karen A. Putnal

Moyle Law Firm, P.A.

118 North Gadsden Street

Tallahassee, Florida 32301

Telephone: (850)681-3828

Facsimile: (850)681-8788

[jmoyle@moylelaw.com](mailto:jmoyle@moylelaw.com)

[kputnal@moylelaw.com](mailto:kputnal@moylelaw.com)

Attorneys for Florida Industrial Power Users Group

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Florida Industrial Power Users Group's Objections to Cedar Bay Generating Company's 7th Request for Confidential Classification was served by electronic mail this 7th day of July 2015, to the following:

Martha F. Barrera  
John Villafrate  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399  
[mbarrera@psc.state.fl.us](mailto:mbarrera@psc.state.fl.us)  
[JVillafr@psc.state.fl.us](mailto:JVillafr@psc.state.fl.us)

R. Wade Litchfield  
John T. Butler  
Maria J. Moncada  
Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, FL 33408  
[wade.litchfield@fpl.com](mailto:wade.litchfield@fpl.com)  
[john.butler@fpl.com](mailto:john.butler@fpl.com)  
[maria.moncada@fpl.com](mailto:maria.moncada@fpl.com)

Schef Wright  
1300 Thomaswood Drive  
Tallahassee, FL 32308  
[Schef@gbwlegal.com](mailto:Schef@gbwlegal.com)

Ken Hoffman  
Florida Power & Light Company  
215 South Monroe Street, Suite 810  
Tallahassee, Florida 32399-1400  
[Ken.hoffman@fpl.com](mailto:Ken.hoffman@fpl.com)

J.R. Kelly, Esq.  
Charles J. Rehwinkel  
John Truitt  
Office of Public Counsel  
111 West Madison Street, Room 812  
Tallahassee, FL 32301  
[kelly,jr@leg.state.fl.us](mailto:kelly,jr@leg.state.fl.us)  
[rehwinkel.charles@leg.state.fl.us](mailto:rehwinkel.charles@leg.state.fl.us)  
[truitt.john@leg.state.fl.us](mailto:truitt.john@leg.state.fl.us)

*/s/ Jon C. Moyle*  
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Jon C. Moyle