

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Florida Power & Light Company's) Docket No. 070098-EI
Petition to Determine Need for FPL Glades)
Power Park Units 1 and 2 Electrical Power Plant) Date Filed: April 19, 2007

MOTION FOR DETERMINATION THAT CERTAIN INFORMATION IS NOT ENTITLED TO CONFIDENTIAL TREATMENT

Pursuant to Rules 25-22.006 and 28-106.204, Florida Administrative Code, Florida Power & Light Company ("FPL") requests that the Commission determine that certain information for which a claim of confidentiality has been made is not proprietary confidential business information within the meaning of Section 366.093(3), Florida Statutes, and therefore is not entitled to exemption from Section 119.07(1), Florida Statutes. FPL requests a ruling on this motion when the hearing in the above-referenced matter reconvenes on April 25, 2007, or before, so that a final determination regarding the confidentiality of this information can be made and the information can be freely and fully used during the hearing and potentially entered into the record.

1. On March 21, 2007, FPL took the deposition of Sierra Club witness David Schlissel. During the deposition, Mr. Schlissel was asked to provide as a late-filed exhibit documentation regarding the calculation that produced the Synapse "levelized" values that are presented on page 21 of his direct testimony and in Exhibit DAS-3, page 52 of 63, to his direct testimony. [Exhibit A – Relevant excerpts of deposition transcript]. This information was not provided as a late-filed exhibit, despite follow-up requests by FPL including the e-mail attached as Exhibit B to this Motion. [Exhibit B April 9, 2007 e-mail correspondence between W. Litchfield and M. Gross and April 11 follow-up e-mail from W. Litchfield to M. Gross].

2. Two and a half weeks later, on the day Sierra Club's responses to FPL discovery were due, counsel for the Sierra Club informed counsel for FPL that FPL needed to sign a confidentiality agreement prior to receiving the late-filed exhibit. [Exhibit C -- April 9, 2007 4:07 p.m. e-mail from M. Gross to N. Smith (without Attachments)]. Counsel for FPL quickly signed the confidentiality agreement and faxed it to the Sierra Club's counsel in order to receive the data. The agreement was entered into for the purpose of facilitating the free-exchange of confidential information or information designated confidential during the discovery and hearing phases of this proceeding. The intent of the agreement is to preserve the confidential nature of all confidential information and designated confidential information without invoking the provisions and procedures of Rule 25-22.006, Florida Administrative Code.

3. On April 11, 2007, Sierra Club filed a Notice of Intent to seek confidential treatment of the late-filed exhibit that is the subject of this motion, including a copy of the late-filed deposition exhibit that Sierra Club claims is confidential. [Exhibit D -- Copy of Sierra Club's Notice of Intent]. The documents provided to FPL and the Commission did not, however, supply the information that was requested because they did not provide access to the calculations and other information that FPL needs. This fact was admitted by counsel for Sierra Club in an e-mail dated April 13, 2007 -- the Friday before the Monday that the hearing in this matter commenced -- to which an electronic version of the documents were attached. [Exhibit E -- E-mail (without attachments) from M. Gross to W. Litchfield, N. Smith, B. Anderson dated April 13, 2007].

4. FPL's counsel has in good faith attempted to resolve this matter with counsel for Sierra Club prior to filing this Motion, but has not been told what specific

information is confidential. Therefore, FPL files this Motion in order for the Commission to rule on the confidentiality of the information. In accordance with Rule 25-22.006(4)(e), “the burden of proof shall be on the [person claiming confidentiality] to show that the material in question contains bona fide proprietary confidential business information.”

5. The Sierra Club is recommending that this Commission, and the public at large, accept its levelized CO₂ values as a proper measure against which to judge the reasonableness of FPL’s CO₂ cost scenarios. It is critical that the calculations that created its alleged CO₂ values be made publicly available so that they can be appropriately vetted during the hearing in this matter. The results of the calculations supplied by Sierra Club and its witness Mr. Schlissel have been published and distributed by Mr. Schlissel’s consulting firm and have been included in Mr. Schlissel’s public testimony in Commission proceedings in other jurisdictions. FPL has merely requested the mathematical calculation whereby Mr. Schlissel’s figures were levelized. Levelization is not a calculation unique to Mr. Schlissel or his consulting firm and the basis upon which calculations were made in no way meets the requirements of Section 366.093(3), Florida Statutes, for designation as proprietary confidential business information. Therefore, the Commission should conclude that the information can be treated as public during the hearing in this case and is not entitled to exemption from the Public Records Act.

6. FPL contacted counsel for the Sierra Club to discuss this Motion prior to filing it and is authorized to represent that the Sierra Club is opposed to FPL’s request.

WHEREFORE, for the above and foregoing reasons, Florida Power & Light Company respectfully requests that the Commission make a determination of the confidentiality of the information provided with Sierra Club's April 11, 2007 Notice of Intent and conclude that the information is not proprietary confidential business information and, therefore, is not entitled to exemption from Section 119.07(1), Florida Statutes. FPL requests a ruling on this motion when the hearing in the above-referenced matter reconvenes on April 25, 2007, or before, so that a final determination regarding the confidentiality of this information can be made and the information can be freely and fully used during the hearing and potentially entered into the record.

Respectfully submitted this 19th day of April, 2007.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically and by United States Mail this 19th day of April, 2007, to the following:

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