

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery
clause with generating performance incentive
factor.

DOCKET NO. 20190001-EI
ORDER NO. PSC-2019-0418-CFO-EI
ISSUED: October 16, 2019

ORDER GRANTING DUKE ENERGY FLORIDA, LLC'S
MOTION FOR TEMPORARY PROTECTIVE ORDER
(DOCUMENT NO. 08770-2019)

On September 13, 2019, pursuant to Section 366.093(3), Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), Duke Energy Florida, LLC (DEF) filed a Motion for Temporary Protective Order (Document No. 08770-2019) for its responses to the Office of Public Counsel's (OPC) Sixth Set of Interrogatories No. 36 and Sixth Request for Production of Documents Nos. 47-48. DEF's answer to OPC's Sixth Set of Interrogatories No. 36 contains edits to Jeffrey Swartz's March 2, 2018, direct testimony based on changes as of August 14, 2019. OPC's Sixth Request for Production of Documents Nos. 47-48 contain copies of requests for proposals (RFP) for vendors to retro-fit the Bartow plant for incidents previously identified as well as documents that memorialize, describe or analyze the "long-term solution" to fix the Bartow plant's April 2017 failure. DEF seeks protection of the confidential information, submitted to OPC in response to discovery requests propounded by the OPC in the instant docket.

Motions for Temporary Protective Orders

DEF states that the information provided in the responses outlined above is confidential and seeks protection of these documents as provided in Section 366.093(3), F.S., and Rule 25-22.006(6)(c), F.A.C., while the material is in the possession of OPC. DEF also requests that the protection extend not only to OPC, but also to any consultants or advisors with whom OPC has contracted for purposes of this proceeding.

Section 366.093(2), F.S., directs that all records produced pursuant to a discovery request for which proprietary confidential status is requested shall be treated by any party subject to the public records law as confidential and exempt from the public records law, Section 119.07(1), F.S. Rule 25-22.006(6), F.A.C., codifies the Commission's policy regarding the protection of confidential information from public disclosure during the discovery process in a manner that is not overly burdensome to both parties. Rule 25-22.006(6)(a), F.A.C., in pertinent part, states:

In any formal proceeding before the Commission, any utility or other person may request a protective order protecting proprietary confidential business information from discovery. Upon a showing by a utility or other person and a finding by the Commission that the material is entitled to protection, the Commission shall enter a protective order limiting discovery in the manner provided for in Rule 1.280, Florida Rules of Civil Procedure.

In addition, Rule 25-22.006(6)(c), F.A.C., states that if a party allows OPC to inspect or take possession of utility information, then that “utility may request a temporary protective order exempting the information from section 119.07(1), F.S.”

Upon consideration, DEF’s assertions of the confidential nature of the information contained in its responses to OPC’s Sixth Set of Interrogatories No. 36 and Sixth Request for Production of Documents Nos. 47-48 are sufficient to grant its Motion for Protective Order for that information. As a result, all of this information shall be protected from disclosure pursuant to Rule 25-22.006(6)(c), F.A.C.

Based on the foregoing, it is hereby

ORDERED by Commissioner Gary F. Clark, as Prehearing Officer, that Duke Energy Florida, LLC’s Motion for Temporary Protective Order (Document No. 08770-2019) regarding its responses to OPC’s Sixth Set of Interrogatories No. 36 and Sixth Request for Production of Documents Nos. 47-48, is granted. It is further

ORDERED that this Temporary Protective Order shall extend not only to the Office of Public Counsel, but also to any consultants or advisors with whom the Office of Public Counsel has contracted for purposes of this proceeding.

By ORDER of Commissioner Gary F. Clark, as Prehearing Officer, this 16th day of October, 2019.



GARY F. CLARK
Commissioner and Prehearing Officer
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.