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May 13, 2003

Ms. Blanca S. Bayo, Director  
Commission Clerk and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Betty Easley Conference Center, Room 110  
Tallahassee, Florida 32399-0850

**VIA HAND DELIVERY**

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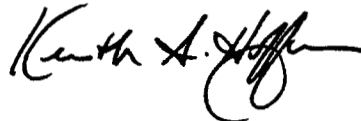
Re: Docket No. 030084-EI

Dear Ms. Bayo:

Enclosed herewith for filing on behalf of Florida Power & Light Company ("FPL") are an original and fifteen copies of FPL's Second Request for Confidential Classification.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me. Thank you for your assistance with this filing.

Sincerely,



Kenneth A. Hoffman

AUS \_\_\_\_\_ KAH/rl  
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CMP \_\_\_\_\_ Enclosures  
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04281 MAY 13 8

FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

Petition for Determination of Need for )  
Collier-Orange River 230 kV Transmission )  
Line in Collier, Hendry, and Lee Counties, )  
by Florida Power & Light Company. )  
\_\_\_\_\_)

Docket No. 030084-EI

Filed: May 13, 2003

**FLORIDA POWER & LIGHT COMPANY'S  
SECOND REQUEST FOR CONFIDENTIAL CLASSIFICATION**

Florida Power & Light Company ("FPL"), pursuant to Rule 25-22.006(4), Florida Administrative Code, hereby files this Second Request for Confidential Classification and states the following:

1. On April 4, 2003, the deposition of William Robert Schoneck, a witness appearing on behalf of FPL, was taken in this proceeding by the Commission Staff and former Intervenor, Barron Collier Companies ("Barron Collier"). On April 7, 2003, the deposition of C. Martin Mennes, also a witness on behalf of FPL, was taken by the Commission Staff and Barron Collier.
2. During the course of these depositions, questions were asked by counsel for Barron Collier and information was provided by these witnesses that constitutes "proprietary confidential business information" as defined under Section 366.093(3)(c), Florida Statutes.
3. The confidential information is found in the sealed portions of the transcripts of the depositions of Messrs. Mennes and Schoneck, together with confidential sealed Exhibit 3 to Mr. Schoneck's deposition. By agreement of the parties and Commission Staff, this information has remained sealed and maintained as confidential pending the filing and disposition of this Request.
4. FPL maintains that the sealed portions of the transcripts of the depositions of Messrs. Mennes and Schoneck, and Exhibit 3 to Mr. Schoneck's deposition, constitute "proprietary

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confidential business information” as defined under Section 366.093(3)(c), Florida Statutes, which provides in pertinent part that:

Proprietary confidential business information includes, but is not limited to:

\* \* \*

(c) Security measures, systems, or procedures.

(Emphasis supplied).<sup>1</sup> The list of types of information protected under Section 366.093(3) is illustrative and not exhaustive.

5. In support of its position that the above-referenced information constitutes proprietary confidential business information under Section 366.093(3)(c), FPL relies on the Policy Statement and Rule issued by the Federal Energy Regulatory Commission (“FERC”) in proceedings that have resulted in FERC protection from public disclosure of documents and information that constitute critical energy infrastructure information (at times referred to hereinafter as “CEII”).

6. FERC embarked on this policy by issuing a Policy Statement shortly after the September 11, 2001 terrorist attacks on the United States of America. In that Policy Statement issued October 11, 2001, FERC stated that:

[t]he September 11... attacks on America have prompted the Commission to reconsider its treatment of certain documents that

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<sup>1</sup>For this and all subsequent references to Section 366.093(3)(c), Florida Statutes, see also Section 281.301, Florida Statutes (“Information relating to the security systems for any property owned by or leased to the state or any of its political subdivisions, and information relating to the security systems for any privately owned or leased property which is in the possession of any agency as defined in s. 119.011(2), including all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to or revealing such systems or information, and all meetings relating directly to or that would reveal such systems or information are confidential and exempt from ss. 119.07(1) and 286.011 and other laws and rules requiring public access or disclosure”) (Emphasis supplied).

have previously been made available to the public through the Commission's Internet site, the Records and Information Management System (RIMS), and the Public Reference Room.<sup>2</sup>

7. FERC's Policy Statement led to the initiation by FERC of a Notice of Proposed Rulemaking ("NOPR") in Docket Nos. RM02-4-000 and PL02-1-000. The NOPR was issued on September 5, 2002. In the NOPR, FERC proposed changes to FERC's regulations to address the appropriate treatment of CEII. FERC emphasized:

The rule proposed here would reconcile the Commission's regulatory responsibilities under its enabling statutes and federal environmental laws with the need to protect the safety and well-being of American citizens from attacks on our nation's energy infrastructure.<sup>3</sup>

On February 21, 2003, FERC issued Order No. 630 in Docket Nos. RM02-4-000 and PL02-1-000 reflecting its Final Rule addressing the appropriate treatment of CEII in the aftermath of the September 11 terrorist attacks. Following its consideration of comments submitted in response to the NOPR, FERC adopted Section 388.113, Code of Federal Regulations,<sup>4</sup> regarding access to critical energy infrastructure information. Subsection 388.113(c) defines CEII as follows:

- (c) Definitions. For purposes of this section:
  - (1) Critical energy infrastructure information means information about proposed or existing critical infrastructure that:
    - (i) Relates to the production, generation, transportation, transmission, or distribution of energy;

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<sup>2</sup>See 66 FR 52917, 97 FERC ¶61,030.

<sup>3</sup>See 67 FR 57994, IV FERC Stats. & Regs. ¶32,564.

<sup>4</sup>See 18 C.F.R. §388.113.

(ii) Could be useful to a person in planning an attack on critical infrastructure;

(iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552;<sup>5</sup> and

(iv) Does not simply give the location of the critical infrastructure.

(2) Critical infrastructure means existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.

8. The information provided under seal by witnesses Schoneck and Mennes in their depositions includes responses identifying or related to the specific configuration of FPL's transmission facilities, how FPL may incorporate security and terrorist related events into its transmission planning process, and information regarding Attachments 1a and 8 to Exhibit A to FPL's Petition. FPL maintains that such information should be protected as confidential as it relates to the transmission of energy, could be useful to a person planning an attack on critical infrastructure, and does not simply give the location of the infrastructure. In Order No. PSC-03-0551-FOF-WS issued April 28, 2003 (the Final Order issued in this proceeding), the Commission determined that such information constitutes proprietary confidential information business information under Section 366.093(3)(c), Florida Statutes.

9. Exhibit B to Mr. Schoneck's deposition is the same facilities map attached as Attachment 1a to Exhibit A to FPL's Petition to Determine Need for Electrical Transmission Line. The Commission previously determined in Order No. PSC-03-0551-FOF-EI that this map constitutes

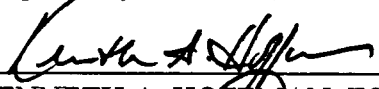
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<sup>5</sup>In Order No. 630, Appendix B, FERC stated that its "actions in the NOPR and the final rule are based on its position that CEII includes only information that is exempt from disclosure under FOIA," noting that the exemptions most likely to apply are found at 5 U.S.C. 552(b)(2), (4) and (7).

proprietary confidential business information within the meaning of Section 366.093(3)(c), Florida Statutes (consistent with FPL's position that Section 366.093(3)(c) should be construed and applied in a manner consistent with Section 388.113, Code of Federal Regulations and FERC Order No. 630).

WHEREFORE, based on the foregoing, and pursuant to Section 366.093(3) and (4), Florida Statutes, FPL respectfully requests that the Prehearing Officer or Commission enter an Order declaring the information and document described above to be proprietary confidential business information that is not subject to public disclosure.

Respectfully submitted,

  
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Attorneys for Florida Power & Light Company

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was furnished by Hand Delivery to the following this 13<sup>th</sup> day of May , 2003:

Larry Harris, Esq.  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Room 370  
Tallahassee, Florida 32399-0850

  
\_\_\_\_\_  
KENNETH A. HOFEMAN, ESQ.

FPL\2request