

# ORIGINAL

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to Determine Need for	)	Docket No. 040206-EI
Turkey Point Unit 5 Power Plant	)	
by Florida Power & Light Company.	)	Dated: May 6, 2004
_____	)	

**FLORIDA POWER & LIGHT COMPANY'S MOTION FOR  
PROTECTIVE ORDER REGARDING CALPINE ENERGY SERVICES, L.P.'S  
FIRST REQUEST FOR  
PRODUCTION OF DOCUMENTS (NOS. 1-71)**

Pursuant to Section 366.093, Florida Statutes,<sup>1</sup> and Rules 25-22.006(6), 28-106.204 and 28-106.206, Florida Administrative Code,<sup>2</sup> Florida Power & Light Company ("FPL") moves the Florida Public Service Commission (the "PSC" or the "Commission") for a protective order: 1) prohibiting discovery by Calpine Energy Services, L.P. ("Calpine") of certain confidential, proprietary business information and trade secrets of FPL and of third-party vendors; 2) requiring FPL to disclose bid information only to the extent necessary to permit Calpine to replicate FPL's evaluation of bids and only after Calpine demonstrates to FPL an intention and the capability to use the information solely for the purpose of replicating FPL's bid evaluation; and 3) approving the attached

CMP 1  
 COM 5  
 CTR \_\_\_\_\_  
 ECR 1  
 GCL 1  
 OPC \_\_\_\_\_  
 MMS \_\_\_\_\_  
 RCA \_\_\_\_\_  
 SCR \_\_\_\_\_  
 SEC 1  
 OTH Morgan

confidentiality agreement to govern the use of and access to all confidential information that a party deems confidential and produces in response to discovery requests in this proceeding. FPL further respectfully requests that the Prehearing Officer expedite consideration of this Motion. In support, FPL states:

<sup>1</sup> All references to "Section[s]" or § are to the latest version of the Florida Statutes unless otherwise indicated.

<sup>2</sup> All references to "Rule[s]" are to the latest version of the Florida Administrative Code unless otherwise indicated.

DOCUMENT NUMBER-DATE  
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## Background

1. FPL submitted its Petition to Determine Need for an electrical power plant on March 8, 2004, along with supporting documentation, including the pre-filed testimony of its witnesses. On March 31, 2004, Calpine filed a Petition to Intervene as a party to this proceeding. The date by which any intervenor was to have filed testimony was April 12, 2004. As of the date of filing of this Motion no testimony has been filed other than that submitted by FPL on March 8, 2004.

2. On April 16, 2004, Calpine, a non-party at that time, propounded on FPL its First Request for Production of Documents (Nos. 1-71) [Attached as Exhibit A to this Motion for Protective Order (“Motion”)] and First Set of Interrogatories (Nos. 1-19).<sup>3</sup> FPL timely objected to certain of Calpine’s discovery requests, including those at issue in this Motion, on a number of grounds. See FPL’s Objections to Calpine’s First Request for Production of Documents (Nos. 1-71) and First Set of Interrogatories (Nos. 1-18) [Attached as Exhibit B to this Motion] and FPL’s Supplemental Objections to Calpine’s First Request for Production of Documents (Nos. 1-71) and First Set of Interrogatories (Nos. 1-18) [Attached as Exhibit C to this Motion].

3. Despite the fact that Calpine impermissibly served discovery as a non-party on FPL, FPL is providing answers to Calpine’s interrogatories within twenty days from the date such discovery was served, and likewise expects to have available for Calpine’s review most, if not all, documents requested that are not otherwise subject to FPL’s objections. However, FPL finds it necessary to seek a protective order with respect to certain of Calpine’s discovery requests to the extent those requests seek highly

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<sup>3</sup> The title to Calpine’s First Set of Interrogatories incorrectly states “(1-18).” In fact, there are 19 interrogatories in Calpine’s First Set.

commercially sensitive and confidential proprietary business information, including information that contain or constitute FPL trade secrets, is proprietary and confidential to FPL and/or third parties, and/or is subject to obligations of non-disclosure to third-party vendors. The disclosure of such commercially and contractually sensitive data would cause irreparable harm to FPL's business interests, FPL's customers and in some cases third parties.

4. As a general matter, FPL asserts that most discovery requests by Calpine for which FPL seeks an order prohibiting discovery are requests by Calpine for information that is irrelevant to this need determination proceeding. Instead of seeking information that is relevant to the issues in this proceeding, many of Calpine's requests amount to nothing more than competitive intelligence gathering in the guise of discovery and the Commission should not allow it.

5. There are three categories of confidential data with respect to which FPL seeks a protective order. First, numerous of Calpine's discovery requests ask FPL to divulge competitively sensitive, confidential, proprietary business information related to its contracts and negotiations with third-party vendors. As an example of the numerous discovery requests seeking contracts and information about FPL's negotiations with third-party vendors, Calpine's Request No. 51 states:

Please provide all documents, including any contractual arrangements, between you and any supplier of combustion turbines for FPL's Turkey Point Unit 5.

Similarly, Request No. 53 provides:

Please provide all documents, including any contractual arrangements, exchanged between you and any supplier of turbine generators to provide turbine generators for FPL's Turkey Point Unit 5.

Request No. 55 states:

Please provide all documents, including any contractual arrangements, exchanged between you and any entity for the provision of engineering services for FPL's Turkey Point Unit 5.

For purposes of this motion, FPL refers to competitively sensitive, confidential, proprietary business information related to FPL's contracts and negotiations with third-party vendors as "Vendor Contract Data." Such information is proprietary and highly sensitive data both to FPL and to its third-party vendors. To the extent Calpine seeks Vendor Contract Data in its First Request for Production of Documents, Request Nos. 10-14, 30, 33, 36-38, 45, 47, 49-60, 62-63 and 66, FPL requests the Commission to enter a protective order prohibiting discovery by Calpine of such Vendor Contract Data.

6. The second category of information FPL seeks to protect from discovery through this Motion is FPL's commercially sensitive information that contains or constitutes trade secrets and which is confidential, proprietary business information to FPL irrespective of any obligation to third parties. Examples of requests for such information by Calpine include:

Request No. 12 seeks:

Any and all documents reflecting the heat rates, either guaranteed or projected, for the steam turbines to be used at Turkey Point Unit 5.

Further, Calpine's Request No. 41 solicits:

Strategic plans for the past five years developed by FPL's Power Generation Department referenced on page 2 of Mr. Silva's testimony.

Also, Calpine's Request No. 14 requests:

Any and all documents reflecting operating characteristics, including guaranteed or projected performance, of the heat recovery steam generators to be used at Turkey Point Unit 5.

For purposes of this motion, FPL refers to commercially sensitive information that contains or constitutes trade secrets and which is confidential, proprietary business information to FPL as “FPL Competitive Data.” To the extent Calpine seeks FPL Competitive Data in its First Request for Production of Documents, Request Nos. 3, 8-14, 18-20, 30, 33, 35-38, 41-42, 45-46, 49-60, 62-64 and 66, FPL requests the Commission to enter a protective order prohibiting discovery by Calpine of such FPL Competitive Data.

7. The third category of documents with respect to which FPL seeks a protective order is bid data received in response to FPL’s 2003 Request for Proposals “RFP.” The responses to numerous of Calpine’s Requests for Production would require FPL to disclose competitively sensitive, proprietary, confidential business information included in the proposals FPL received from bidders, including Calpine, in response to its 2003 RFP. For example:

Calpine’s Request No. 21 seeks:

All documents exchanged between you and third parties, including bidders, related to the bid process or the RFP.

Calpine’s Request No. 29 solicits:

All documents reflecting the costs and operating characteristics for each bid as referenced in your pre-filed testimony.

Calpine’s Request No. 23 seeks:

All documents reflecting your evaluation of the bids received during the bid process and the criteria used to evaluate bids.

For purposes of this motion, FPL refers to competitively sensitive, confidential, proprietary business information related to proposals received in response to FPL’s 2003 RFP as “Highly Sensitive Bid Data.” To the extent Calpine seeks Highly Sensitive Bid

Data in its First Request for Production of Documents, including Calpine Request Nos. 3, 6-8, 18-24, 26, 28-29, and 39, FPL requests the Commission to enter a protective order requiring FPL to disclose Highly Sensitive Bid Data only to the extent necessary to permit Calpine to replicate FPL's evaluation of bids and only after Calpine demonstrates to FPL an intention and the capability to use the information solely for the purpose of replicating FPL's bid evaluation. Otherwise, Calpine's request for this information should be considered nothing more than a "risk free" attempt to obtain competitive intelligence on some of its competitors -- "risk free" because the other bidders are not intervenors in the case and have not asked for Calpine's bid information.

#### Legal Standard

8. Rules 25-22.006(6)(a) and (b) allow the Commission to grant protective orders in accordance with Rule 1.280, Florida Rules of Civil Procedure. Rule 1.280 authorizes a tribunal to grant motions for protective order to the person from whom discovery is sought for good cause shown. Subsection (c)(1) of that rule authorizes a tribunal to order, on good cause shown, "that the discovery not be had." Also, subsection Rule 1.280(c)(2), Florida Rules of Civil Procedure, authorizes a tribunal to order "that the discovery may be had only on specified terms and conditions." In addition, subsection (c)(7) of Rule 1.280 authorizes a tribunal to issue protective orders to prevent disclosure of trade secrets or other confidential commercial information.

9. When ruling on a motion for protective order involving commercial information, a two-part test is used to decide if the information is discoverable. First, the movant must demonstrate that the information sought is confidential commercial information. See, e.g., Order No. PSC-04-0157-PCO-EI, Docket No. 031033-EI (issued

Feb. 16, 2004), Order No. PSC-02-1673-PCO-EI, Docket No. 020953-EI (issued Nov. 27, 2002); Order No. PSC-00-0291-PCO-EU, Docket No. 991462-EU (issued Feb. 11, 2000); Kavanaugh v. Stump, 592 So. 2d 1231, 1232-3 (Fla. 5th DCA 1992); Inrecon v. The Village Homes at Country Walk, 644 So. 2d 103, 105 (Fla. 3d DCA 1994); Rare Coin-It v. I.J.E., Inc., 625 So. 2d 1277 (Fla. 3d DCA 1993). If the information sought to be protected is confidential, the burden then shifts to the propounding party to establish that its need for the information outweighs the countervailing interest in withholding production. See, e.g., Order No. PSC-04-0157-PCO-EI, Docket No. 031033-EI (issued Feb. 16, 2004), Order No. PSC-02-1673-PCO-EI, Docket No. 020953-EI (issued Nov. 27, 2002); Order No. PSC-00-0291-PCO-EU, Docket No. 991462-EU (issued Feb. 11, 2000); Inrecon, *supra*, at 105; Rare-Coin-It, *supra*, at 1277; Higgs v. Kampgrounds of America, 526 So. 2d 980, 981 (Fla. 3<sup>rd</sup> DCA 1988); Eastern Cement Corp. v. Dep't of Env't'l Prot., 512 So. 2d 264, 265-66 (Fla. 1st DCA 1987). A tribunal has broad discretion in balancing the competing interests of the parties. See Fortune Personnel Agency of Ft. Lauderdale, Inc. v. Sun Tech Inc. of South Florida, 423 So. 2d 545, 547 (Fla. 4th DCA 1982); Inrecon at 105.

#### Vendor Contract Data

10. To the extent the discovery requests referenced in paragraph 5 above seek copies of FPL's negotiated contracts with third-party vendors, including documents containing the pricing, terms and conditions of sale to FPL and documents reflecting any negotiations surrounding such contracts, FPL requests a protective order prohibiting discovery by Calpine of such Vendor Contract Data. Vendor Contract Data is highly commercially sensitive and confidential proprietary business information for which FPL

owes an obligation of non-disclosure to third party vendors. Vendor Contract Data is confidential, proprietary business information both to FPL and its third-party vendors within the meaning of Section 366.093(3)(d) and (e). Certain Vendor Contract Data consists of or contains trade secret information within the meaning of Section 812.081(c).<sup>4</sup> The disclosure of this information would cause irreparable harm to FPL's and the third-party vendor's competitive business interests and would impair FPL's ability to contract on favorable terms, to the detriment of FPL's customers.

11. Before withdrawing from FPL's last need proceeding involving Martin Unit 8 and Manatee Unit 3, Calpine had requested much of the same commercially sensitive information. FPL and its vendors had refused to allow Calpine access to such material. Vendors' positions on this subject have not changed. The counterparties to contracts and negotiations with FPL have required FPL to sign non-disclosure agreements regarding the negotiations and/or the terms and conditions of the contracts, or have included non-disclosure provisions in the contractual agreements themselves.

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<sup>4</sup> Pursuant to Section 812.081(c) "Trade secret" means the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. "Trade secret" includes any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.



12. Consistent with its obligations under such agreements, FPL has contacted each vendor/counterparty indicating that Calpine has obtained leave to intervene in this proceeding and notifying the counterparties that Calpine is seeking discovery of FPL's negotiations and contracts with its existing and prospective vendors, including information that is contractually deemed to be confidential, proprietary, commercially sensitive information, and subject to obligations of non-disclosure. FPL asked the vendors whether they would consent to FPL providing Calpine or any of its agents or representatives access to these documents subject to confidentiality agreement. Each of the vendors indicated that it would not waive the non-disclosure provision with respect to allowing Calpine access to any of this commercially sensitive information and several of these vendors have submitted affidavits in support of FPL's Motion. [See Exhibit D to this Motion, which consists of affidavits of FPL's major equipment vendors].

13. The disclosure of Vendor Contract Data to Calpine would seriously injure FPL, FPL's customers and FPL's relationships with its equipment vendors. Disclosure of the terms and conditions, including pricing, that vendors have provided or offered to provide FPL would impair the vendors' own competitive positions in future negotiations with Calpine. Moreover, the disclosure of such terms and pricing will have a chilling effect on vendors' willingness to offer FPL favorable terms and pricing in the future, to the detriment of FPL's customers. [See Exhibit E to this Motion, which is the affidavit of David N. Hicks, FPL's Director of Project Management].

14. Calpine did not submit a preliminary list of issues in this case, but in its Petition to Intervene had included a plethora of supposed issues in this need determination proceeding, most of which revolve around current issue number 5 in

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Staff's proposed list of issues: "Whether FPL satisfied the requirements of Rule 25-22.082, Florida Administrative Code, "Selection of Generating Capacity"?" But rather than focusing on the Calpine issues that are subsumed within this issue, the bulk of Calpine's discovery requests in its First Request for Production of Documents solicit competitive intelligence related to FPL third-party vendor agreements and negotiations, a fact indicative of what FPL suspects is Calpine's true intent and purpose in this docket.

15. Such information, Calpine will assert, relates to issues raised by Calpine in its Petition to Intervene, which though stated in various ways, essentially amount to the following two questions: 1) whether FPL has underestimated the cost to construct Turkey Point Unit 5; and 2) what protections do customers have in the event the cost to construct Turkey Point Unit 5 exceeds the estimate of \$580.3 million? Neither of these questions, whether or not accepted as issues in this proceeding, should serve as a basis to permit Calpine to conduct the "competitive discovery" it has served on FPL.

16. To the extent Calpine seeks to inject into this need proceeding a prudence review of the costs of FPL's proposed generating unit, the Commission rejected the idea that need determination proceedings should include a prudence review if a utility self-build generation alternative is selected as the most cost-effective alternative as a result of the RFP process. See Docket No. 020398. The Commission has long maintained that a need determination proceeding is not a cost recovery proceeding. Recognizing this, but desiring to ensure that utilities do not understate the total cost estimate for their self-build option for purposes of the RFP and need determination process, then later seek recovery of cost overruns, the Commission amended subsection (15) of Rule 25-22.082 (the "Bid Rule")), to provide in relevant part:

If the public utility selects a self-build option, costs in addition to those identified in the need determination proceeding shall not be recoverable unless the utility can demonstrate that such costs were prudently incurred and due to extraordinary circumstance.

17. The Bid Rule's purpose is to protect customers, not to enhance the competitive position of competitors, such as Calpine. While FPL would agree to allow Commission Staff to review contracts with third-party vendors if Staff felt it was necessary to the Commission's decision on FPL's petition for determination of need, it would do so subject to the Commission's rules regarding the treatment of confidential information. However, Staff has not felt the need to do so because Staff recognizes that it is not involved in an up-front prudence review of the costs incurred and realizes it can fully investigate any additional expenditures above FPL's \$580.3 million estimate for Turkey Point Unit 5. On the other hand, Staff has asked FPL to agree to provide certain information going forward that would indicate FPL's progress in achieving the estimated total cost of \$580.3 million for the construction of Turkey Point Unit 5. FPL has agreed to provide that information. Staff clearly has the right to audit FPL's performance in constructing Turkey Point Unit 5, including reviewing the contracts to which Calpine attempts to gain access. Per subsection (15) of the Bid Rule, FPL would have to demonstrate that any costs exceeding \$580.3 million were prudently incurred and due to extraordinary circumstances for such additional costs to be recoverable.<sup>5</sup> Indeed,

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<sup>5</sup> Further, although the Bid Rule does not require that a utility annually report budgeted and actual costs associated with a proposed power plant, FPL has indicated it is amenable to providing such information on an annual basis. Some costs may be higher than estimated and other costs may be lower, but FPL agrees that providing this information on an annual basis will allow Commission Staff to monitor FPL's progress towards achieving its estimated total cost of \$580.3 million. If, on the other hand, the actual total cost is less than \$580.3 million, customers will receive the benefit of such cost underruns.

subsection (15) itself is the answer to both of the questions Calpine would use as a pretext to conduct competitive intelligence gathering in the guise of discovery. If FPL were to underestimate the costs to construct Turkey Point Unit 5, it would do so at no small risk to itself and its shareholders, precisely because of subsection (15) and the protection it provides customers.

18. FPL's underlying cost information is confidential and highly sensitive as it relates to Calpine, a direct competitor. FPL is willing to comment on the status of contracts for equipment and services as it relates to the proposed Turkey Point Unit 5, and it has thoroughly described how it arrived at its cost estimate for Turkey Point Unit 5. Providing more detailed information would serve only Calpine's competitive interests, and would operate to the detriment of FPL and its customers, as well as the vendors with whom FPL contracts.

19. FPL submits that the detailed, commercially confidential Vendor Contract Data sought by Calpine is not reasonably necessary in litigating the issues in this case. Were FPL to provide Calpine, a direct competitor, access to documents responsive to these discovery requests, it would merely be arming Calpine with commercial intelligence that it could use to gain advantage versus its competitors or in negotiations with equipment and services vendors. Calpine has in no way proposed that its resource option submitted in response to FPL's 2003 RFP is more cost effective or would better serve FPL's customers relative to Turkey Point Unit 5. All of the portfolios of resource options proposed by third parties, including the one that comprises Calpine's proposal,

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FPL notes that its discovery responses to Calpine demonstrate that FPL is under budget for its Martin Unit 8 and Manatee Unit 3 plants, the need petitions for which were approved by the Commission in 2002 and which are currently being constructed.

were more than \$100 million more costly than FPL's most cost effective self-build option – even before taking into account additional transmission-related costs or other economic and financial costs, factors that almost doubled the cost differential. Given the substantial cost separation between Turkey Point Unit 5 and portfolios of resource options proposed by third parties, Calpine's discovery requests are especially intrusive. FPL suggests that Calpine's real interest in issuing these intrusive and irrelevant discovery requests is to gain as much competitively sensitive data, including Vendor Contract Data, as it can in an effort to bolster its competitive business. These requests are a shameless attempt on Calpine's part to seek to gain market advantage at the expense of FPL, FPL's customers and FPL's third-party vendors, and the Commission should not allow it.

20. FPL asserts that no level of protection is great enough to permit Calpine, a direct competitor to FPL, or any of its representatives access to Vendor Contract Data. Vendor Contract Data contains competitively sensitive information that FPL should not be required to produce to competitors such as Calpine who, on a regular basis, seek to contract with many of the same vendors for the same kinds of materials, equipment and services. Further, FPL submits that this information should be protected from disclosure entirely as the harm to FPL's present and future ability to obtain similar contracts or favorable terms far outweighs Calpine's purported need for this level of detailed information in this proceeding. FPL does not intend to produce Vendor Contract Data in response to Calpine's competitive "fishing expedition" absent a direct order from the Commission or the express written consent of the counterparty.

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21. Having demonstrated the confidential nature of the Vendor Contract Data and shown good cause for its protection, the burden now shifts to Calpine to demonstrate the reasonable necessity for this information as it relates to this need determination proceeding. Without some showing by Calpine that detailed, commercially sensitive Vendor Contract Data that constitutes confidential, proprietary business information is needed to litigate the issues in this these docket proceedings, no access to these documents should be permitted. The harm to FPL, its customers and third-party vendors that would flow from such disclosure to Calpine, a direct competitor of FPL's, far outweighs any benefit to Calpine's challenge to FPL's need determination petition.

#### FPL Commercial Data

22. The second category of information for which FPL seeks a protective order prohibiting discovery by Calpine, as indicated in paragraph 6 above, is certain FPL Commercial Data that is competitively sensitive to FPL irrespective of any obligation to a third party not to disclose such information. This category of information that FPL seeks to protect through this Motion is information FPL would not willingly disclose to any outside entity, including Calpine, under any circumstances, regardless of the protections offered. It is trade secret information for which FPL maintains internal procedures restricting access and prohibiting disclosure. FPL seeks protection from discovery to the extent Calpine's discovery requests call on FPL to disclose confidential, proprietary business information and trade secrets that constitute FPL Commercial Data.

23. As further explained in the supporting affidavit of David N. Hicks, FPL Commercial Data includes information reflecting cost or operational parameters, or other

commercially sensitive information that would indicate FPL's contracting methods and other business strategies and practices to optimize plant performance.

24. FPL Commercial Data for which FPL seeks a protective order prohibiting discovery by Calpine also includes FPL security data that is implicated by Calpine's requests. This is data so sensitive that even the undersigned counsel could not have access to the data without first undergoing a criminal history investigation, including Federal Bureau of Investigation review of fingerprints. In any case, the undersigned counsel does not have the authority to release such documents to Calpine. Such documents, which may include assessments of security at the Turkey Point Plant, include "Safeguards Information" that cannot be disclosed to unauthorized third parties pursuant to Section 147 of the Atomic Energy Act of 1954, as amended, 42 USC 2167, and implementing regulations of the U.S. Nuclear Regulatory Commission set forth at 10 CFR 73.21.

25. Calpine's discovery requests call on FPL to disclose a portfolio of tools and techniques used to develop power plant design and cost estimates that are not currently known outside FPL. These tools have allowed FPL to design and operate highly efficient and reliable combustion-turbine based generating units, the successes of which are recognized throughout the industry. These tools are so sensitive that, within FPL, access to project development and design information is restricted to a very limited population of employees with only a definite need to know. Before becoming privileged to use and review such tools and techniques, employees are required to sign a confidentiality agreement restricting the use and dissemination of this information. The purpose of such confidentiality agreement is to prevent this cost estimating and design

information from being disclosed to FPL's competitors such as the intervenors in this case.

26. FPL's customers have greatly benefited from such FPL Commercial Data. It has allowed FPL's combined cycle units to achieve performance unsurpassed in the industry. Disclosure of this sensitive data would deprive FPL customers from their position of being the unique beneficiaries of these tools. Moreover, it would deprive FPL of its highly sensitive and valuable tools and techniques without any compensation from competitors.

27. FPL's performance data requested by Calpine can be used to determine FPL's most sensitive cost data and constitutes FPL trade secrets. Such data is not probative of the issues in the case. Disclosure of information responsive to Calpine's discovery requests that seek FPL Commercial Data will require FPL to reveal confidential information regarding FPL's internal financial projections and development plans to its competitors, thereby causing significant and irreparable harm to the economic interests of FPL.

28. Calpine's requests for FPL Commercial Data in the guise of discovery amount to a shameless fishing expedition to gain competitive intelligence from FPL in an effort to improve its own market position. The Commission should not allow Calpine to use its intervention in these proceedings as a subterfuge for gaining commercial intelligence to use to gain advantage over its competitors in Florida and throughout the world.



29. Having demonstrated that FPL Commercial Data constitutes proprietary, confidential trade secret information, the burden shifts to Calpine to demonstrate the reasonable necessity of obtaining such information in litigating this case. Without some showing by Calpine that commercially sensitive information containing or constituting trade secrets and other confidential, proprietary information regarding FPL's competitive business is needed for Calpine to litigate this case, no access to these documents should be permitted. The harm to FPL's customers and FPL's competitive interests and trade secrets that would flow from such disclosure to Calpine, a direct competitor of FPL's, far outweighs any benefit to Calpine's challenge to FPL's need determination petition.

#### Highly Sensitive Bid Data

30. The third category of information FPL seeks to protect is information related to competitive bid proposals from outside bidders received in response to FPL's 2003 RFP. As indicated in paragraph 7 above, the responses to numerous of Calpine's Requests for Production would require FPL to disclose Highly Sensitive Bid Data included in the proposals FPL received from bidders, including Calpine, in response to its 2003 RFP.

31. FPL filed its evaluations of the bid proposals as confidential Appendices C-1 through C-5 to the Need Study document filed March 8, 2004, with FPL's Petition for Determination of Need. The Commission granted FPL's request for confidential classification of such information by Order No. PSC-04-0434-CFO-EI, issued April 28, 2004. Public disclosure of this information would cause irreparable harm to the competitive interests of FPL, as well as to the companies who submitted sensitive competitive information to FPL as part of a RFP process, as the revelation of specific

competitive data would impair FPL's and the companies' ability to enter into contracts on favorable terms in the future. The information was provided in proposals to build generating capacity or otherwise supply electrical power to FPL and contains sensitive proprietary business information about the companies' operations and costs. To FPL's knowledge, this information has not been publicly disclosed.

32. Calpine has not filed a direct case. Calpine has proposed no preliminary issues in this case and the essential points Calpine identified in its Petition to Intervene did not make FPL's modeling an issue in this case. Calpine has made no demonstration to FPL that it intends to or is capable of using confidential bid data provided by FPL to replicate FPL's evaluation of outside generating proposals. To FPL's knowledge, Calpine has retained no expert capable of replicating FPL's analysis. Also, while FPL arranged with EPRI Solutions to make available to intervenors in this case a limited use license of its EGEAS model that can be used to replicate FPL's evaluation of bids, to FPL's knowledge, Calpine has not contracted with EPRI for such license. Had Calpine intended to make legitimate use of the Highly Sensitive Bid Data, it would have done all or most of the following: promptly intervened, promptly requested the EPRI Solutions EGEAS model, and hired an expert with access to the model or paid the limited use license fee to EPRI.<sup>6</sup>

33. The fact that Calpine has not done these things belies any legitimate intent with respect the use of bidder data. Nevertheless, FPL believes that Calpine should be granted access to the data to the extent necessary to replicate FPL's analyses, subject to

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<sup>6</sup> Calpine's counsel has objected to having to pay for a limited use license to be able to replicate FPL's EGEAS model runs.

the conditions outlined in Section 6(a) of the confidentiality agreement [attached as Exhibit F to this Motion].

34. FPL asks the Commission to enter a protective order that requires FPL to allow Calpine access to competitive bid data only to the extent necessary to replicate FPL's analyses. Further, before Calpine could have access to Highly Sensitive Bid Data, Calpine must demonstrate that it is requesting the information to use in replicating FPL's analyses and that it is capable of doing so. No other legitimate purpose would be served in this proceeding by providing Calpine or its representatives' access to competitors' data submitted in response to FPL's 2003 RFP.

35. If Calpine is unable to demonstrate that it intends to and is capable of replicating FPL's evaluation, then Calpine's request for such information is not probative of the issues in this proceeding. Calpine's requests amount to a fishing expedition to gain highly sensitive competitive intelligence about companies with which Calpine directly competes. Should the Commission decide to allow disclosure of the information for an ill-defined and potentially illegitimate purpose, future prospective respondents could be deterred from submitting proposals in response to RFPs issued by Florida public utilities.

36. Having demonstrated that Highly Sensitive Bid Data constitutes proprietary, confidential trade secret information, the burden shifts to Calpine to demonstrate the reasonable necessity of obtaining such information in litigating this case. Without some showing by Calpine that it intends to and is capable of using Highly Sensitive Bid Data to replicate FPL's analyses, no access to these documents should be permitted. The harm to FPL, its customers and third-party bidders from such disclosure to Calpine, a direct competitor of FPL's and these bidders, far outweighs any benefit to

Calpine's challenge to FPL's need determination petition. FPL submits that the confidentiality agreement achieves the appropriate balance of avoiding the type of irreparable harm that may result from unmitigated disclosure of confidential data, while facilitating the exchange of data that is reasonably necessary in litigating this case.

#### Confidentiality Agreement

37. Finally, FPL respectfully requests that the Commission enter an order approving the Confidentiality Agreement that is attached as Exhibit F to this Motion to govern the use of and access to all confidential information that a party deems confidential and produces in response to discovery requests in this proceeding. FPL asserts that its confidentiality agreement contained in Exhibit F will facilitate the discovery process by allowing the parties to exchange and monitor confidential data implicated by discovery requests and encouraging the parties to reach agreement before bringing matters to the Commission for resolution. At the same time, by reserving the parties' right to file a motion for protective order with the Commission, the confidentiality agreement recognizes that there may be some data (such as the Vendor Contract Data and FPL Commercial Data discussed above) for which no level of protection is great enough to allow production to a direct competitor. FPL submits that the confidentiality agreement achieves the appropriate balance of avoiding the type of irreparable harm that may result from unmitigated disclosure of confidential data, while facilitating the exchange of data that is reasonably necessary in litigating this case.

38. As of the time of filing this Motion, Calpine has not agreed to FPL's confidentiality agreement. Through this Motion, FPL requests that the Commission order FPL and Calpine to produce confidential and highly sensitive documents, other than

those falling into the first two categories described and discussed above (Vendor Contract Data and FPL Commercial Data), in accordance with its provisions.

#### Conclusion

39. FPL has attempted to resolve the above issues with counsel for Calpine in an effort to facilitate and speed the discovery process in this case, but has been unable to do so. The undersigned counsel represents, that this motion will be opposed by counsel for Calpine, as well as at least two bidders in FPL's 2003 RFP process. Calpine's counsel believes there may still be an opportunity to discuss and resolve these issues. While FPL remains willing to discuss and attempt to resolve issues with Calpine, in the interest of time, FPL believes it is necessary to apply for a protective order. Subject to Calpine's concurrence, FPL is amenable to having this Motion expedited to achieve speedy resolution of the issues.

**WHEREFORE**, for the foregoing reasons, FPL respectfully requests that the Commission enter a protective order: 1) prohibiting discovery by Calpine of Vendor Contract Data and FPL Commercial Data, as described above; 2) requiring FPL to disclose bid information only to the extent necessary to permit Calpine to replicate FPL's evaluation of bids and only after Calpine demonstrates to FPL an intention and the capability to use the information solely for the purpose of replicating FPL's bid evaluation; and 3) approving the attached confidentiality agreement to govern the use of and access to all confidential information that a party deems confidential and produces in

response to discovery requests in this proceeding. FPL further respectfully requests that the Prehearing Officer expedite consideration of this Motion.

Respectfully submitted this 6<sup>th</sup> day of May, 2004.

R. Wade Litchfield  
Natalie F. Smith  
Florida Power & Light Company  
Law Department  
700 Universe Boulevard  
Juno Beach, FL 33408  
Tele: (561) 691-7100  
Fax: (561) 691-7135

Attorneys for Florida Power & Light  
Company

Charles A. Guyton  
Steel Hector Davis, LLP  
215 S. Monroe St., Suite 601  
Tallahassee, FL 32301  
Tele: (850)222-2300

Attorneys for Florida Power & Light  
Company

By: Charles A. Guyton / By EC Daley  
Charles A. Guyton, Esquire  
Fla. Bar No.: 0398039  
FBN 0104507

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of Florida Power & Light Company's Motion for Protective Order Regarding Calpine's First Request for Production of Documents (Nos. 1-71) has been furnished by hand delivery (\*) and by United States Mail this 6th day of May, 2004, to the following:

Jennifer Brubaker, Esq.\*  
Senior Attorney  
Florida Public Service Commission  
Gerald L. Gunter Building  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Black & Veatch Corporation (KS)  
Myron Rollins  
11401 Lamar Avenue  
Overland Park, KS 66211

Department of Community Affairs  
Paul Darst  
Strategic Planning  
2555 Shumard Oak Blvd.  
Tallahassee, FL 32399-2100

Department of Environmental Protection  
(Siting)  
Buck Oven  
Siting Coordination Office  
2600 Blairstone Road, MS 48  
Tallahassee, FL 32301

Jon C. Moyle, Jr., Esq.\*  
Cathy M. Sellers, Esq.  
Moyle Flanigan Katz Raymond &  
Sheehan, P.A.  
The Perkins House  
118 North Gadsden Street  
Tallahassee, FL 32301

Bruce May, Esquire  
Holland & Knight LLP  
P. O. Drawer 810  
Tallahassee, FL 32302-0810

By: Charles A. Guyton / by EC Daley  
Charles A. Guyton, Esquire  
Fla. Bar No.: 0398039

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# EXHIBIT A

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ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

RECEIVED FPSC

In Re: Florida Power & Light Company's )  
Petition for Determination of Need for Turkey )  
Point Unit 5 Electrical Power Plant Power )

Docket No. 040206-~~EU~~6 PH 4: 55  
Filed April \_\_, 2004 COMMISSION  
CLERK

**CALPINE ENERGY SERVICES, L.P.'s FIRST REQUEST  
FOR PRODUCTION OF DOCUMENTS (Nos. 1 - 71) TO FLORIDA POWER & LIGHT  
COMPANY**

Calpine Energy Services, L.P. (hereinafter "Calpine"), by and through its undersigned counsel, files this First Request for Production of Documents (Nos. 1 - 71) pursuant to Rule 1.350, Florida Rules of Civil Procedure, and Rule 28-106.206, Florida Administrative Code, and requests that the Petitioner, **FLORIDA POWER & LIGHT COMPANY** (hereinafter "FPL"), provide copies of the following documents or make such documents available for inspection by Calpine within the time frames provided for in these proceedings:

**DEFINITIONS**

A. "Documents" means any written, recorded, filmed or graphic matter, whether produced, reproduced, or on paper, cards, tapes, film, electronic facsimile, electronic mail, computer storage device or any other media, including, but not limited to, memoranda, notes, minutes, records, photographs, correspondence, telegrams, diaries, bookkeeping entries, financial statements, tax returns, electronic mail transmissions, checks, check stubs, reports, studies, charts, graphs,

- AUS \_\_\_\_\_ statements, notebooks, handwritten notes, applications, agreements, books, pamphlets, periodicals,
- CAF \_\_\_\_\_
- CMP \_\_\_\_\_
- COM \_\_\_\_\_ appointment calendars, records or recordings or oral conversations, work papers, and also including,
- CTR \_\_\_\_\_
- ECR \_\_\_\_\_ but not limited to, originals, whether by interlineation, receipt stamp, notation, indication of copies
- GCL \_\_\_\_\_
- OFC \_\_\_\_\_
- MMS \_\_\_\_\_ sent or received or otherwise, and drafts, which are in the possession, custody or control of
- SEC   I
- OTH \_\_\_\_\_ Defendant or in the possession, custody or control of the present or former agents, representatives

DOCUMENT NUMBER-DATE

04601 APR 16 2004

FPSC-COMMISSION CLERK

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or attorneys of FPL, or any and all persons acting on its behalf, including documents at any time in the possession, custody or control of such individuals or entities or known by Plaintiff to exist.

B. "You" or "Your" means the Petitioner in these proceedings, Florida Power & Light Company, and its corporate affiliate that may be in possession of documents requested.

C. "Bid process" means the process by which you discussed, prepared, issued, managed, scored, evaluated, changed, rejected, announced, or otherwise took action relative to the Request for Proposal you issued on or about August 25, 2003.

D. "RFP" means the Request for Proposal you issued on or about August 25, 2003.

E. If there is objection to the production of any document or part thereof under the claim of privilege or work product, then please identify the document in a manner sufficient to enable the Commission to rule upon the claim of privilege or work product by stating, as to each such document, the date of the document, its sender(s) or preparer(s), its addressee(s), the person(s) to whom the document was shown or to whom copies were furnished, the subject matter of the document and the person in whose custody the document is presently located.

F. If any document requested was, but is no longer, in your possession, custody or control, then please state whether the document is missing or lost, has been destroyed, has been transferred to another person or has otherwise been disposed of. For each such document, please explain the circumstances surrounding its disposition and describe the subject matter of the document.

G. If you do not clearly understand, or have any questions about, the definitions, instructions, or any request for documents, please contact counsel for Calpine promptly for clarification. These requests are deemed to be continuing requests requiring you to furnish additional documents covered by these requests as they become known and available.

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**DOCUMENTS REQUESTED**

1. Retainer Agreement of Alan Taylor.
  2. Any and all other documents setting for scope of work requested for Alan Taylor.
  3. Any and all documents exchanged between Alan Taylor and Florida Power & Light Company.
  4. Any and all documents each witness relied upon in preparing his testimony.
  5. Drafts of the testimony of each witness.
  6. A copy of Sedway's Consulting Response Surface Model.
  7. Any and all copies of utility resource RFPs that Alan Taylor has previously developed.
  8. The specific set of runs, as referenced in his testimony, that Mr. Taylor asked FPL to execute with EGEAS that he used to calibrate the RSM Model.
  9. Any and all documents reflecting FPL assumptions about future natural gas costs.
  10. Any and all documents relating to FPL production cost data supplied to Alan Taylor at the start of the project as referenced in Mr. Taylor's testimony, page 161, line 11.
  11. Any and all documents related to water cooling to be used at the Turkey Point Unit 5.
  12. Any and all documents reflecting the heat rates, either guaranteed or projected, for the steam turbines to be used at Turkey Point Unit 5.
  13. Any and all documents reflecting operating characteristics, including guaranteed or projected performance, of the steam turbines to be used at Turkey Point Unit 5.
  14. Any and all documents reflecting operating characteristics, including guaranteed or projected performance, of the heat recovery steam generators to be used at Turkey Point Unit 5.
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15. Any and all documents you relied upon for testimony regarding how rating agencies view some portion of a utility's capacity payment obligations as the equivalent of debt on the utility's balance sheet.

16. Any and all documents prepared within the last five (5) years related to FPL's integrated resource planning approach as described in the testimony of Steven R. Sim.

17. Any and all documents relied upon to support the contention that rating agencies' decisions downgrade rating agencies' opinion of a utility's creditworthiness is influenced by a utility's capacity payment obligations to a power provider.

18. Version EGEAS 7.3.2 of the Model used to evaluate the bids, and all related documents which facilitate the use of this Model.

19. All internal correspondence, including e-mails, regarding the bid process you used to select Turkey Point Unit 5.

20. All documents related to your decision to self-supply the energy for which you sought proposals pursuant to the RFP.

21. All documents exchanged between you and third parties, including bidders, related to the bid process or RFP.

22. All correspondence between you and any third party consultant who was involved in the bid process.

23. All documents reflecting your evaluation of the bids received during the bid process and the criteria used to evaluate bids.

24. All documents reflecting the process used and decisions made in preparing a short list of bidders.

25. A copy of all agreements between you and the entity who licensed your use of Model

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EGEAS 7.3.2.

26. All documents, including e-mails, Steven Scruggs sent, received or was copied on related to the Turkey Point RFP or this need determination proceeding.

27. All documents related to the development of the RFP, including drafts of the RFP document.

28. Documents, including agreements and correspondence, between you and any third party you used to assist in the evaluation of the bids during the bid process.

29. All documents reflecting the costs and operating characteristics for each bid as referenced in your pre-filed testimony.

30. All documents related to the cost effectiveness of Turkey Point Unit 5 to meet FPL's need for additional electrical capacity and energy.

31. Copies of any documents related to Steven Scruggs' involvement in the Request for Proposal process.

32. Copies of any documents relating to your preference, if any, to "self-building" facilities to service the need of your native load.

33. Documents reflecting the ranking of FPL self-build options that were considered before selecting Turkey Point Unit 5.

34. All documents related to discussions, meeting or other communications you had with PSC staff or Commissioners related to the Turkey Point Unit 5 need determination hearing.

35. All documents, prepared in the last five (5) years, related to your generation strategy.

36. All documents upon which you rely for the costs of the power block proposed for Turkey Point Unit 5.

37. All documents upon which you rely for the costs of transmission interconnection and

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integration for Turkey Point Unit 5.

38. All documents upon which you rely for the costs of off-site gas mainline improvements for Turkey Point Unit 5.

39. All documents prepared by Mr. Alan Sedway reflecting his evaluation of proposals reviewed by FPL.

40. All documents related to the objections to FPL's RFP filed by the Florida Partnership for Affordable Competitive Energy ("PACE") with the Florida Public Service Commission.

41. Strategic plans for the past five years developed by FPL's Power Generation Department referenced on page 2 of Mr. Silva's testimony.

42. Documents discussing business plans for FPL's Power Generation Department or similar FPL business unit for the past 5 years.

43. All documents relied upon by FPL witness Dewhurst for his testimony concerning FPL's use of an equity adjustment.

44. All documents relied upon by FPL witness Dewhurst for his testimony concerning the status of the independent power industry.

45. All documents, including contracts, reflecting the cost of the power block you intend to use for Turkey Point Unit 5.

46. All documents you relied upon in assessing security risks associated with locating the 4 on 1 combined cycle project at the Turkey Point generating site.

47. All documents related to the environmental permitting of the Turkey Point Unit 5 facility.

48. All documents related to how proposals were evaluated for the negative risks associated with contracting with a particular power provider.

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49. Please provide all versions and revisions of the construction schedules associated with FPL's current construction projects or FPL's projects that have come into service within the last three (3) years.

50. Please provide all documents tracking expenses and costs of FPL generation projects under construction as compared to budgeted costs.

51. Please provide all documents, including any contractual arrangements, between you and any supplier of combustion turbines to provide combustion turbines for FPL's Turkey Point Unit 5.

52. Please provide all documents, including any contractual arrangements, exchanged between you and any supplier of heat recovery steam generators to provide heat recovery steam generators for FPL's Turkey Point Unit 5.

53. Please provide all documents, including any contractual arrangements, exchanged between you and any supplier of turbine generators to provide turbine generators for FPL's Turkey Point Unit 5.

54. Please provide all documents, including any contractual arrangements, exchanged between you and any entity for the provision of construction services for FPL's Turkey Point Unit 5.

55. Please provide all documents, including any contractual arrangements, exchanged between you and any entity for the provision of engineering services for FPL's Turkey Point Unit 5.

56. Please provide all documents, including any contractual arrangements, exchanged between you and any entity for the operation of FPL's Turkey Point Unit 5.

57. Please provide all documents, including any contractual arrangements, exchanged

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between you and any entity for the provision of maintenance services for FPL's Turkey Point Unit

5.

58. Please provide all documents, including any contractual arrangements, exchanged between you and any entity for the provision of fuel transport services for FPL's Turkey Point Unit

5.

59. Please provide all documents, regarding interconnection agreements or plans to connect FPL's Turkey Point Unit 5 to the grid.

60. Any and all documents supporting the statement in Paragraph 14 of your petition that Turkey Point Unit 5 is expected to achieve fuel conversion rates of less than 7,000 btu/kwh (at 75° F).

61. Any and all document supporting the statement in Paragraph 18 of your need petition that support the statement that locating the project at Turkey Point will minimize environmental, land use and costs typically associated with the development of a normal 1,144 mw power plant.

62. Any and all documents that support the statement in Paragraph 19 of your need determination petition that the project "will have an estimated availability factor of 97 percent and a low estimated equivalent forced outage rate of one percent."

63. Any and all documents that support the statement in Paragraph 20 of the need determination petition that "the estimated total installed cost of Turkey Point Unit 5 is \$580.3 million 2007 dollars."

64. Any and all documents reflecting your scheduled generation additions and transmission upgrades.

65. A copy of the notice required to be published by Rule 25-22.082(8).

66. Any and all documents exchanged between you and any and all third party vendors

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who will be supplying goods, materials, or services for the Turkey Point Unit 5.

67. Any and all documents that relate to whether a 15% reserve margin is a sufficient reserve margin in which to operate your utility system.

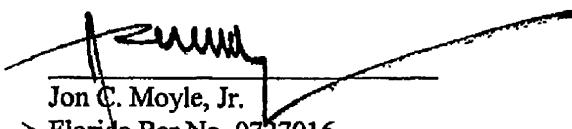
68. Any and all documents reflecting the reserve margins used in other states to which you have made wholesale elective sales within the past three (3) years.

69. Any and all documents supporting your view that a 20% reserve margin in Florida is appropriate.

70. Any and all documents which support or are otherwise related to how you figured transmission loss penalties or calculations for projects proposed in areas other than Turkey Point.

71. Any and all document reflecting your current, historical (past 10 years), and future (life of Turkey Point Unit 5) load centroid.

Respectfully submitted this 16<sup>th</sup> day of April, 2004.



Jon C. Moyle, Jr.  
Florida Bar No. 0727016  
Cathy M. Sellers  
Florida Bar No. 0784958  
Moyle Flanigan Katz Raymond & Sheehan, P.A.  
The Perkins House  
118 North Gadsden Street  
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[csellers@moylelaw.com](mailto:csellers@moylelaw.com)

**CERTIFICATE OF SERVICE**

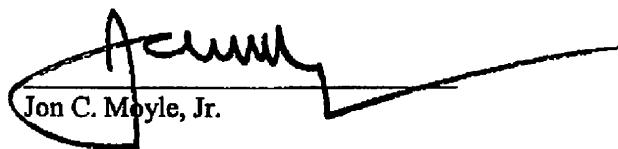
**I HEREBY CERTIFY** that a true and correct copy was served by hand-delivery this 16<sup>th</sup>

day of **April, 2004**, on Jennifer Brubaker, Esq., Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-9850; Charles A. Guyton, Esq., Steel Hector & Davis, LLP, 215 South Monroe Street, Suite 601, Tallahassee, FL 32301, and Mr. Bill Walker and Ms. Lynne Adams, Florida Power & Light Company, 215 South Monroe Street, Suite 810, Tallahassee, Florida 32301-1859; and by U.S. Mail to the following persons:

R. Wade Litchfield, Esquire  
Natalie F. Smith, Esquire  
Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, FL 22408-0420

Department of Community Affairs  
Paul Darst  
Strategic Planning  
2555 Shumard Oak Blvd.  
Tallahassee, Florida 32399-2100

Department of Environmental Protection  
Buck Oven  
Siting Coordination Office  
2600 Blairstone Road, MS 48  
Tallahassee, Florida 32301

  
Jon C. Moyle, Jr.

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Florida Power & Light Company's ) Docket No. 040206-EU  
Petition for Determination of Need for Turkey )  
Point Unit 5 Electrical Power Plant Power ) Filed April \_\_, 2004.

**CALPINE ENERGY SERVICES, L.P.'s FIRST SET OF INTERROGATORIES  
TO FLORIDA POWER & LIGHT COMPANY (Nos. 1 - 18)**

Pursuant to Rule 1.340, Florida Rules of Civil Procedure, CALPINE ENERGY SERVICES, L.P.'s (hereinafter "Calpine"), by and through its undersigned attorney, hereby serves its First Set of Interrogatories (Nos. 1 through 18) to Florida Power & Light Company. These interrogatories shall be answered under oath by you or through your agent who is qualified to answer and who shall be fully identified, with said answers being served as provided pursuant to the Rules of Civil Procedure, within twenty (20) days.

**DEFINITIONS**

"You," "your," "Company," or "FPL" refers to Florida Power & Light Company, its employees and authorized agents.

"Document" or "report" shall mean any kind of written, typed, recorded, or graphic matter, however produced or reproduced, of any kind or description, whether sent or received, including originals, non-identical copies and drafts and both sides thereof; and including, but not limited to: papers, books, letters, correspondence, telegrams, bulletins, notices, announcements, instructions, charts, manuals, brochures, schedules, cables, telex messages, memoranda, notes, notations, accountants' working papers, transcripts, notes, computer models, minutes, agendas, reports and recordings of telephone or other conversations, of interviews, of conferences, or of other meetings, affidavits, statements, summaries, opinions, reports, studies, analyses, evaluations, contracts,

ENCLOSURE

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agreements, journals, statistical records, desk calendars, appointment books, diaries, lists, tabulations, sound recordings, computer print-outs, data processing input and output, microfilms, and all other records kept by electronic, photographic, or mechanical means and things similar to any of the foregoing, however denominated by you, and any other documents as defined in Rule 1.340, Florida Rules of Procedure;

“Identify” shall mean:

- (a) With respect to a person, to state the person’s name, address, and business relationship (e.g., “employee”) to the Company;
- (b) With respect to any document or report, to state the nature of the document in sufficient detail for identification in a request for production, its date, its author, and to identify its custodian. If the information or document identified is recorded in electrical, optical or electromagnetic form, identification includes a description of the computer hardware or software required to reduce it to readable form.
- (c) in the event any interrogatory herein calls for information or for the identification of a document which you deem to be privileged, in whole or in part, the information should be given or the document identified to the fullest extent possible consistent with such claim of privilege and specify the grounds relied upon for the claim of privilege; and
- (d) for each interrogatory, identify the name, address, telephone number and position of the person responsible for providing the answer.

---

**INTERROGATORIES**

1. Identify each member of the evaluation team, including name, title, business address, and telephone number.

2. Do you believe that a 15-1 reserve margin is adequate to provide dependable electric service to your customers? If no, please explain the basis for your answer, excluding the stipulation in which you agreed to a 20-1 reserve margin figure.

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3. During the period of time in which a 15-1 reserve margin criteria was used, did you believe this figure of 15-1 was adequate?

4. What are the reserve margins used in other states into which you sell energy or capacity? Please list the state in which you do business, and the corresponding reserve margin criteria for that state. If you do not know the reserve margin criteria used in a particular state, indicate that you do not know the particular state's criteria.

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5. Why was Turkey Point selected as the reference point for the purposes of calculated capacity and energy costs associated with transmission losses?

6. Have you ever needed to operate gas turbines out of economic dispatch order to preserve system reliability? If so, please list the times, dates, and durations of such operations. If the answer is no, when and for what durations do you anticipate the need to operate such gas turbines out of economic dispatch order, assuming your Turkey Point Need Application is denied by the Commission.

---

7. Please describe all situations of which you are aware in which a rating agency was influenced to downgrade their opinion of a utility's creditworthiness due to concerns about a utility's capacity payment obligations to a power provider.

8. Please list all criteria you used in evaluating the proposals.



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9. Describe how the criteria was applied to the proposals.

10. Identify any person, including name, title, address, and telephone number of any person whose pinion you have relied upon to support your contention that rating agency decisions to downgrade their opinion of a utility's creditworthiness is influenced by a utility's capacity payment obligations to a power provider.

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11. What role did Steven Scruggs play in the RFP process and determination process?

12. Is Mr. Scruggs still employed by FPL? If so, what position does he hold, and what are his duties and responsibilities?

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13. At what point was the generation load imbalance in your Southeastern operating region first identified?

14. Please describe the circumstances pursuant to which the generation load imbalance for your Southeastern operating region was first identified?

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15. When did you first recognize, as stated in Paragraph 23 of your need petition, that “there is a growing imbalance between the amount of governing capacity located in the southeast area of FPL’s service territory and the electrical load for this region”?

16. Provide all documents that support your answer to Interrogatory #15.

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17. Who made the decision to proceed with the Turkey Point Unit 5 project after you conducted the RFP?

18. If a committee or multiple individuals made or were involved in making the decision, please identify all such individuals or members of the committee.

19. What was the basis for deciding to make transmission loss and the related location penalty a component of your RFP?

I understand that I am swearing or affirming under oath to the truthfulness of the answers of these interrogatories and that the punishment for knowingly making a false statement includes fines and/or imprisonment,

Dated this \_\_\_\_\_ day of May, 2004.

\_\_\_\_\_  
Signature of Party and Title

\_\_\_\_\_  
Printed Name  
Address: \_\_\_\_\_  
\_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

Sworn to or affirmed and signed before me by \_\_\_\_\_,  
who is personally known or who has produced \_\_\_\_\_ as identification  
this \_\_\_\_\_ day of May, 2004.

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
(Print, type, or stamp commissioned name of notary)

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# **EXHIBIT B**

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to Determine Need )  
for Turkey Point Unit 5 Electrical )  
Power Plant by Florida Power and )  
Light Company )

DOCKET NO. 040206-EI

Date: April 26, 2004

NOTICE OF SERVICE OF  
FLORIDA POWER & LIGHT COMPANY'S  
OBJECTIONS TO CALPINE ENERGY SERVICES, L.P.'S FIRST SET  
OF INTERROGATORIES AND FIRST REQUEST FOR PRODUCTION  
OF DOCUMENTS TO FLORIDA POWER & LIGHT COMPANY

Florida Power & Light Company ("FPL") gives Notice of Service of its  
Objections to Calpine Energy Services, L.P.'s First Set of Interrogatories (Nos. 1-18) and  
First Request for Production of Documents (Nos. 1-71) to FPL served by hand delivery  
on April 16, 2004.

Respectfully submitted,

R. Wade Litchfield, Senior Attorney  
Natalie F. Smith, Esq.  
Florida Power & Light Company  
Law Department  
700 Universe Boulevard  
Juno Beach, FL 33408  
Tele: (561) 691-7100  
Fax: (561) 691-7135

Charles A. Guyton, Esq.  
Florida Bar No. 398039  
Steel Hector & Davis LLP  
215 S. Monroc St., Suite 601  
Tallahassee, Florida 32301  
Tel: (850) 222-2300

Attorneys for Florida Power & Light  
Company

Attorneys for Florida Power & Light  
Company

By: R. Wade Litchfield *RL*  
R. WADE LITCHFIELD



**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of Florida Power & Light Company's Objections to Calpine's First Request for Production of Documents (Nos. 1-71) and First Set of Interrogatories (Nos. 1-19) has been furnished electronically (\*) and by United States Mail (\*\*\*) this 26 day of April, 2004, to the following:

Jennifer Brubaker, Esq.\*\*  
Senior Attorney  
Florida Public Service Commission  
Gerald L. Gunter Building  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Black & Veatch Corporation (KS)\*\* +  
Myron Rollins  
11401 Lamar Avenue  
Overland Park, KS 66211

Department of Community Affairs\*\* ++  
Paul Darst  
Strategic Planning  
2555 Shumard Oak Blvd.  
Tallahassee, FL 32399-2100

Department of Environmental Protection\*\*++  
(Siting)  
Buck Oven  
Siting Coordination Office  
2600 Blairstone Road, MS 48  
Tallahassee, FL 32301

Jon C. Moyle, Jr., Esq.\*+++  
Cathy M. Sellers, Esq.  
Moyle Flanigan Katz Raymond &  
Sheehan, P.A.  
The Perkins House  
118 North Gadsden Street  
Tallahassee, FL 32301

Bruce May, Esquire\*\*\*+  
Holland & Knight LLP  
P. O. Drawer 810  
Tallahassee, FL 32302-0810

- + Interested Person
- ++ State Agency
- +++ Not Yet a Party (courtesy copy)

By: R. Wade Litchfield LDA  
R. WADE LITCHFIELD

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition to Determine Need for ) Docket No. 040206-EI  
Turkey Point Unit 5 Power Plant )  
by Florida Power & Light Company. ) Dated: April 26, 2004  
\_\_\_\_\_ )

**FLORIDA POWER & LIGHT COMPANY'S OBJECTIONS TO  
CALPINE ENERGY SERVICES, L.P.'S FIRST REQUEST FOR PRODUCTION  
OF DOCUMENTS (NOS. 1 - 71) AND FIRST SET OF INTERROGATORIES  
(NOS. 1 - 19)**

Florida Power & Light Company ("FPL") submits the following Objections to the Calpine Energy Services, L.P.'s ("Calpine") First Request for Production of Documents (Nos. 1-71) and First Set of Interrogatories (Nos. 1-19):

**I. Preliminary Nature of These Objections**

FPL's objections stated herein are preliminary in nature. FPL is furnishing its objections consistent with the time frames set forth in the Commission's Order Establishing Procedure, Order No. PSC-04-0325-PCO-EI, dated March 30, 2004 (the "Order Establishing Procedure"), and Rule 1.190(e), Florida Rules of Civil Procedure. Should additional grounds for objection be discovered as FPL develops its response, FPL reserves the right to supplement or modify its objections up to the time it serves its responses. Should FPL determine that a protective order is necessary regarding any of the information requested of FPL, FPL reserves the right to file a motion with the Commission seeking such an order at the time its response is due.

**II. General Objections.**

FPL objects to each and every request for production of documents or interrogatory filed by Calpine before being granted status as a party in this proceeding. Rules 1.340 and 1.350, Florida Rules of Civil Procedure, and Rule 28-106.206, Florida Administrative Code, provide that only a party may serve discovery on another party. As of the date of these Objections, Calpine has not been granted status as a party. Accordingly, FPL objects to responding to discovery from an entity not a party to the proceeding. FPL is filing these objections as a procedural courtesy and not because the objections are due.

FPL objects to each and every request for documents or interrogatory that calls for information protected by the attorney-client privilege, the work product doctrine, the accountant-client privilege, the trade secret privilege, or any other applicable privilege or protection afforded by law, whether such privilege or protection appears at the time response is first made or is later determined to be applicable for any reason. FPL in no way intends to waive such privilege or protection.

FPL objects to providing information that is proprietary, confidential business information without adequate provisions in place to protect the confidentiality of the information. FPL in no way intends to waive claims of confidentiality. In particular, FPL objects to providing certain commercially sensitive information to a direct competitor.

FPL is a large corporation with employees located in many different locations. In the course of its business, FPL creates numerous documents that are not subject to Florida Public Service Commission or other governmental record retention requirements. These documents are kept in numerous locations and frequently are moved from site to site as employees change jobs or as business is reorganized. Therefore, it is possible that

not every relevant document may have been consulted in developing FPL's response. Rather, these responses provide all the information that FPL obtained after a reasonable and diligent search conducted in connection with this discovery request. To the extent that the discovery requests propose to require more, FPL objects on the grounds that compliance would impose an undue burden or expense on FPL.

FPL objects to any production location other than FPL's General Offices at 9250 West Flagler Street, Miami, Florida.

FPL also objects to these discovery requests to the extent they call for FPL to prepare information in a particular format or perform calculations or analyses not previously prepared or performed as purporting to expand FPL's obligations under applicable law. Further, FPL objects to these interrogatories to the extent they purport to require FPL to conduct an analysis or create information not prepared by FPL in the normal course of business. FPL will comply with its obligations under the applicable rules of procedure.

FPL objects to providing information to the extent that such information is already in the public record before the Florida Public Service Commission and available to Calpine through normal procedures.

FPL notes that the cumulative effect of the discovery requests in these proceedings make Calpine's requests for irrelevant or marginally relevant information or documents overly burdensome. Even if an individual request on its own may not seem overly burdensome, the fact that FPL is responding to numerous requests with overlapping expedited deadlines creates a cumulative burden on FPL, which must be

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taken into account when looking at whether responding to a discovery request is overly burdensome.

Numerous of the discovery requests are not expressly limited to data or analyses performed in connection with the evaluation of the Turkey Point Unit 5 project that is the subject of this docket. FPL assumes that, unless expressly stated to the contrary, Calpine's discovery requests are intended to refer to data or analyses related to the Turkey Point Unit 5 project and objects to the extent that any such discovery requests are not so limited, on the grounds that they would be overly broad, irrelevant and unduly burdensome.

FPL objects to each discovery request and any definitions and instructions that purport to expand FPL's obligations under applicable law. FPL objects to the definitions set forth in the Calpine's First Request For Production of Documents to the extent that they purport to impose upon FPL obligations that FPL does not have under the law. FPL objects to these "definitions" to the extent they do not comply with the Florida Rules of Civil Procedure regarding discovery or the Commission's Order Establishing Procedure.

In addition, FPL reserves its right to count interrogatories and their sub-parts (as permitted under the applicable rules of procedure) in determining whether it is obligated to respond to additional interrogatories served by any party.

FPL objects to each discovery request to the extent that the information requested constitutes "trade secrets" which are privileged pursuant to Section 90.506, Florida Statutes.

FPL reserves the right to file specific objections to Calpine's First Set of Interrogatories and First Request for Production of Documents in the event Calpine is

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granted party status in these proceedings and to the extent that these requests are deemed properly served.

Respectfully submitted,

R. Wade Litchfield  
Natalie F. Smith  
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700 Universe Boulevard  
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By: Robert E. Stone / LPA  
Robert E. Stone, Esquire  
Fla. Bar No.: 0352446

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of Florida Power & Light Company's Objections to Calpine's First Request for Production of Documents (Nos. 1-71) and First Set of Interrogatories (Nos. 1-19) has been furnished electronically (\*) and by United States Mail (\*\*) this 26 day of April, 2004, to the following:

Jennifer Brubaker, Esq.\*\*  
Senior Attorney  
Florida Public Service Commission  
Gerald L. Gunter Building  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Black & Veatch Corporation (KS)\*\* +  
Myron Rollins  
11401 Lamar Avenue  
Overland Park, KS 66211

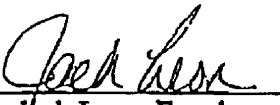
Department of Community Affairs\*\* ++  
Paul Darst  
Strategic Planning  
2555 Shumard Oak Blvd.  
Tallahassee, FL 32399-2100

Department of Environmental Protection\*\*++  
(Siting)  
Buck Oven  
Siting Coordination Office  
2600 Blairstone Road, MS 48  
Tallahassee, FL 32301

Jon C. Moyle, Jr., Esq.\*+++  
Cathy M. Sellers, Esq.  
Moyle Flanigan Katz Raymond &  
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The Perkins House  
118 North Gadsden Street  
Tallahassee, FL 32301

Bruce May, Esquire\*\*+  
Holland & Knight LLP  
P. O. Drawer 810  
Tallahassee, FL 32302-0810

- + Interested Person
- ++ State Agency
- +++ Not Yet a Party (courtesy copy)

By:   
Jack Leon, Esquire  
Fla. Bar No. 230197

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# EXHIBIT C

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition to Determine Need )  
for Turkey Point Unit 5 Electrical )  
Power Plant by Florida Power and )  
Light Company )

DOCKET NO. 040206-EI

Dated: April 29, 2004

**NOTICE OF SERVICE OF FLORIDA POWER & LIGHT COMPANY'S  
SUPPLEMENTAL OBJECTIONS TO CALPINE ENERGY SERVICES, L.P.'S  
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS (NOS. 1-71) AND  
FIRST SET OF INTERROGATORIES (NOS. 1-19)**

Florida Power & Light Company ("FPL") gives Notice of Service of its  
Supplemental Objections to Calpine Energy Services, L.P.'s First Request for Production  
of Documents (Nos. 1-71) and First Set of Interrogatories (Nos. 1-19).

Respectfully submitted,

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Attorneys for Florida Power & Light  
Company

Attorneys for Florida Power & Light  
Company

By:

  
R. Wade Litchfield

LAA

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of Florida Power & Light Company's Supplemental Objections to Calpine's First Request for Production of Documents (Nos. 1-71) and First Set of Interrogatories (Nos. 1-19) has been furnished by hand delivery (\*) and by United States Mail this 29<sup>th</sup> day of April, 2004, to the following:

Jennifer Brubaker, Esq.\*  
Senior Attorney  
Florida Public Service Commission  
Gerald L. Gunter Building  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Department of Community Affairs  
Paul Darst  
Strategic Planning  
2555 Shumard Oak Blvd.  
Tallahassee, FL 32399-2100

Jon C. Moyle, Jr., Esq.\*  
Cathy M. Sellers, Esq.  
Moyle Flanigan Katz Raymond &  
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Department of Environmental Protection  
(Siting)  
Buck Owen  
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Tallahassee, FL 32301

Bruce May, Esquire  
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P. O. Drawer 810  
Tallahassee, FL 32302-0810

By:

  
R. Wade Litchfield *LSA*

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition to Determine Need for )      Docket No. 040206-EI  
Turkey Point Unit 5 Power Plant        )      )  
by Florida Power & Light Company.       )      Dated: April 29, 2004  
\_\_\_\_\_ )

**FLORIDA POWER & LIGHT COMPANY'S SUPPLEMENTAL OBJECTIONS  
TO CALPINE ENERGY SERVICES, L.P.'S FIRST REQUEST FOR  
PRODUCTION OF DOCUMENTS (NOS. 1-71) AND FIRST SET OF  
INTERROGATORIES (NOS. 1-19)**

Pursuant to Rule 28-106.206, Florida Administrative Code, and Rules 1.340 and 1.350, Florida Rules of Civil Procedure, Florida Power & Light Company ("FPL") submits the following Supplemental Objections to Calpine Energy Services, L.P.'s ("Calpine's") First Request for Production of Documents (Nos. 1-71) and First Set of Interrogatories (Nos. 1-19) that were served by hand delivery on April 16, 2004.

**I.      Premature Nature of Calpine's Discovery**

On April 26, 2004, FPL made its general objections to Calpine's First Request for Production of Documents (Nos. 1-71) and First Set of Interrogatories (Nos. 1-19). In part, FPL objected to each and every request for production of documents or interrogatory filed by Calpine before being granted status as a party in this proceeding. Rules 1.340 and 1.350, Florida Rules of Civil Procedure, and Rule 28-106.206, Florida Administrative Code, provide that only a party may serve discovery on another party. As of the date FPL made its general objections, Calpine had not been granted status as a party. Accordingly, FPL objected to responding to discovery from an entity not a party to the proceeding. FPL made its objections as a procedural courtesy and not because the objections were due. However, in making its general objections, FPL reserved the right

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to file specific objections to Calpine's First Set of Interrogatories and First Request for Production of Documents in the event Calpine was granted party status in these proceedings and to the extent that Calpine's requests were deemed properly served.

Because Calpine was not a party at the time it served discovery, it had no right to serve discovery and no entitlement to receive any response. Numerous administrative rules and decisions establish that an intervenor must accept a case as it finds it and has no standing to participate, e.g., by serving discovery, unless and until granted intervention, and only then if it can do so in accordance with the procedures that govern the case. *See* Fla. Admin. Code R. 25-22.039; *Panda Energy Intern. v. Jacobs*, 813 So. 2d 46, FN. 4 (Fla. 2002), *citing*, *Coast Cities Coaches, Inc. v. Dade County*, 178 So. 2d 703 (Fla. 1965).

By Order No. PSC-04-0432-FCO-EI, issued April 28, 2004, Calpine was granted party status in these proceedings. Notwithstanding and without waiving its objection to Calpine's premature discovery, FPL files the following supplemental objections to Calpine's First Request for Production of Documents (Nos. 1-71) and First Set of Interrogatories (Nos. 1-19).

## **II. Preliminary Nature of These Objections**

FPL's objections stated herein are preliminary in nature. Should additional grounds for objection be discovered as FPL develops its response, FPL reserves the right to supplement or modify its objections up to the time it serves its responses. Should FPL determine that a protective order is necessary regarding any of the information requested of FPL, FPL reserves the right to file a motion with the Commission seeking such an order at the time its response is due.

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### **III. General Objections.**

FPL adopts and incorporates by reference as its General Objections, FPL's Objections to Calpine Energy Services, L.P.'s First Request For Production of Documents (Nos. 1-71) and First Set of Interrogatories (Nos. 1-19) made on April 26, 2004.

Additionally, FPL notes that, in certain circumstances, FPL may determine upon investigation and analysis that information responsive to certain requests to which objections are not otherwise asserted is confidential and proprietary and should not be produced or should be produced only under an appropriate confidentiality agreement or protective order. Certain confidential, proprietary, highly commercially sensitive business information held by FPL (such as information and documents relating to specific contracts or negotiations for contracts relating to Turkey Point Unit 5 or other business operations) contain competitively sensitive information that FPL should not be required to produce to competitors such as Calpine who, on a regular basis, seek to contract with many of the same vendors for the same kinds of materials, equipment and services. This information should be protected from disclosure entirely where indicated as the harm to FPL's present and future ability to obtain similar contracts or favorable terms far outweighs Calpine's purported need for this level of detailed information in this proceeding.

Moreover, numerous counterparties to contracts with FPL have required FPL to sign non-disclosure agreements related to the terms and conditions of the contracts, or have included non-disclosure provisions in the contractual agreements. FPL has issued a letter to each counterparty indicating that Calpine has obtained leave to intervene in this

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proceeding and requesting that each counterparty take a position as to whether Calpine can be provided with the vendor's confidential, proprietary, commercially sensitive information. Before withdrawing from FPL's last need proceeding involving Martin Unit 8 and Manatee Unit 3, Calpine had requested much of the same commercially sensitive information. FPL's vendors had refused to allow Calpine access to such material. Disclosure of the terms and conditions, including pricing, that vendors have provided or offered to provide FPL would impair their own competitive positions in future negotiations with Calpine. Vendors' positions on this subject will not likely have changed. Accordingly, FPL does not intend to produce such information in response to Calpine's competitive "fishing expedition" absent a direct order from the Commission or the express written consent of the counterparty.

As to any other confidential, proprietary business information, irrespective of whether FPL agrees to provide such information in response to such interrogatory or request for production of documents, FPL is not waiving its right to insist upon appropriate protection of confidentiality by means of a confidentiality agreement and/or protective order. FPL hereby asserts its right to require such protection of any and all documents and information it has agreed to or may be required to produce that may qualify for protection under the Florida Rules of Civil Procedure and other applicable statutes, rules and legal principles.

FPL further objects to producing any information or documents reflecting the confidential information received from proposers that submitted responses to its RFP solicitation except pursuant to a suitable confidentiality agreement, or order of the

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Commission. FPL has issued a letter to each proposer indicating that Calpine has obtained leave to intervene in this proceeding and has asked FPL to provide bidder data.

FPL notes that in FPL's need determination proceedings for its Martin and Manatee units, several proposers who chose not to participate in the proceeding filed motions for protective order, which were granted, to protect their confidential bid information from disclosure to their direct competitors. See Order No. PSC-02-0611-PCO-EI in Docket Nos. 020262-EI and 020263-EI.

FPL incorporates by reference all of the foregoing general objections into each of its specific objections set forth below as though stated therein. To the extent not subject to and without waiving these objections, documents will be produced and interrogatories will be answered.

#### **IV. Specific Objections and Clarifications to Calpine's First Request for Production of Documents**

Definitions. FPL made a general objection to the definitions set forth in Calpine's First Request For Production of Documents to the extent that they purport to impose upon FPL obligations that FPL does not have under the law. Specifically, FPL objects to the definitions contained in paragraph A., B. and F. of the DEFINITIONS section of Calpine's First Request For Production of Documents. Paragraph A in the DEFINITIONS section is impermissibly overbroad to the extent it expands the definition of "Documents" beyond the meaning of that term in the Florida Rules of Civil Procedure. Additionally, the definition of "Documents" is vague and ambiguous to the extent it refers to documents in the possession of "Defendant" or "Plaintiff," terms foreign to these proceedings. Paragraph B in the DEFINITIONS section impermissibly expands the definition of "You" or "Your" to include FPL's "corporate affiliate." FPL's corporate

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affiliates are not parties to this action. It is not FPL's legal obligation to produce responsive documents that are solely in the possession, custody or control of its "corporate affiliate". See Rule 1.350(a), Fla. R. Civ. P. Additionally, FPL's corporate affiliates are not involved in the construction of Turkey Point Unit 5. Any documents in the hands of FPL's corporate affiliates are wholly irrelevant to this need determination proceeding. For purposes of Calpine's First Request For Production of Documents, FPL will accept the definition of the words "You" or "Your" to mean Florida Power & Light Company.

Paragraph F in the DEFINITIONS section impermissibly requests FPL to provide certain information about documents that may no longer be in FPL's possession, custody or control. Rule 1.350(a), Florida Rules of Civil Procedure pertains to producing documents "... that *are* in the possession, custody, or control of the party to whom the request is directed." (emphasis added). There is no legal obligation pursuant to Rule 1.350(a), Florida Rules of Civil Procedure to provide information about documents that are no longer in FPL's possession, custody or control. Accordingly, FPL objects to these "definitions" since they do not comply with the requirements of the Florida Rules of Civil Procedure regarding discovery or the Commission's Order Establishing Procedure.

Request for Production Nos. 3, 7-8, 39. FPL objects to Request Nos. 3, 7-8 and 39 to the extent they call for FPL to disclose information that is protected by the work product doctrine. These requests seek documents that would include materials prepared in anticipation of litigation and subject to the attorney work product privilege against disclosure. FPL also objects to these requests because they are overly broad, unduly burdensome, seeking documents outside the scope of this proceeding, and not reasonably



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calculated to lead to the discovery of admissible evidence to the extent it relates to something other than Turkey Point Unit 5. In the course of its analysis of the RFP proposals and FPL self-build options, FPL performed hundreds of EGEAS simulations. Moreover, for each EGEAS simulation there are literally thousands of data entries supported by hundreds of documents. Providing all these documents would be extremely burdensome to FPL, particularly because the vast majority of the EGEAS runs are in the nature of preliminary runs that were not ultimately relied upon to assess the relative cost effectiveness Turkey Point Unit 5. FPL is concerned that if it produced all the documents that are arguably responsive to these broad requests it would be accused of attempting to bury Calpine in largely irrelevant documents.

FPL further objects to this request as calling for the disclosure of proprietary, confidential business information. The documents requested in these requests may contain two types of information considered by FPL as confidential. The first type is information provided to FPL by RFP proposers. This includes, but is not limited to, capacity costs, energy prices, fixed and variable O&M, heat rates and unit availability. The RFP proposers requested that FPL treat their RFP proposal terms as confidential. Disclosure of this information could impair the competitive interests of the RFP proposers and jeopardize their ability to negotiate contract terms. Disclosure might also afford Calpine an improper competitive advantage relative to such proposers in future solicitations, whether conducted by FPL or other utilities. Disclosure of this information also would impair FPL's prospective ability to solicit capacity proposals, to the detriment of FPL's customers.

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The second type of information FPL considers as proprietary and confidential is information regarding the cost and operation of FPL's generating units. This information is confidential to FPL just as this type of information is confidential to the RFP proposers. However, unlike information furnished by proposers that relates to potential units that may never be built, FPL's information relates to actual costs and operations of existing units. FPL competes in the wholesale power market, and the disclosure of this information would injure FPL's competitive interests and FPL's ability to favorably negotiate contractual terms. The disclosure of this information would disadvantage FPL in making off-system sales to benefit FPL's customers. This information has not been disclosed to the public and is protected by FPL from disclosure.

The information discussed above is the type of information recognized by the Legislature in Section 366.093, Florida Statutes as proprietary confidential business information, specifically, 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 and information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

Finally, FPL requests clarification to Request No. 39 to the extent it is not aware of a "Mr. Alan Sedway" who is involved in any aspect of these proceedings.

Notwithstanding and without waiving these objections, FPL will produce documents exchanged between Alan Taylor and Florida Power & Light Company that relate to FPL's 2003 RFP and evaluation and the Turkey Point Unit 5 project that is the

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subject of these proceedings and certain other documents in response to the above-referenced requests, consistent with FPL's objections described above.

Request for Production Nos. 4-5, 34, 47. FPL objects to Request Nos. 4, 5, 34 and No. 47 to the extent they purport to invade the work product doctrine or the attorney-client privilege. FPL also objects to Request No. 4 on the grounds that it is overly broad in scope to the extent that it includes documents that the witnesses have reviewed over their entire careers that form the basis of the level of experience and education on the subjects to which they will testify.

Request for Production No. 6. FPL objects to Request No. 6 as calling for the disclosure of proprietary, confidential business information. This request calls for the production of the Sedway Consulting Response Surface Model which is proprietary to Sedway Consulting and is not in the possession of FPL. Sedway Consulting will permit FPL to release a copy of its model only upon execution of a confidentiality agreement satisfactory to Sedway Consulting.

Request for Production No. 9 FPL objects to Request No. 9 on the ground that it is overly broad in scope and time. This request asks for any and all documents reflecting assumptions about future natural gas costs. The scope of this request includes documents that are not limited to FPL's 2003 RFP and Turkey Point Unit 5. To the extent that the request seeks documents other than those limited to Turkey Point Unit 5 and FPL's 2003 RFP, the request is overly broad. The request is also unlimited by time, requiring FPL to produce data which could be more than a decade (and maybe two) old. This would require the retrieval of information from archives, a lengthy and time consuming process, especially given the corporate reorganizations the company has experienced over the

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period in question. The breadth of the search necessary to respond to this request and the unlimited time frame for which the data is sought make the request unduly burdensome and unreasonable. Moreover, the relevance of such old and stale data is highly questionable. Such a request is unlikely to lead to the discovery of admissible evidence and, relative to the burden imposed, should not be permitted. Notwithstanding and without waiving these objections, FPL will produce documents reflecting FPL assumptions about future natural gas costs related to the assumptions underlying FPL's 2003 RFP and selection of Turkey Point Unit 5.

Request for Production Nos. 10, 12-14, 36, 45. FPL objects to these requests as an improper attempt to obtain FPL's confidential, proprietary business information. Please see FPL's specific objections to providing vendor-specific information in the general objections above. FPL's underlying cost information is confidential and highly sensitive as it relates to Calpine, a direct competitor. FPL is willing to comment on the status of contracts for such equipment, but it does not believe that producing detailed negotiated contracts, or spreadsheets and backup workpapers that contain proprietary, confidential information provided by vendors is material or probative of the ultimate issues in this proceeding. FPL has thoroughly described how it arrived at its cost estimate for Turkey Point Unit 5, and a fishing expedition into detailed terms -- if known -- surrounding certain components is nothing more than a thinly veiled attempt by Calpine to obtain competitive intelligence. FPL also objects to these requests to the extent they call for highly commercially sensitive confidential and proprietary business information that may consist of or constitute trade secrets. "Trade secrets are privileged under section 90.506, Florida Statutes (2000), and Florida cases recognize that their

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disclosure creates the potential for irreparable harm.” *Harley Shipbuilding Corp. v. Fast Cats Ferry Service, LLC.*, 820 So. 2d 445 (Fla. 2DCA 2002). Trade secrets are also recognized by the Legislature in Subsection 366.093(3)(a), Florida Statutes as proprietary confidential business information. FPL also objects to Request No. 10 on the ground that it references page 161 line 11 of Mr. Taylor’s testimony. No such page and line number exists in the testimony of Alan Taylor filed by FPL. FPL requests clarification from Calpine as to the correct page and line number.

Request for Production No. 16. FPL objects to Request No. 16 on the ground that it is overly broad, seeking documents outside the scope of this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence to the extent it relates to something other than Turkey Point Unit 5. It would be unduly burdensome for FPL to respond to this request.

Request for Production No. 18. The EGEAS software sought by this Request is the property of the Electric Power Research Institute, Inc. (“EPRI”), which FPL licenses from EPRI. FPL’s license agreement with EPRI restricts FPL’s ability to share the EGEAS software with non-licensees. FPL objects to this request on the basis that it cannot comply with this request consistent with its contractual obligations to EPRI. However, FPL has made arrangements with EPRI for parties to this proceeding to obtain a limited use license for the EGEAS software. Calpine may obtain a limited use license for the software by contacting Diana Babcock at EPRI, 650-855-8583. Thus, FPL also objects to this request because Calpine is seeking documents that are readily available to Calpine directly through EPRI.

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Request for Production Nos. 19 and 20. FPL objects to Request Nos. 19 and 20 as overbroad and unduly burdensome. Further, FPL objects to the extent these requests call for FPL to disclose information that is protected by the attorney-client privilege or the work product doctrine. Request No. 19 seeks all internal correspondence, including emails, regarding the bid process FPL used to select Turkey Point Unit 5. This request would include documents between FPL's attorneys and the client. Such documents are protected by the attorney-client privilege. Request No. 20 seeks all documents related to FPL's "decision to self supply the energy for which [FPL] sought proposals pursuant to the RFP." This request also may include attorney-client communications as well as documents prepared at the direction of counsel in anticipation of litigation. Some of the documents that may be responsive to this request consist of or contain confidential bid information. FPL objects to these requests to the extent they seek confidential bid information. Please see FPL's more detailed objection above. FPL objects to producing any information or documents reflecting the confidential information received from proposers that submitted responses to its RFP solicitation except pursuant to a suitable confidentiality agreement, or order of the Commission. FPL has issued a letter to each proposer indicating that Calpine has obtained leave to intervene in this proceeding and has asked FPL to provide bidder data. Finally, FPL objects to these requests to the extent they seek documents otherwise objected to herein. Notwithstanding and without waiving these objections, FPL will provide the final analysis used by FPL's Resource Planning department and provided to management upon the execution of a confidentiality agreement satisfactory to FPL.

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Request for Production No. 21. FPL objects to Request No. 21 to the extent it calls for the disclosure of proprietary, confidential business information. Some of the documents that may be responsive to this request consist of or contain confidential bid information. Please see FPL's more detailed objection above. FPL objects to producing any information or documents reflecting the confidential information received from proposers that submitted responses to its RFP solicitation except pursuant to a suitable confidentiality agreement, or order of the Commission. FPL has issued a letter to each proposer indicating that Calpine has obtained leave to intervene in this proceeding and has asked FPL to provide bidder data.

Request for Production No. 22. FPL reasserts the objections asserted in response to No. 21 above. FPL also objects to Request to Produce No. 22 on the ground that it is overly broad in scope and time and should be limited to the 2003 RFP and evaluation.

Request for Production Nos. 23 and 24. FPL reasserts the objections asserted in response to No. 21 above. FPL also objects to Request No. 23 to the extent it calls for FPL to disclose information that is protected by the attorney-client privilege or the work product doctrine. Further, FPL objects on the grounds that the request is overbroad and unduly burdensome. The printouts of the EGEAS runs performed in connection with the evaluation process would fill many file boxes.

Request for Production No. 25. FPL objects to Request No. 25 on the ground that it is overly broad, unduly burdensome and not likely to lead to the discovery of admissible evidence to the extent that it calls for the production of documents that are unrelated to Turkey Point Unit 5. Further, even the agreement that relates specifically to version 7.3.2 of EGEAS is wholly irrelevant to any potential issue in this case. Finally,

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FPL has made arrangements with EPRI for parties to this proceeding to obtain a limited use license for the EGEAS software, as indicated above in FPL's objection to Request No. 18.

Request for Production No. 26 FPL objects to Request No. 26 to the extent it calls for the disclosure of proprietary, confidential business information. Some of the documents that may be responsive to this request consist of or contain confidential bid information. Further, some of the information requested is confidential to FPL. The information requested is the type of information recognized by the Legislature in Section 366.093, Florida Statutes as proprietary confidential business information, specifically, 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 and information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information. Please see FPL's more detailed objection above. FPL objects to producing any information or documents reflecting the confidential information received from proposers that submitted responses to its RFP solicitation except pursuant to a suitable confidentiality agreement, or order of the Commission. FPL has issued a letter to each proposer indicating that Calpine has obtained leave to intervene in this proceeding and has asked FPL to provide bidder data. FPL also objects to Request No. 26 to the extent it calls for FPL to disclose information that is protected by the attorney-client privilege or the work product doctrine.

Request for Production Nos. 28-29 FPL objects to Request Nos. 28 and 29 to the extent they call for the disclosure of proprietary, confidential business information. Some of the documents that may be responsive to this request consist of or contain confidential



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bid information. Also, some of the information requested is confidential to FPL. Please see FPL's more detailed objection above. FPL objects to producing any information or documents reflecting the confidential information received from proposers that submitted responses to its RFP solicitation except pursuant to a suitable confidentiality agreement, or order of the Commission. FPL has issued a letter to each proposer indicating that Calpine has obtained leave to intervene in this proceeding and has asked FPL to provide bidder data. The information requested is the type of information recognized by the Legislature in Section 366.093, Florida Statutes as proprietary confidential business information, specifically, 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 and information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information. FPL also objects to Request Nos. 28 and 29 on the ground they are overly broad in scope and time and should be limited to FPL's 2003 RFP and evaluation.

Request for Production No. 30. FPL objects to Request No. 30 to the extent it calls for the disclosure of proprietary, confidential business information. Some of the documents that may be responsive to this request consist of or contain confidential bid information. Please see FPL's more detailed objection above. FPL objects to producing any information or documents reflecting the confidential information received from proposers that submitted responses to its RFP solicitation except pursuant to a suitable confidentiality agreement, or order of the Commission. FPL has issued a letter to each proposer indicating that Calpine has obtained leave to intervene in this proceeding and has asked FPL to provide bidder data. Also, some of the documents that may be

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responsive to this request are confidential to FPL. Further, FPL objects to this request to the extent it seeks documents related to FPL vendor agreements. FPL is willing to comment on the status of contracts for such equipment, but does not believe that producing detailed negotiated contracts, or drafts of contracts, is material or probative with respect to the ultimate issues in the case. Please refer to FPL's more detailed objection regarding vendor information above.

Request for Production No. 31. FPL objects to Request No. 31 to the extent it calls for the disclosure of attorney-client privileged information or information protected by the work product doctrine. Further, FPL objects to the extent it calls for the disclosure of proprietary, confidential business information. Some of the documents that may be responsive to this request consist of or contain confidential bid information. Please see FPL's more detailed objection above. FPL objects to producing any information or documents reflecting the confidential information received from proposers that submitted responses to its RFP solicitation except pursuant to a suitable confidentiality agreement, or order of the Commission. FPL has issued a letter to each proposer indicating that Calpine has obtained leave to intervene in this proceeding and has asked FPL to provide bidder data. Also, some of the documents that may be responsive to this request are confidential to FPL.

Request for Production No. 35, 41-42, 64. FPL objects to Request No. 35 to the extent it is vague and ambiguous with respect to the meaning of "generation strategy." Further, FPL objects to these requests as overbroad, unduly burdensome, seeking documents outside the scope of this need determination proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. FPL's plans relating to the

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addition of new generation, as well as some information regarding transmission upgrades, are reflected in documents filed with the Commission and publicly available. These requests amount to an improper effort to use this proceeding to gain access to confidential, proprietary business information. FPL objects to these requests to the extent they call for highly commercially sensitive confidential and proprietary business information that may consist of or constitute trade secrets. "Trade secrets are privileged under section 90.506, Florida Statutes (2000), and Florida cases recognize that their disclosure creates the potential for irreparable harm." *Harley Shipbuilding Corp. v. Fast Cats Ferry Service, LLC.*, 820 So. 2d 445 (Fla. 2DCA 2002). Trade secrets are also recognized by the Legislature in Subsection 366.093(3)(a), Florida Statutes as proprietary confidential business information.

Request for Production No. 40. FPL objects to Request No. 40 on the ground that it is overly broad and it would be unduly burdensome for FPL to respond. Additionally, FPL objects to Request No. 40 to the extent it calls for FPL to disclose information that is protected by the attorney-client privilege or the work product doctrine. Finally, FPL objects to Request to Produce No. 40 to the extent that information sought is already in the public record before the Florida Public Service Commission and available to Calpine through normal procedures.

Request for Production No. 43. FPL objects to Request No. 43 on the grounds that it is overly broad in scope to the extent that it includes documents that the witness has reviewed over his entire career that form the basis of the level of experience and education on the subjects to which he will testify.

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Request for Production No. 46. FPL objects to Request No. 46 as calling for the disclosure of proprietary, confidential business information. The information requested is confidential to FPL. Its disclosure would cause harm to FPL's customers or FPL's business operations by disclosing highly sensitive information regarding security measures, systems, or procedures. This information has not been disclosed to the public and is protected by FPL from disclosure. The information requested is the type of information recognized by the Legislature in Section 366.093, Florida Statutes as proprietary confidential business information, specifically, information regarding security measures, systems, or procedures. FPL also asserts that certain documents that may be responsive to this request contain "Safeguards Information" that cannot be disclosed to unauthorized third parties pursuant to Section 147 of the Atomic Energy Act of 1954, as amended, 42 USC 2167, and implementing regulations of the U.S. Nuclear Regulatory Commission set forth at 10 CFR 73.21.

Request for Production Nos. 49-50. FPL objects to these requests as overbroad, seeking documents outside the scope of this need proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. The only relevant issue in this proceeding is whether Turkey Point Unit 5 is the most cost-effective alternative to meet FPL's need. Further, FPL objects to these requests to the extent they seek confidential, proprietary business information related to vendor agreements and other highly commercially sensitive information that FPL objects to providing to a direct competitor, like Calpine.

Request for Production Nos. 51-57, 60, 62-63, 66. FPL objects to these requests as an improper attempt by Calpine to obtain FPL's confidential, proprietary business

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information. FPL is willing to comment on the status of contracts for equipment and services, but does not believe that producing detailed negotiated contracts, or spreadsheets and backup workpapers that contain proprietary, confidential information provided by vendors is material or probative of the ultimate issues in this case. FPL has thoroughly described how it arrived at its cost estimate for Turkey Point Unit 5, and a fishing expedition into detailed terms -- if known -- surrounding certain components is nothing more than a thinly veiled attempt by Calpine to obtain competitive intelligence. Indeed, such disclosure to Calpine could impair FPL's ability to bring the best possible result to its customers. FPL also objects to these requests on grounds that they call for highly commercially sensitive confidential and proprietary business information that may consist of or constitute trade secrets. "Trade secrets are privileged under section 90.506, Florida Statutes (2000), and Florida cases recognize that their disclosure creates the potential for irreparable harm." *Harley Shipbuilding Corp. v. Fast Cats Ferry Service, LLC.*, 820 So. 2d 445 (Fla. 2DCA 2002). Trade secrets are also recognized by the Legislature in Subsection 366.093(3)(a), Florida Statutes as proprietary confidential business information.

Request for Production Nos. 58-59. FPL objects to Request Nos. 58 and 59 as calling for the disclosure of proprietary, confidential business information. FPL objects to these requests as an improper attempt by Calpine to obtain FPL's confidential, proprietary business information. FPL is willing to comment on the status of contracts for equipment and services, but does not believe that producing detailed negotiated contracts is material or probative of the ultimate issues in this case. FPL has thoroughly described how it arrived at its cost estimate for Turkey Point Unit 5, and a fishing

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expedition into detailed terms -- if known -- surrounding certain components is nothing more than a thinly veiled attempt by Calpine to obtain competitive intelligence. Indeed, such disclosure to Calpine could impair FPL's ability to bring the best possible result to its customers.

Request for Production Nos. 67-69. FPL objects to Request Nos. 67-69 as overly broad in scope and time, seeking documents outside the scope of this need proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. The only relevant issue in this proceeding is whether FPL's petition to determine need for Turkey Point Unit 5 should be granted. Calpine's request amounts to a collateral attack on a Commission final order. Since FPL is subject to the Commission-approved reserve margin of 20 percent, any requests for documents relating to whether a 15 percent reserve margin is sufficient are irrelevant to this proceeding. Documents relating to reserve margins in other states are equally irrelevant to these need proceedings. Finally, documents responsive to these requests are available to Calpine in the public domain.

**V. Specific Objections and Clarifications to Calpine's First Set of Interrogatories**

Interrogatories Nos. 2-4. FPL incorporates by reference and reasserts its objections to Calpine's Request for Production Nos. 67-69 above.

Interrogatory No. 16. FPL objects to Interrogatory No. 16 on grounds that it is not an interrogatory, but rather, is a request for production of documents.

Respectfully submitted,

R. Wade Litchfield  
Natalie F. Smith  
Florida Power & Light Company  
Law Department  
700 Universe Boulevard  
Juno Beach, FL 33408  
Tele: (561) 691-7100  
Fax: (561) 691-7135

Florida Power & Light Company  
Law Department  
700 Universe Boulevard  
Juno Beach, FL 33408

By:

*Robert E. Stone LSA*  
Robert E. Stone, Esquire  
Fla. Bar No.: 0352446

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of Florida Power & Light Company's Supplemental Objections to Calpine's First Request for Production of Documents (Nos. 1-71) and First Set of Interrogatories (Nos. 1-19) has been furnished by hand delivery (\*) and by United States Mail this 29th day of April, 2004, to the following:

Jennifer Brubaker, Esq.\*  
Senior Attorney  
Florida Public Service Commission  
Gerald L. Gunter Building  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850


Black & Veatch Corporation (KS)  
Myron Rollins  
11401 Lamar Avenue  
Overland Park, KS 66211

Department of Community Affairs  
Paul Darst  
Strategic Planning  
2555 Shumard Oak Blvd.  
Tallahassee, FL 32399-2100

Department of Environmental Protection  
(Siting)  
Buck Oven  
Siting Coordination Office  
2600 Blairstone Road, MS 48  
Tallahassee, FL 32301

Jon C. Moyle, Jr., Esq.\*  
Cathy M. Sellers, Esq.  
Moyle Flanigan Katz Raymond &  
Sheehan, P.A.  
The Perkins House  
118 North Gadsden Street  
Tallahassee, FL 32301

Bruce May, Esquire  
Holland & Knight LLP  
P. O. Drawer 810  
Tallahassee, FL 32302-0810

By:   
Jack Leon, Esquire  
Fla. Bar No. 230197



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# **EXHIBIT D**

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The undersigned counsel acknowledge and represent that they have actual authority to enter into this Agreement on behalf of their respective clients.

11. Modifications.

This Agreement may be modified only in writing and only upon the mutual consent of the Parties to the modification.

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Dated this \_\_\_\_\_ day of April 2004.

\_\_\_\_\_  
Counsel for [insert company's name]

\_\_\_\_\_  
Counsel for Florida Power & Light Company

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**APPENDIX A**

**NON-DISCLOSURE ACKNOWLEDGEMENT**

I certify my understanding that the Confidential Information is provided to me pursuant to the terms and restrictions of the Confidentiality Agreement in Florida Public Service Commission Docket No. 040206-EI, Florida Power & Light Company's Petition to Determine Need for Turkey Point Unit 5 Electrical Power Plant, and that I have been given a copy of the Confidentiality Agreement and have read the Agreement and agree to be bound by it. I understand that the contents of the Confidential Information, and my notes, memoranda, or any other form of information regarding or derived from the Confidential Information, shall not be disclosed to anyone other than in accordance with the Agreement and shall be used only for the purpose of the proceeding in Florida Public Service Commission Docket No. 040206-EI. Provided, however, if the information contained in the Confidential Information is publicly available or is obtained from the independent sources, the understanding stated herein shall not apply unless an exception or exemption exists or is granted.

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition to Determine Need	§	DOCKET NO. 040206-EI
for Turkey Point Unit 5 Electrical	§	
Power Plant by Florida Power and	§	
Light Company	§	
<hr/>		
	§	

**AFFIDAVIT**

State of Texas           §  
                                  §  
County of Bexar       §

BEFORE ME, the undersigned authority, this day personally appeared Buddy Myers, who, being first duly sworn, deposes and states:

1. My name is Buddy Myers. I am over eighteen (18) years of age and make this affidavit upon my personal knowledge.
2. I am a Management Committee Representative of Florida Lakes Power Partners, LLC ("FLPP"), a Delaware limited liability corporation, registered to do business in the State of Florida, comprised of Black & Veatch Corporation and Zachry Construction Corporation ("BVZ"), which sells engineering, procurement and construction services.
3. Pursuant to an Engineering Procurement and Construction ("EPC") Purchase Agreement ("Agreement") currently being negotiated, Florida Power & Light Company ("FPL") may procure EPC services from FLPP.
4. The terms upon which FLPP agreed to supply EPC services, if ordered, are confidential according to the Agreement. FLPP considers the terms and conditions of the Agreement, including the favorable pricing extended to FPL under the Agreement to be highly sensitive commercial information, the disclosure of which would place BVZ in a detrimental position relative to current and future customers, including Calpine Energy Services, L.P. and its affiliates. Moreover, such disclosure would affect FLPP's or BVZ's willingness to offer Florida Power & Light favorable pricing and other terms and conditions in future negotiations.
5. Disclosure of the terms of the Agreement will be detrimental to FLPP's and BVZ's relationship with FPL and BVZ's other customers. FLPP's agreement to the terms in the Agreement were subject to many factors, including but not limited to manufacturing facility capacity, current and projected costs of materials and labor, and economic projections for the industry. To the extent the Agreement contains

favorable terms and conditions from the standpoint of FPL and provision of confidentiality, FLPP agreed to such terms and conditions based on FLPP's assessment of these factors during negotiations and because of FPL is one of FLPP's and BVZ's valued customers. If BVZ's other customers obtain this information, BVZ will be placed in an unfair bargaining position during future negotiations because the factors that existed during negotiations of the Agreement have changed.

6. Additionally, BVZ is very concerned that disclosure to third parties would allow BVZ's confidential, proprietary information to be disclosed to BVZ's immediate competitors. If BVZ's competitors obtain this information, BVZ will be placed in an unfair bargaining position during future negotiations with BVZ's customers.
7. The Agreement also contains proprietary technical information. For the same reasons as previously stated, disclosure of this information to third parties, especially competitors, will cause serious damage to FLPP's and BVZ's business.

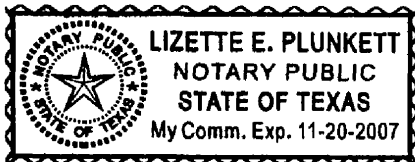
Buddy Myers  
Buddy Myers

Before me, the undersigned authority, appeared Buddy Myers, who is personally known to me, or has produced \_\_\_\_\_ as identification, on May 5, 2004.

Lizette E. Plunkett

Notary Public  
State of Texas  
County of Bexar

Printed name and commission number:



Lizette E. Plunkett  
11-20-2007

My commission expires on November 20, 2004

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition to Determine Need )  
for Turkey Point Unit 5 Electrical ) DOCKET NO. 040206-EI  
Power Plant by Florida Power and )  
Light Company )  
\_\_\_\_\_ )

**AFFIDAVIT**

State of MO )  
 )  
County of St. Louis )

BEFORE ME, the undersigned authority, this day personally appeared Timothy S. Peterson, who, being first duly sworn, deposes and states:

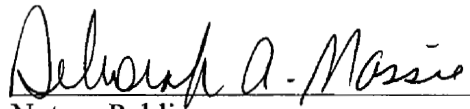
1. My name is Timothy S. Peterson. I am over eighteen (18) years of age and make this affidavit upon my personal knowledge.
2. I am Vice President - Operations of Nooter/Eriksen, Inc. ("Nooter"), which sells large power plant equipment such as heat recovery steam generators ("HRSGs").
3. Pursuant to a Heat Recovery Steam Generator Purchase Agreement ("Agreement"), Florida Power & Light Company ("FPL") has procured HRSGs from Nooter.
4. The terms upon which Nooter agreed to supply these HRSGs, if ordered, are confidential according to the Agreement. Nooter considers the terms and conditions of the Agreement, including the pricing extended to FPL under the Agreement to be highly sensitive commercial information, the disclosure of which would place Nooter in a detrimental position relative to current and future customers, including Calpine Energy Services, L.P. and its affiliates. Moreover, such disclosure may affect Nooter's willingness to offer Florida Power & Light similar pricing and other terms and conditions in future negotiations.
5. Disclosure of the terms of the Agreement will be detrimental to Nooter's relationship with FPL and Nooter's other customers. Nooter's agreement to the terms in the Agreement was subject to many factors, including but not limited to manufacturing facility capacity, current and projected costs of materials and labor, and economic projections for the industry. To the extent the Agreement contains favorable terms and conditions from the standpoint of FPL and provision of confidentiality, Nooter agreed to such terms and conditions based on Nooter's assessment of these factors during negotiations and because of FPL is one of Nooter's valued customers. If Nooter's other customers obtain this information, Nooter will be placed in an unfair

bargaining position during future negotiations because the factors that existed during negotiations of the Agreement will have changed.

6. Additionally, Nooter is very concerned that disclosure to third parties would allow Nooter's confidential, proprietary information to be disclosed to Nooter's immediate competitors. If Nooter's competitors obtain this information, Nooter will be placed in an unfair bargaining position during future negotiations with Nooter's customers.
7. The Agreement also contains proprietary technical information. For the same reasons as previously stated, disclosure of this information to third parties, especially competitors, will cause serious damage to Nooter's business.

  
\_\_\_\_\_  
Timothy S. Peterson

Before me, the undersigned authority, appeared Timothy S. Peterson, who is personally known to me, on May 5, 2004.

  
\_\_\_\_\_  
Notary Public  
State of MISSOURI



Printed name and commission number:

DEBORAH A. MASSIE  
\_\_\_\_\_

My commission expires on 6/22, 07.



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# **EXHIBIT E**

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

**AFFIDAVIT**

State of Florida                    )  
  )  
County of Palm Beach            )

BEFORE ME, the undersigned authority, this day personally appeared David N. Hicks, who, being first duly sworn, deposes and states:

I am employed by Florida Power & Light Company (“FPL”) as Director of Project Development. I am a resident of the State of Florida, am over eighteen (18) years of age and make this affidavit upon my personal knowledge.

Numerous discovery requests by Calpine seek highly commercially sensitive and confidential proprietary business information, including information that contains or constitutes FPL trade secrets, is proprietary and confidential to FPL and/or third parties, and/or is subject to obligations of non-disclosure to third-party vendors. To the extent FPL is required to disclose highly sensitive, proprietary, confidential information and/or contract terms in response to Calpine’s First Request for Production of Documents, Request Nos. 10-14, 20, 30, 33, 35-38, 41-42, 45-47, 49-55, 58-60, 62-63 and 66, FPL’s competitive business interests and ability to contract on favorable terms will be irreparably harmed to the detriment of FPL’s customers.

To the extent Calpine’s discovery requests referenced above implicate FPL’s contracts with third-party vendors, FPL has obligations to third parties not to disclose their contractual data. Such third-party vendors have required FPL to sign non-disclosure agreements regarding the negotiations and/or the terms and conditions of the contracts, or have included non-disclosure provisions in the contractual agreements themselves. Consistent with its obligations under those agreements, FPL contacted each vendor/counterparty indicating that Calpine has become an intervenor in this proceeding and notifying the counterparties that Calpine is seeking discovery of FPL’s negotiations and contracts with its existing and prospective vendors, including

information that is contractually deemed to be confidential, proprietary, commercially sensitive information, and subject to obligations of non-disclosure. FPL asked the vendors whether they would consent to FPL providing Calpine or any of its agents or representatives access to these documents subject to confidentiality agreement. Each of the vendors indicated that it would not consent to disclosure.


FPL's relationships with its third-party vendors will be irreparably harmed if FPL is required to disclose sensitive data related to contracts and negotiations with its major equipment and services vendors. These vendors indicated that such disclosure of their data to Calpine would affect their willingness to offer Florida Power & Light favorable pricing and other terms and conditions in future negotiations. In addition, these vendors have indicated that the disclosure of confidential contractual data will harm their competitive business interests.

In addition to equipment and services prices from third-party vendors, Calpine's discovery requests would require FPL to disclose a portfolio of tools and techniques used to develop power plant design and cost estimates that are not currently known outside of FPL. These tools have allowed FPL to design and operate highly efficient and reliable combustion-turbine based generating units, the success of which are recognized throughout the industry. These tools are so sensitive that, within FPL, access to project development and design information is restricted as to a very limited population of employees with only a definite need to know. Prior to becoming privileged to use and review these tools and techniques, employees are required to sign a confidentiality agreement restricting the use and dissemination of this information. The purpose of such confidentiality agreement is to prevent such cost estimating and design information from being disclosed to FPL's competitors, such as Calpine.

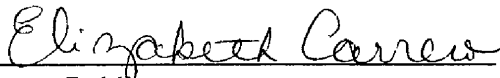
FPL's customers have greatly benefited from this highly sensitive confidential information. It has allowed FPL's combined cycle units to achieve unsurpassed performance in the industry. Disclosure of this competitively sensitive, confidential proprietary information

under any circumstances would deprive FPL's customers from their position of being the unique beneficiaries of these tools. Moreover, it would deprive FPL of its commercially sensitive and valuable tools and techniques without any compensation from its competitors.


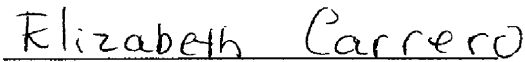
FPL's underlying cost information is confidential and highly sensitive as it relates to Calpine, a direct competitor. FPL is willing to comment on the status of contracts for equipment and services as it relates to the proposed Turkey Point Unit 5, and it has thoroughly described how it arrived at its cost estimate for Turkey Point Unit 5. Providing more detailed information would serve Calpine's competitive interests, but would operate to the detriment of FPL and its customers, as well as the vendors with whom FPL contracts.

  
\_\_\_\_\_  
David N. Hicks

Before me, the undersigned authority, appeared David N. Hicks, who is personally known to me, or has produced \_\_\_\_\_ as identification, on May 5, 2004.

  
\_\_\_\_\_  
Notary Public  
State of Florida

Printed name and commission number:

 Elizabeth Carrero  
My Commission **DD002041**  
Expires February 18, 2005  
  
\_\_\_\_\_

My commission expires on \_\_\_\_\_, \_\_\_\_\_.

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# **EXHIBIT F**

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Florida Power & Light Company's	)	Docket No. 040206-EI
Petition to Determine Need for	)	
Turkey Point Unit 5 Electrical Power Plant	)	
_____	)	Dated: _____, 2004
	)	

**CONFIDENTIALITY AGREEMENT**

This Confidentiality Agreement (the "Agreement") is entered into by and between Florida Power & Light Company ("FPL") and the undersigned parties (the "Parties" or a "Party") by and through their representative counsel. The Agreement shall govern the use of and access to all information that a Party deems confidential and produces in responding to discovery requests.

1. Applicability: The terms of this Agreement shall apply to:
  - (a) all information found to be confidential by the Florida Public Service Commission ("FPSC" or the "Commission") pursuant to Section 25-22.006, Florida Administrative Code (the "Confidentiality Rule"), and Section 366.093(3), Florida Statutes, and all other information, regardless of format, that a Party to this Agreement designates confidential, whether pursuant to this Agreement or the Confidentiality Rule, (collectively "Confidential Information").
  - (b) The term Highly Sensitive Information applies to a subset of Confidential Information and refers to information that a responding Party claims is of such a highly sensitive nature that allowing a Party to make copies of or notes regarding such material or providing access to a Party or its employees would expose the responding Party, or a person or entity to which the responding Party owes a duty

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to protect the confidentiality of such materials, to an unreasonable risk of harm.

2. Reviewing Party:

A party to FPSC Docket No. 040206-EI is a "Reviewing Party" to the extent that such party receives or is provided access to material pursuant to this Agreement.

3. Obligation to Act in Good Faith:

- (a) By signing this Agreement, no Party accepts the validity of, or waives the right to contest a claim of confidentiality on any grounds.
- (b) In the event that a Reviewing Party wishes to disclose Confidential Information to any person to whom disclosure may not be authorized by this Confidentiality Agreement, or wishes to have changed the designation of certain information or material as protected by alleging, for example, that such information or material has entered the public domain, such Reviewing Party shall first file and serve on the Party asserting confidentiality written notice of such proposed disclosure or request for change in designation, identifying with particularity each of the protected materials with respect to which such a disclosure or change in designation is proposed, the nature of such proposed disclosure or change in designation, and the basis therefor.
- (c) The Parties agree to attempt to resolve any issues on an informal basis before resorting to the provisions and procedures of the Confidentiality Rule. All Parties agree to act reasonably and in good faith in claiming or questioning the claim of confidentiality of information provided pursuant to this Agreement.
- (d) If the Parties are unable to informally resolve the matter, the Party asserting the confidentiality of information or the particular designation of confidentiality shall

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promptly seek a ruling from the FPSC. The Party asserting the information to be non-confidential shall preserve the confidentiality of the information as provided in this Agreement pending resolution of the matter by the FPSC or any subsequent reviewing or appellate body or authority.

4. Procedure for Producing Confidential Information:

- (a) Any Party producing materials, including but not limited to documents or records stored or encoded on a computer disk or other similar electronic storage medium, in the above-referenced proceeding may designate that material or any portion of it as Confidential Information pursuant to this Agreement by clearly labeling, typing, or stamping on the face of the material "CONFIDENTIAL INFORMATION PURSUANT TO AGREEMENT IN FPSC DOCKET NO. 040206-EI" or words of similar import.
- (b) Any Party producing materials, including but not limited to documents or records stored or encoded on a computer disk or other similar electronic storage medium, in the above-referenced proceeding may designate that material or any portion of it Highly Sensitive Information pursuant to this Agreement by clearly labeling, typing, or stamping on the face of the material "HIGHLY SENSITIVE INFORMATION PURSUANT TO AGREEMENT IN FPSC DOCKET NO. 040206-EI."
- (c) Confidential Information shall not include any information or document contained in the public files of the FPSC, the Federal Energy Regulatory Commission, or any other federal or state agency unless an exception or exemption exists or is granted. Unless an exception or exemption exists or is granted, Confidential



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Information also shall not include documents or information which at the time of or prior to disclosure in these proceedings is or was public knowledge or which becomes public knowledge other than through disclosure in violation of this Agreement.

5. Procedures applicable to Review of Confidential Information:

- (a) Except as otherwise provided in this Agreement, a Reviewing Party shall be permitted access to Confidential Information only through its authorized "Reviewing Representatives." "Reviewing Representatives" of a Reviewing Party may include its counsel of record in Docket No. 040206-EI and associated attorneys, paralegals, economists, statisticians, consultants, expert witnesses, or other persons employed or retained by the Reviewing Party and directly engaged in these proceedings. The total number of Reviewing Representatives who may be designated by a Party to have access to the Confidential Information shall not exceed ten (10) without the express written permission of the Party providing the Confidential Information.
- (b) Each Reviewing Representative who inspects the Confidential Information shall, before such inspection, agree in writing to the following Acknowledgement, and shall provide a copy of a signed Acknowledgement in the form of that attached to this Agreement to counsel for the Party asserting confidentiality:

"I certify my understanding that the Confidential Information is provided to me pursuant to the terms and restrictions of the Confidentiality Agreement in Florida Public Service Commission Docket No. 040206-EI, Florida Power & Light Company's Petition to Determine Need for Turkey Point Unit 5 Electrical Power Plant (the "Agreement"), and that I have been given a copy of the Agreement and have read the Agreement and agree to be bound by it. I understand that the contents of the Confidential Information,

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and my notes, memoranda, or any other form of information regarding or derived from the Confidential Information, shall not be disclosed to anyone other than in accordance with the Agreement and shall be used only for the purpose of the proceeding in Florida Public Service Commission Docket No. 040206-EI. Provided, however, if the information contained in the Confidential Information is publicly available or is obtained from the independent sources, the understanding stated herein shall not apply unless an exception or exemption exists or is granted.”

- (c) Except as otherwise provided in this Agreement, any Reviewing Representative may disclose Confidential Information to any other Reviewing Representative, provided that a copy of the Acknowledgement appended to this Agreement as Appendix A signed by the Reviewing Representative is provided to counsel for the Party asserting confidentiality before any such disclosure.
- (d) In the event that any Reviewing Representative to whom such Confidential Information is disclosed ceases to be engaged in this proceeding, access to such materials by such person shall be terminated. Any person who has agreed to the Acknowledgement in Appendix A shall continue to be bound by the provisions of this Agreement, even if no longer so engaged.
- (e) Except as otherwise provided in this Agreement, Confidential Information shall be made available for inspection by Reviewing Representatives at a location specified by the Party declaring such materials to be confidential between the hours of 9:30 a.m. and 5:00 p.m., Monday through Friday (except holidays). The materials may be reviewed only during the "reviewing period," which period shall commence upon signing of this Agreement, and continue until conclusion of these proceedings. As used in this paragraph, "conclusion of these proceedings" refers to the exhaustion of available appeals, or the running of the time for the making of

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such appeals, as provided by applicable law.

- (f) Except as otherwise provided in this Agreement, Reviewing Representatives may take handwritten notes regarding the Confidential Information made available for inspection pursuant to paragraph 5(e), and, after such inspection, may designate materials to be copied. Only one copy of the materials designated shall be reproduced by the Party making such materials available for inspection. A Party may reproduce Confidential Information only to the extent necessary to provide a copy to Reviewing Representatives who have executed the Acknowledgement appended to this Agreement as Appendix A. Each Party will maintain a copy control log.

6. Special Procedures Applicable to Review of Highly Sensitive Information:

- (a) No copies shall be made of any Highly Sensitive Information and no notes shall be made regarding Highly Sensitive Information except to the extent that such information is necessary to replicate a Party's analyses of non-Party competing generation supply proposals and the Reviewing Party demonstrates that it has the intention and capability to do so; Highly Sensitive Information shall be made available for inspection only by the Reviewing Representatives of the Reviewing Parties; provided, however, that, for purposes of access to Highly Sensitive Information, "Reviewing Representatives" of a Reviewing Party may include its counsel of record in Docket No. 040206-EI and associated attorneys, paralegals, economists, statisticians, consultants, and expert witnesses retained by the Reviewing Party and directly engaged in these proceedings, except to the extent that the duties, responsibilities, or assignments of such individuals involve them

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in any aspect of generation-related planning or management, including, but not limited to, the development, construction, operation or maintenance of electric generation facilities, the purchase, sale, or marketing of equipment, materials or labor associated with the development, construction, or operation of electric generation facilities, the purchase, sale, or marketing of electric energy or capacity, the development, construction, operation, or maintenance of electric transmission facilities that facilitate the flow of electric capacity or energy to or from electric generation facilities, or the development construction, or operation of facilities that interconnect electric generation facilities to gas pipelines. Further, for purposes of access to Highly Sensitive Information, Reviewing Representatives may not include persons employed by the Reviewing Party or its affiliates. The total number of Reviewing Representatives who may be designated by a Party to have access to the Highly Sensitive Information shall not exceed two (2) without the express written permission of the Party providing the Highly Sensitive Information.

- (b) If the Party asserting confidentiality believes that further protections should be afforded with respect to the manner in which, or the Reviewing Representatives to which, such materials are disclosed, such materials may be made available for inspection by counsel for the Reviewing Party only, pending a determination of the manner in which, and the Reviewing Representatives to which, such materials will be disclosed pursuant to this Agreement, which determination shall be made on a case-by-case basis, depending on the level of protection that may be necessary to protect the responding Party, and any other person or entity to which

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the responding Party owes a duty to protect the confidentiality of such materials, from any unreasonable risk of harm that may result from disclosure of such information.

- (c) In the event the Parties are unable to agree on the manner in which, and the Reviewing Representatives to which, such materials will be disclosed, the Party asserting confidentiality reserves its right to seek from the Commission a protective order providing the level of protection for the Highly Sensitive Information that the Party asserting confidentiality believes is required.

7. Protection of Confidential Information in General:

- (a) The Confidential Information provided or made available by a Party pursuant to this Agreement shall remain the property of the Party who provided it.
- (b) All Confidential Information shall be made available to the Reviewing Parties and their Reviewing Representatives solely for the purpose of the Party's participation in Docket No. 040206-EI. Confidential Information or access to Confidential Information may not be used in furtherance of any other purpose, including, without limitation, (i) any other pending or potential proceeding involving any claim, complaint, or other grievance of whatever nature, or (ii) any business endeavor or competitive purpose of whatever nature.
- (c) The Confidential Information, as well as the Reviewing Party's notes, memoranda, or any other information regarding, or derived from the Confidential Information, are to be treated as confidential by the Reviewing Party and shall not be disclosed or used by the Reviewing Party except as permitted and provided in this Agreement. Information derived from or describing the Confidential

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Information shall not be placed in the public or general files of the Reviewing Party except in accordance with provisions of this Agreement. A Reviewing Party must take all reasonable precautions to ensure that Confidential Information, including handwritten notes and analyses made from protected materials, are not viewed or taken by any person other than a Reviewing Representative of the Party.

8. Terms and Termination:

- (a) This Agreement shall be effective from the date it is executed by the Parties until all Confidential Information has been destroyed by the Party to whom it is provided, or returned to the Party who provided it, or as to any information for which a determination of confidential status has been sought, until the FPSC has made a final adjudication as to the confidential status of the information.
- (b) Except for information for which the FPSC has issued a final order holding that the information is not granted confidential status, each Party's obligation not to disclose Confidential Information continues unless or until the information is otherwise publicly disclosed in a manner not in violation of this Agreement and the information is not otherwise protected. The continuing obligation not to disclose of each Party and each person who has been granted access to Confidential Information under the terms of this Agreement, shall survive the expiration of this Agreement.
- (c) All Confidential Information as well as the Reviewing Party's notes, memoranda, or any other information regarding, or derived from the Confidential Information, shall be returned to the Party who provided or it shall be certified to that Party that

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it has been destroyed no later than 45 days after the date the FPSC issues its final decision or order in this proceeding, unless any decision of the FPSC in Docket No. 040602-EI is appealed, in which case the Agreement shall continue until all appellate review is completed. At the end of the term of this Agreement, or before, each Party shall either return all Confidential Information as well as the Reviewing Party's notes, memoranda, or any other information regarding, or derived from the Confidential Information, remaining in its possession to the Party from whom it was obtained or, alternatively, certify in writing to said Party that all Confidential Information has been destroyed.

9. Remedies.

Each Party agrees that: (i) divulgence or unauthorized use of Confidential Information could damage the owner of the information; (ii) the amount of resulting damages could be difficult to ascertain; (iii) the owner of the information may not reasonably or adequately be compensated for the loss of such information in damages alone; and (iv) the owner of the information shall be entitled to injunctive or other equitable relief to prevent or remedy a breach of this Agreement or any part of it. In any action to enforce the provisions of this Agreement, the prevailing Party shall be entitled to any and all costs and attorneys' fees incurred in that action. Furthermore, nothing herein is intended to restrict any remedies available to the owner of Confidential Information for the unauthorized disclosure, dissemination or release of proprietary information by any of the Parties to this Agreement. This Agreement shall be interpreted, governed, and construed under the laws of the State of Florida.

10. Authority.

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The undersigned counsel acknowledge and represent that they have actual authority to enter into this Agreement on behalf of their respective clients.

11. Modifications.

This Agreement may be modified only in writing and only upon the mutual consent of the Parties to the modification.



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Dated this \_\_\_\_\_ day of April 2004.

\_\_\_\_\_  
Counsel for [insert company's name]

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Counsel for Florida Power & Light Company

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**APPENDIX A**

**NON-DISCLOSURE ACKNOWLEDGEMENT**

I certify my understanding that the Confidential Information is provided to me pursuant to the terms and restrictions of the Confidentiality Agreement in Florida Public Service Commission Docket No. 040206-EI, Florida Power & Light Company's Petition to Determine Need for Turkey Point Unit 5 Electrical Power Plant, and that I have been given a copy of the Confidentiality Agreement and have read the Agreement and agree to be bound by it. I understand that the contents of the Confidential Information, and my notes, memoranda, or any other form of information regarding or derived from the Confidential Information, shall not be disclosed to anyone other than in accordance with the Agreement and shall be used only for the purpose of the proceeding in Florida Public Service Commission Docket No. 040206-EI. Provided, however, if the information contained in the Confidential Information is publicly available or is obtained from the independent sources, the understanding stated herein shall not apply unless an exception or exemption exists or is granted.

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