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October 26, 2004

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VIA HAND DELIVERY

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

Re: Fuel and Purchased Power Cost Recovery Clause and Generating
Performance Incentive Factor – Docket No. 040001-EI

Dear Ms. Bayó:

Enclosed for filing on behalf of Florida Power & Light Company (“FPL”) are an original and fifteen (15) copies of FPL’s Motion for Protective Order Regarding Thomas K. Churbugk’s First Request for Production of Documents (Nos. 1-76), First Set of Interrogatories (Nos. 1-57), and Requests for Admission (Nos. 1-49) in the above-referenced docket.

Also included in this submittal is a computer diskette containing FPL’s Motion in Word format. Please contact me if you or your Staff have any questions regarding this filing.

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OTH Copy to
Blanca Bayó

Sincerely,

Natalie F. Smith

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased Power)
Recovery Clause and Generating)
Performance Incentive Factor)
_____)

DOCKET NO. 040001-EI

Filed: October 26, 2004

**FLORIDA POWER & LIGHT COMPANY'S MOTION FOR
PROTECTIVE ORDER REGARDING THOMAS K. CHURBUCK'S FIRST
REQUEST FOR PRODUCTION OF DOCUMENTS (NOS. 1-76), FIRST SET OF
INTERROGATORIES (NOS. 1-57) AND FIRST REQUEST FOR ADMISSIONS
(NOS. 1-49)**

Pursuant to Section 366.093, Florida Statutes,¹ Florida Rules of Civil Procedure Rule 1.280(c) and Rules 25-22.006(6), 28-106.204 and 28-106.206, Florida Administrative Code,² Florida Power & Light Company ("FPL") moves the Florida Public Service Commission (the "PSC" or the "Commission") for a protective order prohibiting discovery by Thomas K. Churbuck ("Mr. Churbuck," "Calpine Subsidiary Officer," or "Calpine Proxy Interest") of certain confidential, proprietary business information and trade secrets of FPL and third-party power producers. FPL further respectfully requests that the Prehearing Officer expedite consideration of this Motion.

In support, FPL states:

Background

1. On September 9, 2004, in accordance with the Order Establishing Procedure, Order No. PSC-04-0161-PCO-EI (issued Feb. 17, 2004), FPL pre-filed direct testimony in the above-referenced docket in support of its petition for levelized fuel and

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

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

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capacity cost recovery. As part of this filing, FPL requested approval for purposes of cost recovery through the capacity cost recovery clause and the fuel and purchased power cost recovery clause of the UPS Replacement Contracts with subsidiaries of the Southern Company representing 955 MW of capacity. As expressed in the testimony of FPL Witness Thomas L. Hartman, the purpose of the Replacement Contracts is to allow FPL to cost-effectively continue many of the benefits provided by the current supply arrangements under the Unit Power Sales Agreement (the “UPS Agreement”) between FPL and subsidiaries of the Southern Company that is set to expire May 31, 2010.

2. On September 17, 2004, Jon C. Moyle, Jr., filed a petition to intervene on behalf of Power Systems Mfg., LLC (“Calpine Subsidiary”), which is attached as Exhibit A to this Motion. The petition directs that all pleadings, orders and correspondence be directed to two representatives of Calpine Subsidiary: Mr. Moyle and Joseph Regnery. *Id.* at ¶2. It gives Mr. Regnery’s e-mail address as JRegnery@calpine.com. *Id.*— Mr. Regnery, of course, should be well known to this Commission as a representative of Calpine Corporation (“Calpine”) in several past proceedings before the Commission, including most recently in Docket No. 040206-EI., FPL’s Turkey Point Unit 5 need determination proceeding (the “Turkey Point Unit 5 Need Proceeding”).

3. On September 21, 2004, Mr. Moyle filed a second petition to intervene, this one on behalf of Calpine Subsidiary Officer, which is attached as Exhibit B to this Motion. Again, it directs that all pleadings, orders and correspondence be directed to Mr. Moyle and Mr. Regnery.

4. On September 27, 2004, FPL filed a response in opposition to the proxy interventions of Calpine Subsidiary and Calpine Subsidiary Officer (“September 27

Response”), which is attached as Exhibit C to this Motion and the arguments from which are incorporated herein by reference. FPL’s basic position was that the petitions were intended to gain Calpine access to this proceeding by proxy, so that it could seek information about FPL’s plans to purchase power from the Southern Company and, if possible, disrupt those plans.³ FPL argued that Calpine should not be allowed by pretext to gain entrance to this proceeding, either via a subsidiary that is the tenant of a customer of record or via a residential customer of record who happens to be an officer of that subsidiary. In other words, Calpine should not be permitted to do indirectly through proxy interventions what it obviously has no standing to do directly.

5. By Order No. PSC-04-1018-PCO-EI, issued October 19, 2004, the Commission granted Mr. Churbuck party standing in this proceeding based on his position as an FPL customer of record. Power Systems’ petition to intervene was denied because its substantial interests would not be affected by this proceeding.

Argument

6. On September 27, 2004, Calpine Subsidiary Officer, a non-party at that time, propounded on FPL his First Request for Production of Documents (Nos. 1-76), First Set of Interrogatories (Nos. 1-57) and First Request for Admissions (Nos. 1-49), attached as Exhibit D to this Motion. Despite the fact that Calpine’s Subsidiary Officer

³ In paragraph 4 of its response to the Churbuck and Power Systems Petitions to Intervene, FPL noted a number of “missing facts” from the Power Systems and Churbuck Petitions that showed their true motivation in intervening in this proceeding, including as follows:

- a. According to its website, Power Systems is “a Calpine Company.” ...
- b. Mr. Churbuck is the president of Power Systems. ...
- c. Mr. Regnery, one of the two representatives listed for both Power Systems and Mr. Churbuck, is an attorney for Santa Rosa Energy, LLC, a subsidiary of Calpine. As noted above, Mr. Regnery has appeared as a representative of Calpine in several prior Commission proceedings.

impermissibly served discovery as a non-party on FPL, FPL has agreed to respond to their interrogatories and requests for admission on or before October 26, 2004, and likewise to make available for inspection and review documents requested that are not subject to FPL's objections filed October 26, 2004, and this Motion.

7. However, FPL finds it necessary to seek a protective order with respect to certain of Calpine Subsidiary Officer's discovery requests. With respect to such requests, one cannot ignore that they are being made by the president of a Calpine subsidiary on behalf of Calpine, a merchant power provider, in an obvious, and calculated effort to advance Calpine's competitive interests to the detriment of FPL's customers. FPL seeks protection to the extent Calpine Subsidiary Officer's requests seek highly 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-parties. 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.

8. Not surprisingly, Calpine Subsidiary Officer's first set of discovery is reminiscent of that served on FPL by Calpine during the Turkey Point Unit 5 Need Proceeding in Docket No. 040206-EI before Calpine withdrew from that proceeding. This discovery is consistent with Calpine's business strategy of intervening in regulatory proceedings to gain competitive intelligence and delay and disrupt the proceeding. For example, during the Turkey Point Unit 5 Need Proceeding, notwithstanding that it had no alternative to FPL's proposed unit that would be remotely cost-competitive, Calpine engaged in a protracted and punishing motion practice, the apparent purpose of which

was to delay and disrupt the proceeding to the point that FPL could not receive timely approvals for its proposed unit and thus there would be more attractive opportunities for Calpine to market wholesale power in Florida. Equally disturbing, Calpine propounded voluminous discovery to FPL and its vendors, and to other bidders who responded to FPL's RFP. This discovery sought highly confidential information. In many instances, the information Calpine sought was irrelevant to the purposes of the Turkey Point Unit 5 Need Proceeding, while in all instances the information would be extremely useful to Calpine in advancing its competitive interests in the wholesale power market. FPL, its vendors and the other bidders sought protective orders against this discovery. On May 21, 2004, the Commission entered Order No. PSC-04-0518-PCO-EI, protecting FPL against much of Calpine's discovery and putting strict limits on Calpine's access to and use of the rest.⁴

9. Here again Calpine, through Calpine Proxy Interest, has propounded on FPL a set of discovery designed to gain competitive intelligence that Calpine can use in the market. As a general matter, FPL asserts that many discovery requests by Calpine Proxy Interest for which FPL seeks an order prohibiting discovery are requests by Calpine Proxy Interest for information that is irrelevant to FPL's request for approval of the UPS Replacement Contracts. Instead of seeking information that is relevant to the issues in this proceeding, many of Calpine Proxy Interest's requests amount to nothing more than competitive intelligence gathering in the guise of discovery and the Commission should not allow it.

⁴ FPL also sought discovery from Calpine, all of which Calpine refused to answer, thus forcing FPL to move to compel responses. Calpine took a voluntary dismissal before the Commission ruled on FPL's motion to compel. Mr. Moyle was Calpine's counsel in the Turkey Point Unit 5 Need Proceeding.

10. There are two categories of confidential data with respect to which FPL seeks a protective order. First, numerous of Calpine Subsidiary Officer's discovery requests ask FPL to divulge competitively sensitive, confidential, proprietary business information related to information gained from offers and negotiations with third-party power suppliers or from FPL's continuous evaluation of the wholesale market for power to assess opportunities for its customers. As an example of the numerous discovery requests seeking information about FPL's discussions and negotiations with third-party power suppliers, Calpine Subsidiary Officer's First Set of Interrogatories No. 20 asks:

Identify what investigation or forecast, if any, FPL has done into market prices for purchased power during the 2010 to 2015 time frame and identify all documents relied upon in such investigation or forecast.

Calpine Subsidiary Officer's First Set of Interrogatories No. 25 asks:

Under the Scherer Contract, what is the fixed monthly capacity payment, variable O&M payment and startup payments referenced on page 4 of Mr. Hartman's testimony?

Request for Production No. 37 seeks:

Any and all documents which relate to any investigation of the wholesale market for power in the 2010 to 2015 time frame you conducted prior to entering into the PPAs with SCSi.

Request for Production No. 52 asks for:

Any and all documents regarding the firm gas transportation contracts "between SCSi⁵ and Southern Mutual [sic] Gas Company" by which the Harris and Franklin contracts are supplied firm gas transportation.

Request No. 76 seeks:

⁵ "SCSi" is defined as "Southern Company Services, Inc. and the entities it represented as agent under the PPAs (Gulf Power Company, Georgia Power Company and Southern Power Company)." See Thomas K. Churbuck's First Request for Production of Documents (Nos. 1-76) to Florida Power and Light Company, page 3, attached as Exhibit D.

Any and all documents provided to you by a corporate affiliate of SCSi or SCSi.

For purposes of this motion, FPL refers to competitively sensitive, confidential, proprietary business information related to FPL's offers and/or negotiations with third-party power providers or FPL's market assessment as "Power Market Data." Such information is proprietary and highly sensitive data both to FPL and to the third-party power suppliers. To the extent Calpine Subsidiary Officer seeks Power Market Data in its First Set of Interrogatories Nos. 9(c) and (d), 18-20, 25-26, 28-33, 41-43, 45, and 55 First Request for Admissions Nos. 30-35 and 38-41, and Request for Production of Documents, Request Nos. 1, 3-4, 6, 9, 11-13, 15-17, 21, 27, 37-38, 41, 43-52, 55-57, 59-63, 65-68, 70-72, 74, and 76, FPL requests the Commission to enter a protective order prohibiting discovery by Calpine Subsidiary Officer of such Power Market Data.

11. 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 that seek the disclosure of such information include:

Request for Production No. 38 solicits:

Any and all documents which relate to self-build options for power in the 2010 to 2015 time frame you considered prior to entering into the PPAs with SCSi.

Also, Request No. 67 requests:

Any and all documents Mr. Hartman provided to you regarding negotiating new purchase power agreements.

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 Commercial Data.” To the extent Calpine Subsidiary Officer seeks FPL Commercial Data in its First Set of Interrogatories Nos. 9(c) and (d), 18-20, 25-26, 28-33, 41-43, 45, and 55, First Request for Admissions Nos. 30-35 and 38-41, and Request for Production of Documents, Request Nos. 1, 3-4, 6, 9, 11-13, 15-17, 21, 27, 37-38, 41, 43-52, 55-57, 59-63, 65-68, 70-72, 74, and 76, FPL requests the Commission to enter a protective order prohibiting discovery by Calpine Subsidiary Officer on behalf of Calpine, a merchant power company, of such FPL Commercial Data.

Legal Standard

12. 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 Rule 1.280 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.

13. 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-04-0518-PCO-EI (issued May 21, 2004), 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-04-0518-PCO-EI, Docket No. 040206-EI (issued May 21, 2004); 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. 3rd DCA 1988); Eastern Cement Corp. v. Dep't of Env'tl 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.

Power Market Data

14. To the extent the discovery requests referenced in paragraph 10 above seek copies of information FPL has obtained through third-party offers and negotiations or through FPL's own continuous assessment of the wholesale power market, FPL seeks absolute protection from discovery pursuant to Rule 1.280(c)(1). Power Market Data includes highly commercially sensitive and confidential proprietary business information

for which FPL owes an obligation of non-disclosure to third party power suppliers. Power Market Data is confidential, proprietary business information both to FPL and the third party power suppliers within the meaning of Section 366.093(3)(d) and (e). Certain Power Market Data consists of or contains trade secret information within the meaning of Section 812.081(c).⁶ Such trade secret data for which FPL seeks protection includes, but is not limited to, information about capacity payments, variable operation and maintenance payments and associated fuel costs, startup payments and escalation rates. The disclosure of this information would cause irreparable harm to FPL's and the third-party power supplier's competitive business interests and would impair FPL's ability to contract on favorable terms, to the detriment of FPL's customers.

15. Were FPL required to disclose Power Market Data to any outside entity and especially Calpine, the true party in interest behind this discovery and a wholesale market competitor, the prices disclosed would become the starting point for these power suppliers in their next negotiations and would send a number of signals that could disrupt

⁶ 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.

the operation of the wholesale market. Such disclosure would harm FPL and its customers because entities would be far less willing to enter into negotiations or make an offer to FPL on favorable terms in the future because they would fear that the price and information they provide would become public in discovery, such as this. In the future, FPL would only get the price that third parties would be willing to make public, which would be a higher price than FPL may otherwise obtain. Therefore, the disclosure of Power Market Data could be severely detrimental to FPL's customers.

16. Certain of the counterparties to negotiations and contracts 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. Consistent with its obligations under such agreements, FPL contacted the counterparties indicating that Calpine Subsidiary Officer has obtained leave to intervene in this proceeding and notifying the counterparties that Calpine Subsidiary Officer is seeking discovery of FPL's negotiations and contracts with its existing and prospective power suppliers, including information that is contractually deemed to be confidential, proprietary, commercially sensitive information, and subject to obligations of non-disclosure. FPL asked the power suppliers whether they would consent to FPL providing Calpine Subsidiary Officer or any of its agents or representatives access to these documents subject to confidentiality agreement. Each of the power suppliers that responded to FPL by the time this Motion is being filed indicated that they would not waive the non-disclosure provision with respect to allowing Calpine Subsidiary Officer access to such confidential information. See, e.g., Motion of Non-

Party Summit Energy Partners, LLC, for Protective Order, filed October 19, 2004, in Docket No. 040001-EI.

17. The disclosure of Power Market Data to Calpine Subsidiary Officer would seriously injure FPL, FPL's customers and FPL's relationships with power suppliers. Disclosure of the terms and conditions, including pricing, that power suppliers have provided or offered to provide FPL would impair the power suppliers' own competitive positions in future negotiations with Calpine, the true party in interest behind Calpine Subsidiary Officer. Moreover, the disclosure of such terms and pricing will have a chilling effect on suppliers' 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 Thomas L. Hartman, FPL's Director of Business Management, Resource Assessment and Planning.] Calpine Subsidiary Officer's requests are a shameless attempt on Calpine's part to seek to gain market advantage at the expense of FPL, FPL's customers and third-party power suppliers, and the Commission should not allow it.

18. Power Market Data contains competitively sensitive information that FPL should not be required to produce to anyone, but especially not to competitors such as Calpine, which is the real party in interest in this docket and which participates in many of the same power markets as these same suppliers. FPL asserts that no level of protection is great enough to permit Calpine Subsidiary Officer or any of his representatives, who are Calpine attorneys, access to Power Market Data. 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 enter into negotiations on favorable terms far outweighs Calpine Subsidiary Officer's purported need for this level

of detailed information in this proceeding. FPL does not intend to produce Power Market Data in response to Calpine Subsidiary Officer's competitive "fishing expedition" absent a direct order from the Commission.

19. Having demonstrated the confidential nature of the Power Market Data and shown good cause for its protection, the burden now shifts to Calpine Subsidiary Officer to demonstrate the reasonable necessity for this information as it relates to this proceeding. Without a significant showing by Calpine Subsidiary Officer that detailed, commercially sensitive Power Market Data that constitutes confidential, proprietary business information is needed to litigate the issues in these docket proceedings, no access to these documents should be permitted. The harm to FPL, its customers and third-party power suppliers that would flow from such disclosure of this confidential data to Calpine, the true party in interest behind the discovery and a direct competitor of such power suppliers, far outweighs any benefit to Calpine Subsidiary Officer's challenge to the reasonableness and prudence of the UPS Replacement Contracts.

FPL Commercial Data

20. The second category of information for which FPL seeks a protective order prohibiting discovery by Calpine, as indicated in paragraph 11 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 trade secret information FPL would not willingly disclose to any outside entity, including Calpine Subsidiary Officer, under any circumstances, regardless of the protections offered. 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.

21. As further explained in the supporting affidavit of Thomas L. Hartman, FPL Commercial Data includes information reflecting fuel forecasts, load forecasts, expected dispatch schedules of the facilities in FPL's fleet, dispatch strategies related to fuel and maintenance. FPL considers this information to be highly confidential. The disclosure of FPL's commercial data could seriously injure FPL and its customers because it would send signals to the market that may lead to FPL being unable to obtain the favorable pricing and terms that it otherwise could. It would impair FPL's competitive positions in future negotiations and would have a chilling effect on suppliers' willingness to offer FPL favorable terms and pricing in the future, to the detriment of FPL's customers.

22. 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 to the detriment of FPL's customers. The Commission should not allow Calpine Subsidiary Officer to use its intervention in these proceedings as a subterfuge for gaining commercial intelligence for Calpine to use to gain advantage over its competitors in Florida and throughout the world.

23. 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 substantial 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, the true party in interest behind the president of its wholly owned subsidiary and a direct competitor of FPL, far outweighs any benefit to Calpine's challenge to the UPS Replacement Contracts.

Conclusion

24. FPL indicated its intent to file this Motion to counsel for Calpine Subsidiary Officer to protect itself against competitive intelligence gathering under the guise of discovery. Calpine's representative acting for Mr. Churbuck has refused to withdraw the offending discovery. The undersigned counsel represents, that this motion will be opposed by counsel for Calpine Subsidiary Officer. Subject to Calpine Subsidiary Officer's concurrence, FPL is amenable to having this Motion expedited to achieve speedy resolution of the issues.

25. Calpine Subsidiary Officer has noticed the deposition of FPL Witness Thomas Hartman to take place on Thursday, October 28, 2004, at 2 p.m. and FPL expects Calpine Subsidiary Officer to notice the deposition of FPL employee Terry Morrison to take place on Friday, October 29, 2004, at 1 p.m. To the extent counsel for Calpine Subsidiary Officer asks questions during these depositions that seek the same or similar information to that for which protection is sought in this Motion, FPL intends to object and, if necessary, will seek protection on the same grounds as those raised in this Motion.

WHEREFORE, for the foregoing reasons, FPL respectfully requests that the Commission enter a protective order prohibiting discovery by Calpine Subsidiary Officer

of Power Market Data and FPL Commercial Data as described above. FPL further respectfully requests that the Prehearing Officer expedite consideration of this Motion.

Respectfully submitted this 26th day of October, 2004.

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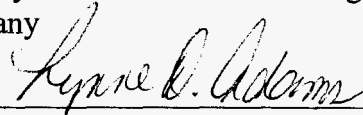
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Attorneys for Florida Power & Light
Company

Attorneys for Florida Power & Light
Company

By:

for



Natalie F. Smith

CERTIFICATE OF SERVICE
Docket No. 040001-EJ

I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Motion for Protective Order regarding Thomas K. Churbuck's First Request for Production of Documents (Nos. 1-76), First Set of Requests for Admission (Nos. 1-49) and First Set of Interrogatories (Nos. 1-57) has been furnished by hand delivery (*) or United States Mail this 26th day of October, 2004, to the following:

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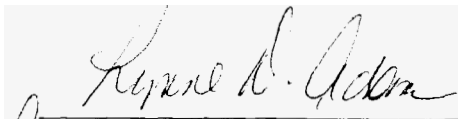

for Natalie F. Smith

EXHIBIT A

DOCUMENT NUMBER-DATE

11585 OCT 26 3

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and Purchased Power Cost)
Recovery Clause and Generating) DOCKET NO. 040001-EI
Performance Incentive Factor) Filed: September 17, 2004
_____)

POWER SYSTEMS MFG., LLC'S PETITION TO INTERVENE

Power Systems Mfg., LLC, ("Power Systems") pursuant to Chapter 120, Florida Statutes and Rules 25-22.039 and 28-106.201, Florida Administrative Code ("F.A.C."), hereby petitions to intervene in the above-styled docket. In summary, Power Systems is a consumer of electricity provided by Florida Power & Light Company ("FPL") and pays for the costs of the FPL electricity it uses, and petitions to intervene in order to protect its interests in having the Commission determine fair, just, and reasonable purchased power cost recovery charges to be charged by FPL, and in having the Commission take such other action to protect the interests of Power Systems and of all of FPL's customers as the Commission may deem appropriate. In further support of its Petition to Intervene, Power Systems states as follows:

1. The name and address of the Petitioner are:

Power Systems Mfg., LLC
1440 W. Indiantown Road, Suite 200
Jupiter, Florida 33458
(561) 354-1100

2. All pleadings, orders and correspondence should be directed to Petitioner's

representatives as follows:

Jon C. Moyle, Jr., Esq.
Bill Hollimon, Esq.
Moyle, Flanigan, Katz,
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(850) 681-3828 Telephone
(850) 681-8788 Facsimile
jmoylejr@moylelaw.com
bhollimon@moylelaw.com

With a copy to:
Joe Regnery, Esq.
Island Center
2701 North Rocky Point Drive, Suite 1200
Tampa, Florida 33607
JRegnery@calpine.com

3. The agency affected by this Petition to Intervene is:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

4. This proceeding is designed to address issues relating to practices of FPL in procuring purchased power from third parties, the practices of FPL in contracting for power, and how much of the costs of such purchased power contracted for by FPL may be allowed to recover from FPL consumers, including Power Systems. Power Systems learned, through inquiry of its representative, of FPL's efforts to include in this docket review of the certain purchased power agreements with Southern Company Services, Inc. ("SCSI") on or about September 13, 2004.

POWER SYSTEMS' SUBSTANTIAL INTERESTS

5. Power Systems is a consumer of electricity provided by FPL and pays for the costs of the FPL electricity it uses. Its business address is 1440 W. Indiantown Road, Suite 200, Jupiter, Florida 33458. The amount of money Power Systems pays for electricity on a monthly basis is the direct result of rates and charges of FPL. Power Systems has an agreement with its landlord whereby Power Systems pays, in addition to its rent, for the electricity it uses. Thus, the costs of that electricity and any increases thereto directly affect the amount paid by Power Systems.

6. The substantial interests of Power Systems are of sufficient immediacy to entitle it to participate in the proceeding and are the type of interests that the proceeding is designed to protect. To participate as a party in this proceeding, an intervener must demonstrate that its substantial interests will be affected by the proceeding. Specifically, the intervener must demonstrate that it will suffer a sufficiently immediate injury in fact that is of the type the proceeding is designed to protect. Ameristeel Corp. v. Clark, 691 So. 2d 473 (Fla. 1997); Agrico Chemical Co. v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2d DCA 1981), rev. denied, 415 So.2d1359 (Fla. 1982). As a consumer of electricity provided by FPL that pays for the costs of the FPL electricity it uses, Power Systems is subject to the rate impacts that will result from whatever decisions the Commission makes in this proceeding. To the extent that FPL's rates may – and will, if FPL's

claimed purchased power costs paid to certain third parties are approved for recovery through retail rates – be set at levels that are unfair, unjust, and unreasonable, Power Systems' interests will be immediately and adversely affected. As noted below, Power Systems alleges that: 1) the rates that FPL proposes to charge are unfair, unjust, unreasonable and excessive in that they include costs to be paid to SCSI that are unreasonably and imprudently excessive for Purchase Power Agreements¹; 2) that the prices to be paid to SCSI pursuant to its Purchase Power Agreements with FPL are due to the use of market power; and 3) the Purchase Power Agreements are not ripe for approval in this proceeding as the Agreements provide for the delivery of energy and capacity beginning on June 1, 2010, and, thus, any decision on the reasonableness and fairness of such Purchase Power Agreements should be deferred or determined in a separate, spin off docket as these Purchase Power Agreements represent a massive commitment of FPL resources. This proceeding is designed to protect persons who use and pay for electricity provided by FPL, such as Power Systems, against practices and charges that are unfair, unjust, and unreasonable.

DISPUTED ISSUES OF MATERIAL FACT

7. Disputed issues of material fact include, but are not limited to, the following:

- Issue 1: Do the Purchase Power Agreements between FPL and SCSI set forth pricing terms that are fair, just, reasonable and not excessive?
- Issue 2: Can it be determined that the pricing set forth in the Purchase Power Agreements between FPL and SCSI and its corporate affiliates are fair, just, reasonable, and not excessive when SCSI and its corporate affiliates have currently failed, by their own submission, one of the indicative tests used by the Federal Energy Regulatory Commission (“FERC”) for determining market power?
- Issue 3: Do the Purchase Power Agreements between FPL and SCSI account for a transmission loss factor, lack of dual fuel capability, or the

¹ The use of the term Purchase Power Agreements includes contracts between FPL and Southern Company Services, Inc. for output from Scherer Unit 3, Harris Unit 1 and Franklin Unit 1.

generation being located outside of the South Florida area, and if not, what are the appropriate accounting/price reductions that should be applied in evaluating these Purchase Power Agreements?

Issue 4: Did FPL actively and thoroughly investigate the market for purchased power or, in the alternative, self build options for power in the 2010 to 2015 time frame before entering into the Purchase Power Agreements with SCS?

Issue 5: Do the Purchase Power Agreements FPL executed with SCS represent the market price for purchased power during the 2010 to 2015 time frame?

Power Systems reserves all rights to raise additional issues of fact, law, and policy in accordance with the procedural requirements established for this proceeding.

ADDITIONAL ISSUES OF LAW AND FACT

8. Additionally, Power Systems believes that the following issues, which include issues of law and mixed issues of law and fact, should also be considered and decided in this proceeding:

Issue 6: What, if any, action should the Commission take with respect to FPL's Purchase Power Agreements with SCS?

Issue 7 Does the Commission have the statutory power to require FPL to conduct an open, impartial competitive procurement or bidding process for the purpose of procuring the most cost-effective purchased power for the 2010 to 2015 time frame represented by the Purchase Power Agreements FPL entered into with SCS?

Issue 8: If the answer to the preceding issue is affirmative, should the Commission require FPL to conduct an open, impartial competitive procurement or bidding process for the purpose of procuring the most cost-effective purchased power agreement or agreements for the 2010 to 2015 time frame?

Issue 9: Is it reasonable for the Purchase Power Agreements between SCSi and FPL to be approved for rate recovery purposes at this time, given that energy and capacity is not to be provided until June 1, 2010 at the earliest and the counterparty to the Purchase Power Agreements, SCSi, and its corporate affiliates have currently failed, by their own submission, one of the indicative tests used by the FERC for determining market power?

ULTIMATE FACTS THAT ENTITLE POWER SYSTEMS TO RELIEF

9. The ultimate facts that entitle Power Systems to relief are as follows.
 - a. Power Systems is a consumer of electricity provided by FPL, pays for the costs of the FPL electricity it uses, and is directly affected by FPL rates.
 - b. FPL did not sufficiently consider other options, including self-build options and other purchased power options before executing the Purchase Power Agreements with SCSi
 - c. The Purchase Power Agreements between FPL and SCSi were executed at or near a point in time when, by way of an admission contained in a filing made at the FERC, SCSi failed one of the indicative tests used by the FERC for determining market power and, if the Purchase Power Agreements are approved, would result in FPL's purchased power cost recovery charges being unfair, unjust, unreasonable, and excessive.
 - d. No immediate need exists to approve a Purchase Power Agreement between FPL and SCSi that does not provide for the delivery of purchased power until June 1, 2010.
 - e. FPL's costs for its Purchase Power Agreements with SCSi are not reasonable for cost recovery purposes and, to the contrary, are unreasonable, imprudent, and excessive.

STATUTES AND RULES THAT ENTITLE POWER SYSTEMS TO RELIEF

10. The applicable statutes and rules that entitle Power Systems to relief include, but are not limited to, Sections 120.569, 120.57 (1), 366.05 (1), 366.06 (1) & (2), and 366.07, Florida Statutes, and Rule 25-22.039 and Chapter 28-106, Florida Administrative Code.

11. The following statement explains how the facts alleged by Power Systems relate to the above-cited Rules and Statutes in compliance with Section 120.54 (5) (b) 4.f, Florida Statutes. Rules 25-22.039 and 28-106.205, F.A.C., provide that persons whose substantial interests are subject to determination in, or may be affected through, an agency proceeding are entitled to intervene in such proceeding. As a consumer of electricity provided by FPL that pays for the costs of the FPL electricity it uses, Power Systems' substantial interests are subject to determination in and will be affected through the Commission's decisions in this docket. The above-cited sections of Chapter 366 relate to the Commission's jurisdiction over FPL's rates, and FPL's practices affecting rates, and the Commission's statutory mandate to ensure that FPL's rates are fair, just, and reasonable. The facts alleged herein by Power Systems demonstrate (a) that the Commission's decisions herein will have a significant impact on FPL's purchased power cost recovery rates and charges, and (b) accordingly, that these statutes provide the basis for the relief requested by Power Systems herein.


For the reasons set forth herein, Power Systems is entitled to intervene herein. See In Re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor Docket No. 030001-EI, Order No. PSC-03-1258-PCO-EI, granting intervention to CSX Transportation; In Re: Review of Investor-Owned Elective Utilities Risk Management Policies and Procedures, Docket No. 011605-EI, Order No. PSC-02-0357-PCO-EI, granting intervention to Reliant Energy Power Generation, Inc.; In re: Review of Tampa Electric Company's 2004-2008 Waterborne Transportation Contract with TECO Transport and Associated Benchmark, Docket No. 031033-EI, Order No. PSC-04-0029-PCO-EI, granting intervention to residential electric customers.

RELIEF REQUESTED

WHEREFORE, Power Systems respectfully requests the Florida Public Service Commission to enter its order GRANTING this Petition to Intervene and authorizing Power Systems

to intervene in the proceeding with full party status, and requiring that all parties to this proceeding serve copies of all pleadings, notices, and other documents on Power Systems' representatives indicated in paragraphs 1 and 2 above.

Respectfully submitted this 17th day of September, 2004.



JON C. MOYLE, JR.
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WILLIAM H. HOLLIMON
Florida Bar No. 104868
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& SHEEHAN, P.A.
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jmoylejr@moylslaw.com
bhollimon@moylslaw.com

Attorneys for Power Systems Mfg, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by overnight mail to those listed below with an asterisk and the remainder by U.S. Mail without an asterisk this day the 17th day of September, 2004.

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James Beasley
Ausley & McMullen
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Tallahassee FL 32302

John T. English
George Bachman
Florida Public Utilities Company
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Florida Industrial Power Users Group
c/o John W. McWhirter, Jr.
McWhirter Reeves
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Vicki Kaufman
Joseph McGlothlin
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1164 Egret Circle South
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Bill Walker
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Gulf Power Company
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Pensacola FL 32520-0780

James McGee
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Norman H. Horton
Floyd Self
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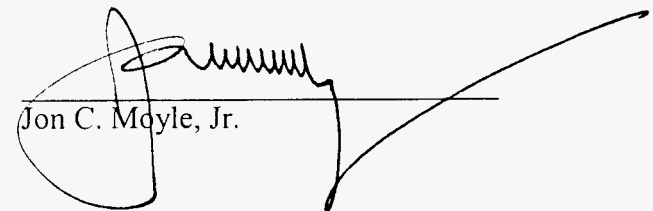
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Ms. Angela Llewellyn
Tampa Electric Company
Regulatory Affairs
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Ms. Bonnie E. Davis
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Tallahassee FL 32301-7740

John T. Butler
Steel Hector & Davis LLP
200 South Biscayne Blvd, Suite 4000
Miami FL 33131-2398



Jon C. Moyle, Jr.

EXHIBIT B

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and Purchased Power Cost)
Recovery Clause and Generating) DOCKET NO. 040001-EI
Performance Incentive Factor) Filed: September 21, 2004
_____)

THOMAS K. CHURBUCK'S PETITION TO INTERVENE

Thomas K. Churbuck, an individual, ("Churbuck") pursuant to Chapter 120, Florida Statutes and Rules 25-22.039 and 28-106.201, Florida Administrative Code ("F.A.C."), hereby petitions to intervene in the above-styled docket. In summary, Churbuck is a residential retail ratepayer of Florida Power & Light Company ("FPL"), pays for the costs of the FPL electricity he uses, and petitions to intervene in order to protect his interests in having the Commission determine fair, just, and reasonable purchased power cost recovery charges to be charged by FPL, and in having the Commission take such other action to protect the interests of Churbuck and of all of FPL's customers as the Commission may deem appropriate. In further support of his Petition to Intervene, Churbuck states as follows:

1. The name and address of the Petitioner are:

Thomas K. Churbuck
911 Tamarind Way
Boca Raton FL 33486
(561) 394-5225

2. All pleadings, orders and correspondence should be directed to Petitioner's

representatives as follows:

Jon C. Moyle, Jr., Esq.
Bill Hollimon, Esq.
Moyle, Flanigan, Katz,
Raymond & Sheehan, P.A.
118 N. Gadsden Street
Tallahassee, Florida 32301
(850) 681-3828 Telephone
(850) 681-8788 Facsimile
jmoylejr@moylelaw.com
bhollimon@moylelaw.com

Joe Regnery, Esq.
Island Center
2701 North Rocky Point Drive, Suite 1200
Tampa, Florida 33607

With a copy to:
Thomas K. Churbuck
911 Tamarind Way
Boca Raton FL 33486
(561) 394-5225

3. The agency affected by this Petition to Intervene is:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

4. This proceeding is designed to address issues relating to practices of FPL in procuring purchased power from third parties, the practices of FPL in contracting for power, and how much of the costs of such purchased power contracted for by FPL may be allowed to recover from FPL residential retail ratepayers, including Churbuck. Churbuck learned, through inquiry of his representative, of FPL's efforts to include in this docket review of the certain purchased power agreements with Southern Company Services, Inc. ("SCSI") on or about September 13, 2004.

CHURBUCK' SUBSTANTIAL INTERESTS

5. Churbuck is a residential ratepayer of electricity provided by FPL and pays for the costs of the FPL electricity he uses. His address is 911 Tamarind Way, Boca Raton, Florida 33486. The costs of that electricity and any increases thereto directly affect the amount paid by Churbuck to FPL on a monthly basis.

6. The substantial interests of Churbuck are of sufficient immediacy to entitle him to participate in the proceeding and are the type of interests that the proceeding is designed to protect. To participate as a party in this proceeding, an intervener must demonstrate that its substantial interests will be affected by the proceeding. Specifically, the intervener must demonstrate that it will suffer a sufficiently immediate injury in fact that is of the type the proceeding is designed to protect. Ameristeel Corp. v. Clark, 691 So. 2d 473 (Fla. 1997); Agrico Chemical Co. v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2d DCA 1981), rev. denied, 415 So.2d1359 (Fla. 1982). As a residential ratepayer of FPL who pays for the costs of the FPL electricity he uses, Churbuck is subject to the rate impacts that will result from whatever decisions the Commission makes in this proceeding. To the extent that FPL's rates may – and will, if FPL's claimed purchased power costs paid to certain third parties are approved for recovery through retail rates – be set at levels that are unfair, unjust, and unreasonable, Churbuck' interests will be immediately and

adversely affected. As noted below, Churbuck alleges that: 1) the rates that FPL proposes to charge are unfair, unjust, unreasonable and excessive in that they include costs to be paid to SCSI that are unreasonably and imprudently excessive for Purchase Power Agreements¹; 2) that the prices to be paid to SCSI pursuant to its Purchase Power Agreements with FPL are due to the use of market power; and 3) the Purchase Power Agreements are not ripe for approval in this proceeding as the Agreements provide for the delivery of energy and capacity beginning on June 1, 2010, and, thus, any decision on the reasonableness and fairness of such Purchase Power Agreements should be deferred or determined in a separate, spin off docket as these Purchase Power Agreements represent a massive commitment of FPL resources. This proceeding is designed to protect persons who use and pay for electricity provided by FPL, such as Churbuck, against practices and charges that are unfair, unjust, and unreasonable.

DISPUTED ISSUES OF MATERIAL FACT

7. Disputed issues of material fact include, but are not limited to, the following:
- Issue 1: **Do the Purchase Power Agreements between FPL and SCSI set forth pricing terms that are fair, just, reasonable and not excessive?**
- Issue 2: Can it be determined that the pricing set forth in the Purchase Power Agreements between FPL and SCSI and its corporate affiliates are fair, just, reasonable, and not excessive when SCSI and its corporate affiliates have currently failed, by their own submission, one of the indicative tests used by the Federal Energy Regulatory Commission (“FERC”) for determining market power?
- Issue 3: Do the Purchase Power Agreements between FPL and SCSI account for a transmission loss factor, lack of dual fuel capability, or the generation being located outside of the South Florida area, and if not,

¹ The use of the term Purchase Power Agreements includes contracts between FPL and Southern Company Services, Inc. for output from Scherer Unit 3, Harris Unit 1 and Franklin Unit 1.

what are the appropriate accounting/price reductions that should be applied in evaluating these Purchase Power Agreements?

Issue 4: Did FPL actively and thoroughly investigate the market for purchased power or, in the alternative, self build options for power in the 2010 to 2015 time frame before entering into the Purchase Power Agreements with SCSI?

Issue 5: Do the Purchase Power Agreements FPL executed with SCSI represent the market price for purchased power during the 2010 to 2015 time frame?

Churbuck reserves all rights to raise additional issues of fact, law, and policy in accordance with the procedural requirements established for this proceeding.

ADDITIONAL ISSUES OF LAW AND FACT

8. Additionally, Churbuck believes that the following issues, which include issues of law and mixed issues of law and fact, should also be considered and decided in this proceeding:

Issue 6: What action, if any, should the Commission take with respect to FPL's Purchase Power Agreements with SCSI?

Issue 7: Does the Commission have the statutory power to require FPL to conduct an open, impartial competitive procurement or bidding process for the purpose of procuring the most cost-effective purchased power for the 2010 to 2015 time frame represented by the Purchase Power Agreements FPL entered into with SCSI?

Issue 8: If the answer to the preceding issue is affirmative, should the Commission require FPL to conduct an open, impartial competitive procurement or bidding process for the purpose of procuring the most cost-effective purchased power agreement or agreements for the 2010 to 2015 time frame?

Issue 9: Is it reasonable for the Purchase Power Agreements between SCSi and FPL to be approved for rate recovery purposes at this time, given that energy and capacity is not to be provided until June 1, 2010 at the earliest and the counterparty to the Purchase Power Agreements, SCSi, and its corporate affiliates have currently failed, by their own submission, one of the indicative tests used by the FERC for determining market power?

ULTIMATE FACTS THAT ENTITLE CHURBUCK TO RELIEF

9. The ultimate facts that entitle Churbuck to relief are as follows.
 - a. Churbuck is a residential ratepayer of electricity provided by FPL, pays for the costs of the FPL electricity he uses, and is directly affected by FPL rates.
 - b. FPL did not sufficiently consider other options, including self-build options and other purchased power options before executing the Purchase Power Agreements with SCSi.
 - c. The Purchase Power Agreements between FPL and SCSi were executed at or near a point in time when, by way of an admission contained in a filing made at the FERC, SCSi failed one of the indicative tests used by the FERC for determining market power and, if the Purchase Power Agreements are approved, would result in FPL's purchased power cost recovery charges being unfair, unjust, unreasonable, and excessive.
 - d. No immediate need exists to approve a Purchase Power Agreement between FPL and SCSi that does not provide for the delivery of purchased power until June 1, 2010.
 - e. FPL's costs for its Purchase Power Agreements with SCSi are not reasonable for cost recovery purposes and, to the contrary, are unreasonable, imprudent, and excessive.

STATUTES AND RULES THAT ENTITLE CHURBUCK TO RELIEF

10. The applicable statutes and rules that entitle Churbuck to relief include, but are not limited to, Sections 120.569, 120.57 (1), 366.05 (1), 366.06 (1) & (2), and 366.07, Florida Statutes, and Rule 25-22.039 and Chapter 28-106, Florida Administrative Code.

11. The following statement explains how the facts alleged by Churbuck relate to the above-cited rules and statutes in compliance with Section 120.54 (5) (b) 4.f, Florida Statutes. Rules 25-22.039 and 28-106.205, F.A.C., provide that persons whose substantial interests are subject to determination in, or may be affected through, an agency proceeding are entitled to intervene in such proceeding. As a residential ratepayer of electricity provided by FPL who pays for the costs of the FPL electricity he uses, Churbuck's substantial interests are subject to determination in and will be affected through the Commission's decisions in this docket. The above-cited sections of Chapter 366 relate to the Commission's jurisdiction over FPL's rates, and FPL's practices affecting rates, and the Commission's statutory mandate to ensure that FPL's rates are fair, just, and reasonable. The facts alleged herein by Churbuck demonstrate (a) that the Commission's decisions herein will have a significant impact on FPL's purchased power cost recovery rates and charges, and (b) accordingly, that these statutes provide the basis for the relief requested by Churbuck herein.

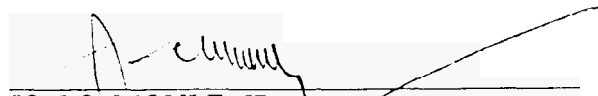
For the reasons set forth herein, Churbuck is entitled to intervene herein. See In Re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor Docket No. 030001-EI, Order No. PSC-03-1258-PCO-EI, granting intervention to CSX Transportation; In Re: Review of Investor-Owned Elective Utilities Risk Management Policies and Procedures, Docket No. 011605-EI, Order No. PSC-02-0357-PCO-EI, granting intervention to Reliant Energy Power Generation, Inc.; In re: Review of Tampa Electric Company's 2004-2008 Waterborne Transportation Contract with TECO Transport and Associated Benchmark, Docket No. 031033-EI, Order No. PSC-04-0029-PCO-EI, granting intervention to residential electric customers.

RELIEF REQUESTED

WHEREFORE, Churbuck respectfully requests the Florida Public Service Commission to enter its order GRANTING this Petition to Intervene and authorizing Churbuck to intervene in the

proceeding with full party status, and requiring that all parties to this proceeding serve copies of all pleadings, notices, and other documents on Churbuck's representatives indicated in paragraphs 1 and 2 above.

Respectfully submitted this 21st day of September, 2004.



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WILLIAM H. HOLLIMON
Florida Bar No. 104868
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Attorneys for Thomas K. Churbuck

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by overnight mail to those marked with an asterisk and by U.S. Mail to those not marked with an asterisk this 21st day of September, 2004.

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James Beasley
Ausley & McMullen
P.O. Box 391
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Florida Industrial Power Users Group
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McWhirter Reeves
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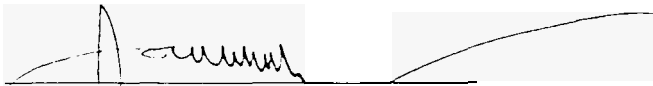

Jon C. Moyle, Jr.

EXHIBIT C

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased Power)
Recovery Clause and Generating)
Performance Incentive Factor)
_____)

DOCKET NO. 040001-EI
Filed: September 27, 2004

**FLORIDA POWER & LIGHT COMPANY'S RESPONSE
IN OPPOSITION TO PETITIONS TO INTERVENE OF
POWER SYSTEMS MFG., LLC AND THOMAS K. CHURBUCK**

Florida Power & Light Company ("FPL") hereby respectfully responds in opposition to the petitions to intervene filed by Power Systems Mfg., LLC ("Power Systems") and Thomas K. Churbuck ("Mr. Churbuck"), and states:

Background

1. On September 17, 2004, Jon C. Moyle, Jr. filed a petition to intervene on behalf of Power Systems (the "Power Systems Petition"). The petition alleges that Power Systems is a "consumer of electricity provided by FPL and pays for the costs of the FPL electricity it uses" via the terms of its lease for office space in Jupiter, Florida, but does not allege that Power Systems is an FPL retail customer. Power Systems Petition at ¶5. The petition asks that all pleadings, orders and correspondence be directed to two representatives of Power Systems: Mr. Moyle and Joseph Regnery. *Id.* at ¶2. It gives Mr. Regnery's e-mail address as JRegnery@calpine.com. *Id.* Mr. Regnery, of course, should be well known to this Commission as a representative of Calpine Corporation ("Calpine") in several past proceedings before the Commission, including most recently in Docket No. 040206-EI, FPL's Turkey Point Unit 5 need determination proceeding (the "PTF5 Need Proceeding"). Likewise, Mr. Moyle was Calpine's counsel in that proceeding.

2. On September 21, 2004, Mr. Moyle filed a second petition to intervene, this one on behalf of Mr. Churbuck (the "Churbuck Petition"). It alleges that Mr. Churbuck is a residential customer of FPL, living in Boca Raton, Florida. Churbuck Petition at ¶5. As with the Power Systems Petition, it asks that all pleadings, orders and correspondence be directed to Mr. Moyle and Mr. Regnery.

3. Other than allegations specific to the circumstances of Power Systems and Mr. Churbuck, the Power Systems and Churbuck Petitions are identical. They allege the same substantial interests concerning FPL's proposed power purchase contracts with the Southern Company¹, they assert the same "disputed issues of material fact," "additional issues of law and fact," "ultimate facts that entitle [the petitioner] to relief" and "statutes and rules that entitle [the petitioner] to relief," and they request the same relief. Cf. Power Systems Petition at ¶¶ 6-11 and "Relief Requested" to Churbuck Petition at ¶¶ 6-11 and "Relief Requested." Clearly, the Churbuck Petition has been filed as a fall-back option by Calpine in the event that the Commission were to find that Power Systems' interests are not sufficient to grant it intervention.

4. What the Power Systems and Churbuck Petitions do *not* state -- but which is highly relevant to understanding what FPL believes to be their real motivation -- is the following:

a. According to its website, Power Systems is "a Calpine Company."² A copy of the home page for Power System's website is attached hereto as Exhibit 1.

¹ In essence, the petitions assert that FPL has agreed to pay "unreasonably and imprudently excessive" charges under the Southern Company contracts, that the prices to be paid under those contracts are the result of Southern Company's "market power" and that the contracts are not ripe for approval in this proceeding because FPL would not begin to take power under them until 2010. Power Systems and Churbuck Petitions at ¶ 6.

² In fact, the website includes a link that allows the visitor to connect directly to the Calpine website.

b. Mr. Churbuck is the president of Power Systems. A copy of a press release from the Investor Relations page of Calpine's website describing Calpine's acquisition of Power Systems and referring to Mr. Churbuck as president of Power Systems is attached hereto as Exhibit 2.

c. Mr. Regnery, one of the two representatives listed for both Power Systems and Mr. Churbuck, is an attorney for Santa Rosa Energy, LLC, a subsidiary of Calpine. As noted above, Mr. Regnery has appeared as a representative of Calpine in several prior Commission proceedings. A copy of an excerpt from the Power Marketing Association's Directory of Power Marketers is attached hereto as Exhibit 3.

d. Calpine's intervention in the PTF5 Need Proceeding was disruptive and disingenuous. Notwithstanding that it had no alternative to FPL's proposed unit that would be remotely cost-competitive, Calpine engaged in a protracted motion practice, the apparent purpose of which was to delay and disrupt the proceeding to the point that FPL could not receive timely approvals for its proposed unit and thus there would be more attractive opportunities for Calpine to market wholesale power in Florida. In another misuse of the administrative process, Calpine propounded voluminous discovery intended to elicit competitively sensitive information from FPL and FPL's material and equipment vendors and contractors,³ as well as from other bidders who responded to FPL's RFP. The vast majority of the information Calpine sought was irrelevant to the purposes of the PTF5 Need Proceeding, but would be extremely useful to Calpine in advancing its competitive interests in the wholesale power market. FPL, its vendors and the other bidders sought protective orders against this discovery. FPL also sought discovery

³ In several cases, the entities whose information Calpine sought through discovery in the PTF5 Need Proceeding were entities with whom Calpine negotiates for equipment and material or against whom Calpine directly competes in other jurisdictions.

from Calpine, all of which Calpine refused to answer, thus forcing FPL to move to compel responses. On May 21, 2004, the Commission entered Order No. PSC-04-0518-PCO-EI, denying much of Calpine's discovery and putting strict limits on Calpine's access to and use of the rest. Calpine took a voluntary dismissal on that very same day.⁴

Argument

5. The Power Systems and Churbuck Petitions are Trojan horses. They are intended to gain Calpine access to this proceeding by proxy, so that it can seek information about FPL's plans to purchase power from the Southern Company and, if possible, disrupt those plans while at the same time shielding Calpine from the discovery to which it would be exposed as a party. The petitions are motivated by reasons that have nothing to do with Power Systems' or Mr. Churbuck's interests in FPL's retail rates and everything to do with Calpine's competitive position in the wholesale power market. This proceeding is clearly not intended to address competition in the wholesale power market, a subject beyond this Commission's jurisdiction. Calpine is well aware of this and so has engaged in subterfuge to bring the intervention it seeks within the "zone of interests" requirement for standing and to do so via proxies that would shelter Calpine itself from scrutiny. Calpine's participation in the PTF5 Need Proceeding earlier this year appeared calculated to gather competitive intelligence through discovery and to disrupt the timing of FPL's resource acquisitions so as to economically advantage Calpine's merchant assets -- improper motives and uses of Commission proceedings. Calpine should not be allowed by pretext to gain entrance to this proceeding, either via a subsidiary that is the tenant of a

⁴ Indeed, in neither of FPL's last two need proceedings did Calpine file testimony or submit any evidence whatsoever supporting the cost-effectiveness of its own projects. Neither did Calpine respond to a single written discovery request, nor permit its representatives to be deposed in either case, in each instance taking a voluntary dismissal after discovery was served on Calpine, but before any responses were provided.

customer of record or via a residential customer of record who happens to be an officer of that subsidiary. In other words, Calpine should not be permitted to do indirectly through proxy interventions what it obviously has no standing to do directly. To avoid the risk of Calpine's unwarranted and disruptive interference, the Commission should deny the Power Systems and Churbuck Petitions. If the Commission nonetheless allows either petitioner to intervene, it should place explicit limits on the intervention to protect against abuse of this proceeding by Calpine.

A. Intervention standards.

6. Rule 28-106.205, F.A.C., requires that a petition to intervene in a Commission proceeding contain allegations sufficient to demonstrate that the person seeking intervention is entitled to participate in the proceeding, either as a matter of constitutional or statutory right or pursuant to Commission rule, or because the person's substantial interests are subject to determination or will be affected by the proceeding. The Power Systems and Churbuck Petitions do not allege, nor could they, that Power Systems or Mr. Churbuck have any sort of constitutional, statutory or regulatory right to intervene. Therefore, in order to demonstrate that either entity is entitled to intervene, the petitions have to contain allegations sufficient to demonstrate that Power Systems' and Mr. Churbuck's substantial interests will be affected.

7. To demonstrate standing to intervene under the "substantial interest" test, a potential intervener must show that (a) it will suffer injury in fact as a result of the agency action contemplated in the proceeding that is of sufficient immediacy to entitle it to a hearing, and (b) the injury suffered is a type against which the proceeding is designed to protect. *Ameristeel Corp. v. Clark*, 691 So.2d 473, 477 (Fla. 1997) (quoting *Agrico Chemical Co. v. Dep't of Environmental Regulation*, 406 So.2d 478 (Fla. 2nd DCA 1981)). Mere economic losses due to

increased competition are not of sufficient immediacy to warrant intervention. *Florida Soc'y of Ophthalmology v. State Board of Optometry*, 532 So.2d 1279, 1285 (Fla. 1st DCA 1988). Nor do general concerns shared by members of the community at large reflect the type of injury that proceedings are intended to protect. *Boca Raton Mausoleum v. Dep't of Banking and Finance*, 511 So.2d 1060, 1066 (Fla. 1st DCA 1987).

8. Courts strictly limit the ability of a party who does have standing before a court or agency to assert the interests of third parties who are not before the court or agency. “[The Supreme Court of the United States] has held that the plaintiff [who has demonstrated standing] generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties. ... Without such limitations -- closely related to Article III concerns but essentially matters of judicial self-governance -- the courts would be called upon to decide abstract questions of wide public significance even though other governmental institutions may be more competent to address the questions and even though judicial intervention may be unnecessary to protect individual rights.” *Warth v. Seldin*, 422 U.S. 490, 499-500 (1975) (citations omitted); *see also Singleton v. Wulff*, 428 U.S. 106, 113-117 (1976).

B. Power Systems has failed to allege an adequate basis for intervention.

9. As support for its contention that Power Systems is entitled to intervene, Paragraph 11 of the Power Systems Petition references three Commission orders which all have to do with the Commission's usual practice of allowing retail customers to intervene in proceedings that affect a utility's retail rates. But the petition does not allege that Power Systems is a retail customer of FPL, and Power Systems is not such a customer. Simply put, the Power Systems Petition is deficient on its face.

10. The petition tries to finesse this inconvenient fact by alleging that Power Systems must pay its landlord for the electricity used in its office and therefore has an economic interest in the level of FPL's retail rates. But this is not nearly the same thing as being an FPL customer. The relationship between a utility and its customers is one of privity: each has particular rights and responsibilities relative to the other. No such relationship exists between FPL and Power Systems. To expand the universe of standing as Power Systems suggests would open the floodgates to all sorts of generalized, diffuse standing claims based upon indirect economic impacts. General concerns such as these, which are shared by members of the community at large, are not sufficient grounds for standing. *Boca Raton Mausoleum, supra.*, 511 So.2d at 1066. Any such generalized concerns or interests would be more than adequately represented by the Office of Public Counsel ("OPC").

11. Mr. Moyle's filing of a separate, but virtually identical, petition to intervene for Mr. Churbuck strongly suggests that he, too, believes that Power Systems' assertion of an indirect economic impact from changes in FPL's retail rates cannot confer standing to intervene.

C. Mr. Churbuck has failed to allege an interest that is substantial enough to justify intervention.

12. Mr. Churbuck, president of Power Systems, is indeed alleged to be a retail, residential customer of FPL. This is a status he shares with about 3.6 million other Floridians. Nothing is alleged that would distinguish Mr. Churbuck's interest in FPL's power purchase contracts with the Southern Company from the interests of his 3.6 million fellow residential customers. The interests of all FPL customers, residential and otherwise, are ably represented in this proceeding by OPC. Mr. Churbuck alleges nothing inadequate or inappropriate about OPC's representation of his interests. In short, Mr. Churbuck's interest in this proceeding is minimal, widely shared with others, and is already adequately represented.

13. While the Commission typically allows a utility customer to intervene in proceedings that affect that utility's rates, FPL respectfully suggests that the Commission need not do so automatically and should not do so in this case. The test for intervention is founded upon section 120.57 of the Florida Statutes, which sets forth procedures that must be followed for agency action that "determines the *substantial* interests of a party." (Emphasis added). The expectation that parties to section 120.57 hearings must have a "substantial" interest in the outcome of those hearings is echoed in the test for intervention enunciated in *Agrico Chemical Co. v. Dep't of Environmental Regulation, supra*: "we believe that before one can be considered to have a *substantial* interest in the outcome of a proceeding he must show 1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a section 120.57 hearing, and 2) that his *substantial* injury is of a type or nature which the proceeding is designed to protect." 406 So.2d at 482 (emphasis added). Under the circumstances that exist here, Mr. Churbuck cannot plausibly claim that his own, personal interest in this proceeding is substantial enough to warrant intervention.

D. The Power Systems and Churbuck Petitions are merely subterfuges to advance Calpine's competitive interests in the wholesale power markets, which this proceeding is not designed to protect.

14. The preceding sections have taken the Power Systems and Churbuck Petitions at face value and addressed their merits as if the petitioners were truly out to protect their own interests. But the bigger issue here lies behind the surface of these petitions: what is really motivating Power Systems and Mr. Churbuck to seek intervention? It strains credulity to believe that a business with a modest-sized office where the rent somehow reflects electricity costs, or an individual residential ratepayer, would incur the expense of representation by a law firm such as Mr. Moyle's merely out of a concern that they might pay more if FPL recovers the costs of the

Southern Company contracts through Commission-approved adjustment clauses. That strain reaches the breaking point when one considers that the business happens to be a subsidiary of Calpine and the individual happens to be president of that subsidiary. And, if any further clarity were needed, Mr. Moyle has told counsel for FPL that representatives of Calpine contacted FPL to advise that Calpine would seek to intervene.

1. **Allowing intervention in order to protect Calpine's competitive interests in the wholesale power market would be legally impermissible.**

15. The Commission *may not* allow Power Systems or Mr. Churbuck to intervene to protect Calpine's interests as a participant in the wholesale power market, because those interests are not within the zone of interests that this proceeding is intended to protect. Competition in the wholesale power market is not a subject of this proceeding, and is in any event beyond the jurisdiction of this Commission. Calpine's interests as a participant in the wholesale power market do not satisfy the second prong of the "substantial interest" test stated in *Ameristeel Corp. v. Clark, supra.*, 691 So.2d at 477: they are not of "a type against which the proceeding is designed to protect." If Calpine has a complaint about the workings of the wholesale power market, it needs to seek relief elsewhere, from bodies that have jurisdiction to hear and decide such complaints.⁵

16. **What Calpine may not seek in this proceeding directly, Power Systems and Mr. Churbuck may not seek indirectly in Calpine's stead.** Legal proceedings are, with narrow exceptions, intended to resolve the personal interests of the parties to those proceedings, not the

⁵ The Power Systems and Churbuck Petitions provide a brief glimpse of what really interests Calpine: both express a concern that Southern Company has failed "one of the indicative tests used by the Federal Energy Regulatory Commission ('FERC') for determining market power." Power Systems and Churbuck Petitions at ¶ 7. While the petitions try to dress this up as a concern affecting FPL's customers, it is in fact clear evidence that Calpine is really looking for yet another battleground on which to wage its ongoing dispute with the Southern Company.

separate interests of others who are not -- or, as here, cannot be -- parties. Addressing in this docket Calpine's complaints about the wholesale power market would be exactly the sort of decision on "abstract questions of wide public significance even though other governmental institutions may be more competent to address the questions" against which Justice Powell warned in *Warth v. Seldin, supra.*, 422 U.S. at 500.

2. Allowing intervention in order to protect Calpine's competitive interests in the wholesale power market would put the interests of FPL's customers at risk.

17. The Commission *should not* allow Power Systems or Mr. Churback to intervene to protect Calpine's interests as a participant in the wholesale power market, because of the grave risks that Calpine will (a) misuse this proceeding to gather information in furtherance of its own competitive interests while using its non-party status to shield itself from the discovery to which a party is exposed, and (b) disrupt the proceeding to the detriment of FPL's customers. Calpine's interests in the wholesale power market could be adversely affected by the Southern Company contracts irrespective of whether those contracts are a good deal for FPL's customers. Calpine's motivation, therefore, will be to gather information about the Southern Company contracts and to interfere with their implementation regardless of how this might affect FPL's customers. In fact, Calpine's competitive interest in making wholesale power sales from its facilities in Florida would be enhanced if the outcome of this proceeding were to *increase* FPL's power purchase costs and *decrease* FPL's access to transmission from the SERC region. Of course, both of these outcomes would be directly antithetical to the interests of FPL's customers. The Commission should not allow Calpine to capture this proceeding for its own, improper purposes.

E If the Commission were to allow either Power Systems or Mr. Churbuck to intervene, it should expressly limit that intervention to matters that are directly relevant to, and in the interests of, FPL's customers.

18. For the foregoing reasons, neither Power Systems nor Mr. Churbuck should be permitted to intervene. Their intervention is unnecessary to protect the interests of any FPL customer or to protect any other legitimate interest that is within this proceeding's zone of interests. If the Commission nonetheless allows either to intervene, it is extremely important that the intervention be explicitly limited in ways that will minimize the potential for mischief by Calpine. Any order on intervention should explicitly warn that:

a. neither FPL nor any other entity will be required to answer discovery directed to any subject that would advance Calpine's competitive interests unless it is demonstrated that the predominant purpose for the discovery is to advance the interests of FPL customers

b. any documents or information provided to the intervener(s) in response to discovery may only be viewed or used by the intervener(s) and by counsel and any consultant or witness personally hired by the intervener(s), and may not be disclosed to or discussed with Calpine or any officer, director, employee or agent of Calpine (all normal discovery restrictions and protections will also be available with respect to any such documents and information);

c. the prehearing office will not approve the inclusion of any issue for resolution in this proceeding that advances Calpine's competitive interests unless it is demonstrated that the predominant purpose for the issue is to advance the interests of FPL customers; and

d. the intervener(s) will not be permitted to offer any direct testimony or engage in any cross examination that advances Calpine's competitive interests unless it is

demonstrated that the predominant purpose for the testimony or cross examination is to advance the interests of FPL customers.

WHEREFORE, FPL respectfully requests that the Commission deny the Power Systems Petition and the Churbuck Petition and not allow either Power Systems or Mr. Churbuck to intervene in this proceeding. If the Commission permits either Power Systems Petition or Mr. Churbuck to intervene, then FPL respectfully requests that the Commission limit any such intervention set forth in Paragraph 18 above.

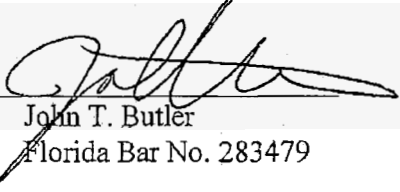
Respectfully submitted,

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By:


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CERTIFICATE OF SERVICE
Docket No. 040001-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic transmission (*) or United States Mail this 27th day of September, 2004, to the following:

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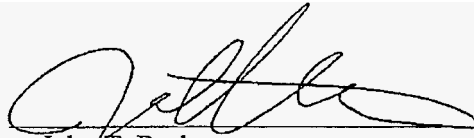
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John T. Butler

EXHIBIT 1

PowerTM
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A Calpine Company



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EXHIBIT 2


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Calpine Natural Gas Trust News Releases

Calpine Corporation (ticker: CPN, exchange: New York Stock Exchange) News Release - 12/19/00

Calpine Acquires Power Systems Mfg. LLC

SAN JOSE, Calif., Dec. 19 /PRNewswire/ – Calpine Corporation (NYSE: CPN), the national independent power company, today announced that it has acquired Boca Raton, Fla.-based Power Systems Mfg. LLC (PSM), an industry leader in combustion turbine component engineering, design and manufacturing, for approximately \$43 million – \$10.7 million in Calpine common stock, totaling approximately 280,000 shares, and \$32.3 million in cash. The majority of the cash payments will be made in five equal annual installments beginning in January 2002, and are contingent upon future PSM performance. PSM's expertise directly supports Calpine's goal of being the low cost producer of electricity and provides Calpine with a competitive advantage in the North American power industry. PSM will operate as a subsidiary of Calpine and will continue to sell its products to the combustion turbine market.

Tom Mason, executive vice president - operations for Calpine, stated, "Over the next few years, Calpine will become the owner and operator of the world's largest fleet of state-of-the-art natural gas-fired power plants. PSM will significantly strengthen Calpine's ability to operate and maintain this fleet to maximize value. With this acquisition and our large backlog of gas turbine orders with Siemens Westinghouse and General Electric, Calpine continues to be well positioned to meet North America's growing demand for electricity."

PSM will be a key strategic component of Calpine's turbine maintenance strategy and will help ensure continued reliable plant performance, while helping reduce Calpine's overall operating costs. PSM employs 40 energy professionals with in-depth gas turbine experience. PSM specializes in the design and manufacturing of turbine hot section blades, vanes, combustors and low emissions combustion components.

[Contact Info:](#)

Need to contact Calpine?

[> IR Contact Info](#)
[> PR Contact Info](#)
[> Calpine Quick Facts:](#)

- Founded in 1984
- Headquartered in San Jose, Calif.
- Publicly traded (NYSE: CPN) since 1996
- Listed on the S&P 500
- Has 88 facilities in operation with a total capacity of about 22,000 megawatts
- Has over 10 more facilities under construction that will provide more than 7,000 additional megawatts of capacity
- Owns 1.0 trillion cubic feet of proved natural gas reserves
- Uses clean, proven technologies: natural gas combined-cycle and geothermal energy
- Is the world's leading

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"Consistent with Calpine's fully integrated approach to power generation, PSM will add value to every phase of our power generation program – from input on design and engineering, through start-up, operations and maintenance. PSM will provide us with new options with which we can ensure that Calpine provides our customers with the highest quality product at competitive rates," continued Mason.

Thomas Churbuck, president of PSM, commented, "PSM's capabilities are an excellent match for Calpine's North American energy initiative. We look forward to building the PSM staff to become a vital part of Calpine's long-range plans."

Calpine has launched the largest power plant construction program in North America. To date, the company has 23 projects in construction, totaling 11,100 megawatts of base load capacity, with an additional 2,100 megawatts of peaking capacity. On the development front, Calpine has announced plans to bring on line an additional 11,600 megawatts of base load capacity and 2,000 megawatts of peaking capacity.

To power its aggressive energy initiative, Calpine has firm orders in place for 183 state-of-the-art gas turbines. When operating in a combined-cycle configuration, these turbines will generate more than 45,000 megawatts of electricity.

Based in San Jose, Calif., Calpine Corporation is dedicated to providing customers with reliable and competitively priced electricity. Calpine is focused on clean, efficient combined-cycle, natural gas-fired generation and is the world's largest producer of renewable geothermal energy. Calpine has launched the largest power development program in North America. To date, the company has approximately 27,600 megawatts of base load capacity and 5,300 megawatts of peaking capacity in operation, under construction and in announced development in 27 states and Canada. The company was founded in 1984 and is publicly traded on the New York Stock Exchange under the symbol CPN. For more information about Calpine, visit its website at www.calpine.com.

This news release discusses certain matters that may be considered "forward-looking" statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, including statements regarding the intent, belief or current expectations of Calpine Corporation ("the Company") and its management. Prospective investors are cautioned that any such forward-looking statements are not guarantees of future performance and involve a number of risks and uncertainties that could materially affect actual results such as, but not limited to, (i) changes in government regulations and anticipated deregulation of the electric energy industry, (ii) commercial operations of new plants that may be delayed or prevented because of various development and construction risks, such as a failure to obtain financing and

geothermal power producer. At The Geysers in northern California, Calpine harnesses naturally heated steam from the earth to create renewable "green" electric power.

- Since 1997, Calpine has had a 67% compound annual growth rate in generating capacity
- Has a safety record much better than the industry average
- According to a survey reported in 2002 in the New York Times, Calpine ranked as the second-lowest emissions-producer of the 100 largest U.S. power companies. (The leader was later sold, moving Calpine to No. 1.)
- Calpine's natural gas-fired plants produce 95% less nitrogen oxide, 99% less sulfur dioxide, 64% less carbon dioxide, 98% less mercury and 83% less particulate matter than the average U.S. fossil-fuel plant

the necessary permits to operate or the failure of third-party contractors to perform their contractual obligations, (iii) cost estimates are preliminary and actual cost may be higher than estimated, (iv) the assurance that the Company will develop additional plants, (v) a competitor's development of a lower-cost generating gas-fired power plant, (vi) the risks associated with marketing and selling power from power plants in the newly competitive energy market, (vii) the risks associated with marketing and selling combustion turbine parts and components in the competitive combustion turbine parts market, (viii) the risks associated with engineering, designing and manufacturing combustion turbine parts and components, or (ix) delivery and performance risks associated with combustion turbine parts and components attributable to production, quality control, suppliers and transportation. Prospective investors are also referred to the other risks identified from time to time in the Company's reports and registration statements filed with the Securities and Exchange Commission. SOURCE Calpine Corporation

CONTACT: media relations, Katherine Potter, ext. 1168, or, investor relations, Rick Barraza, ext. 1125, both of Calpine Corporation, 408-995-5115/

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EXHIBIT 3

PMA**OnLine**www.powermarketers.com

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The Power Marketing Association**Directory of Power Marketers**[Directory Page One](#)[Directory Page Two](#)[Directory Page Three](#)

Updated on: 28 April 2002

[Download](#) the PMA Directory of Power Marketers in Microsoft Word format.

The information in this directory is the property of The Power Marketing Association and is provided for use in contacting individuals only. Any use of the information contained in this directory for mass e-mailing and/or direct mailing and/or telemarketing of unsolicited advertisements, offers and/or other commercial solicitations is strictly prohibited. Any reproduction or distribution of this directory, in whole or in part, without the written permission of The Power Marketing Association is prohibited.

The Power Marketing Association Directory of Power Marketers Page Three

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Fax: 973-263-6977
[FERC Filing Summary: ER00-0895](#)

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[FERC Filing Summary: ER00-1463](#)

Outback Power Marketing, Inc.
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[FERC Filing Summary: ER01-0297](#)

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EXHIBIT D

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and Purchased Power Cost)
Recovery Clause and Generating) DOCKET NO. 040001-EI
Performance Incentive Factor)
_____)

**THOMAS K. CHURBUCK'S
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS (NOS. 1-76)
TO FLORIDA POWER AND LIGHT COMPANY**

THOMAS K. CHURBUCK, ("Churbuck") by and through his undersigned counsel, files this First Request for Production of Documents (Nos. 1-76) pursuant to Rule 1.350, Florida Rules of Civil Procedure, and Rule 28-106.206, Florida Administrative Code, and requests that FLORIDA POWER & LIGHT COMPANY (hereinafter "FPL"), provide copies of the following documents or make such documents available for inspection by Churbuck within the time frames provided for in these proceedings; specifically, as set forth in PSC Order No. PSC-04-0161-PCO-EI, Order Establishing Procedure:

DEFINITIONS

1. The words "and" and "or" should be construed either conjunctively or disjunctively as necessary to include information within the scope of a Request for Production, rather than to exclude information therefrom.
2. The term "communication" should be interpreted to include, but not be limited to, all forms of communication, whether written, printed, electronic, oral, pictorial, or otherwise, of any means or type whatsoever, including testimony or sworn statements and including correspondence, whether by e-mail or otherwise.
3. The term "correspondence" should be interpreted to include, but not be limited to, all letters, telexes, facsimiles, telegrams, notices, messages, memoranda, e-mail communications and attachments, and other written or electronic or computer generated communications.
4. The term "documents" refers to all writings and records of every type in your possession, control, or custody, including but not limited to: testimony, exhibits, memoranda,

correspondence, communications, letters, electronic mail, with attachments, reports (including drafts, preliminary, intermediate, and final reports), surveys, analyses, studies (including economic and market studies), summaries, comparisons, tabulations, charts, books, pamphlets, photographs, maps, bulletins, corporate or other minutes, notes, diaries, log sheets, ledgers, transcripts, microfilm, microfiche, computer data, computer files, computer tapes, computer inputs, computer outputs and printouts, vouchers, accounting statements, budgets, work papers, engineering diagrams (including "one-line" diagrams), mechanical and electrical recordings, records of telephone and telegraphic communications, recordings of telephone communications, speeches, and all other records, written, electrical, mechanical, or otherwise and drafts of any of the above.

5. The term "documents" includes copies of documents, where the originals are not in your possession, custody or control.

6. The term "documents" includes every copy of a document that contains handwritten or other notations or that otherwise does not duplicate the original or any other copy.

7. The term "documents" also includes any attachments or appendices to any document.

8. "Each" shall be construed to include the word "every," and "every" shall be construed to include the word "each." Similarly, "any" shall be construed to include "all," and "all" shall be construed to include "any."

9. "FPSC" or "Commission" means the Florida Public Service Commission.

10. "Parties" refers to all persons or entities who are petitioners, respondents, otherwise named parties, or who have, or may, intervene in FPSC Docket No. 040001-EI.

11. The words "Period of Inquiry" means the time FPL first initiated any action associated with the PPAs or subject matter of the PPAs to the present or January 1, 2000, whichever is the earlier

12. The term "person" or "people" means, without limiting the generality of its meaning, every natural person, corporation, partnership, association (whether formally organized or *ad hoc*),

joint venture, unit operation, cooperative, municipality, commission, governmental body or agency or any other group or other organization.

13. The words "power", "energy", "electricity", "electricity supplies" and "electricity products" shall be construed to include, but not be limited to, electrical energy, capacity, energy, ancillary services (various reserves, scheduling services and any other related service that may be associated with the proper operation of the electricity grid) and losses. Provide all information in MW or MWh as appropriate.

14. "Purchase Power Agreements" or "PPAs" means the three purchase agreements between FPL and Southern Company Services, Inc. as agent for Gulf Power Company, Georgia Power Company and Southern Power Company for output from Scherer Unit 3, Harris Unit 1 and Franklin Unit 1 filed in this proceeding by FPL.

15. The terms "related", "related to" or "relating to" should be interpreted to include every document describing, discussing, analyzing, referring to, associated with, or bearing a relationship to the subject matter of the Request for Production. A document is "related to" a certain subject matter if the subject matter is described, discussed or referenced at any place in the document and even if the subject matter is not a major focus of the document.

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

17. "Bid Process" means the process by which you reviewed and evaluated responses received in response to the RFP you issued on or about August 25, 2003.

18. "Staff" when used in reference to FPSC, means the Commission's Staff in its role in this proceeding.

19. "SCSI" means Southern Company Services, Inc. and the entities it represented as agent under the PPAs (Gulf Power Company, Georgia Power Company and Southern Power Company).

20. The term "study" means an investigation, assessment, research or examination relating to an issue, subject or matter.

21. The term "workpapers" means all documents created, used, relied upon, considered, rejected and/or read by any of your experts, including persons working at such experts' direction.

22. The terms "you", "your" or "yourself" means (a) FPL and predecessors or successors in interest and any parent, subsidiary, division or affiliated entity in existence during the period of time covered by the Requests for Production; (b) all of their present and former directors, officers, employees, agents, representatives, accountants, investigators, consultants, attorneys; (c) any other person or entity acting on their behalf or on whose behalf FPL acted; (d) any other person or entity otherwise subject to FPL's control, oversight or direction; or (e) individuals not employees of FPL who were involved in any manner regarding the PPAs.

23. The term "evaluation team" means any individual, or group of individuals, responsible for reviewing, analyzing, researching, negotiating or approving the PPAs.

INSTRUCTIONS

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.

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.

If you do not clearly understand, or have any questions about, the definitions, instructions, or any request for documents, please contact counsel for Churbuck 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.

DOCUMENTS REQUESTED

- 1) Any and all drafts, revisions, amendments, or annotated copies of Purchase Power Agreements between FPL and Southern Company Services, Inc. ("SCSI") for the Scherer Unit 3, Harris Unit 1, and Franklin Unit 1.
- 2) Any and all organizational charts that relate to any organizational unit within FPL that participated in the development, drafting, amending, creation, negotiation, consummation, evaluation, or selection associated with the PPAs or subject matter of the PPAs.
- 3) Any and all documents prepared by or for any FPL entity that discuss the development, drafting, amending, creation, negotiation, consummation, evaluation, or selection associated with the PPAs.
- 4) Any and all documents that identify each FPL employee, or any other person or persons, involved in the development, drafting, amending, creation, negotiation, consummation, evaluation, or selection processes for the PPAs.
- 5) Any and all documents prepared during the Period of Inquiry which describe the employee's job responsibilities for each FPL employee that participated in the evaluation, selection, and/or negotiation processes associated with the PPAs or subject matter of the PPAs.
- 6) Any and all documents prepared during the Period of Inquiry which relate to the evaluation, selection, and/or negotiation processes associated with the PPAs.
- 7) Any and all documents prepared during the Period of Inquiry which relate to the timing of seeking Commission approval for the PPAs.
- 8) Any and all documents and communications that discuss the process for selecting individuals to participate in the evaluation, selection, and/or negotiation processes associated with the PPAs.
- 9) Any and all documents that identify the qualifications of individuals involved in the evaluation, selection, and/or negotiation processes associated with the PPAs.

- 10) Any and all documents or communications that discuss the factors or qualifications utilized in selecting individuals to participate in the evaluation, selection, and/or negotiation processes associated with the PPAs.
- 11) Any and all documents that identify or discuss FPL's goals or objectives associated with the evaluation, selection, and/or negotiation processes associated with the PPAs.
- 12) Any and all documents relating to the objective or objectives of the evaluation, selection, and/or negotiation processes associated with the PPAs.
- 13) Any and all documents that were reviewed or relied upon in the evaluation, selection, and/or negotiation processes associated with the PPAs.
- 14) Any and all documents which relate to the organization of the evaluation, selection, and/or negotiation processes or teams associated with the PPAs.
- 15) Any and all documents which relate to the decision-making process for the evaluation, selection, and/or negotiation processes associated with the PPAs.
- 16) Any and all documents or communications relating to evaluation, selection, and/or negotiation processes associated with the PPAs that the individuals listed in response to Interrogatory No. 10 reviewed during the decision-making process.
- 17) Any and all documents authored or received by any individual involved in the PPAs evaluation, selection, and/or negotiation processes associated with the PPAs that discuss the evaluation, selection, and/or negotiation processes associated with the PPAs.
- 18) Any and all documents related to criteria used in evaluating the PPAs.
- 19) Any and all document related to criteria used in evaluating responses to your recent Turkey Point RFP.
- 20) Any and all written instructions or communications provided to FPL or FPL representatives concerning the evaluation, selection, and/or negotiation processes associated with the PPAs.
- 21) Any and all documents related to the decision to enter into the PPAs.

- 22) Any and all documents or communications related to the evaluation, selection, and/or negotiation processes associated with the PPAs not otherwise provided in response to a request.
- 23) Any and all documents related to any investigation FPL has done into SCSI's failure to satisfy FERC's indicative market power test or any of the previous market power proceedings at FERC involving SCSI.
- 24) Any and all documents prepared during the Period of Inquiry which describe the job responsibilities of each FPL employee or individual (that is not an employee of FPL) that participated in any investigation described in Interrogatories Nos. 11 and 12.
- 25) Any and all documents you have prepared, performed, received, reviewed or used regarding SCSI's failure to satisfy FERC's indicative market power test or any of the previous market power proceedings at FERC involving SCSI.
- 26) Any and all documents you have prepared, performed, received, reviewed or used regarding SERC power market, including but not limited to the market position of SCSI in SERC.
- 27) Any and all documents or communications between you and SCSI regarding the PPAs.
- 28) Any and all documents upon which FPL is relying to conclude that you will be able to "roll-over" the transmission rights bundled in its existing UPS Agreements into long term point to point transmission service arrangements that you can use to obtain power under these PPAs.
- 29) Any and all documents received from SCSI, its parent organizations, affiliates, subsidiaries, consultants, or third parties, regarding transmission rollover rights.
- 30) Any and all documents prepared during the Period of Inquiry regarding transmission losses associated with the PPAs.
- 31) Any and all documents prepared during the Period of Inquiry regarding lack of dual fuel capability associated with the PPAs.
- 32) Any and all documents prepared during the Period of Inquiry regarding the generation associated with the PPAs being located outside of the State of Florida.

- 33) Any and all documents that you prepared, performed, received, reviewed or used in your evaluation, selection, and/or negotiation processes associated with the PPAs or subject matter of the PPAs regarding transmission losses, lack of dual fuel capability, or the generation being located outside of the South Florida.
- 34) Any and all documents related to the manner in which you evaluated the PPAs that were not used in evaluating responses received to your recent Turkey Point RFP.
- 35) Any and all documents related to the manner in which you evaluated responses received in response to your recent Turkey Point RFP that were not used in evaluating the PPAs.
- 36) Any and all documents that relate to transmission losses of generation being located outside of the South Florida area that you have submitted or made available to the Commission within the Period of Inquiry.
- 37) Any and all documents which relate to any investigation of the wholesale market for power in the 2010 to 2015 time frame you conducted prior to entering into the PPAs with SCSL.
- 38) Any and all documents which relate to self-build options for power in the 2010 to 2015 time frame you considered prior to entering into the PPAs with SCSL.
- 39) Any and all documents related to transmission analysis of the PPAs compared to a self-build option.
- 40) Any and all documents detailing, describing, analyzing, or predicting transmission losses associated with importing power to Florida under the PPAs.
- 41) Any and all documents related to pricing analysis of the PPAs compared to other market resources.
- 42) Any and all documents pertaining to the subject matter of the PPAs sent to, related to or received by power generators, power marketers or developers, other than SCSL and FPL.
- 43) Any and all documents related to generation analysis of the PPAs compared to other options you considered.

- 44) Any and all documents or evaluation reports you prepared, reviewed, relied upon, or considered regarding other possible generation sources before executing the PPAs with SCSL.
- 45) Any and all documents regarding each and every power generator, power marketer, or power developer you contacted regarding their interest in supplying you the power represented by the PPAs.
- 46) Any and all documents you relied on regarding market forecasts for purchased power during the 2010 to 2015 time frame.
- 47) Any and all documents, research, analysis or studies that you may have prepared, performed, received, reviewed, relied upon, or used regarding the investigation into market prices for purchased power during the 2010 to 2015 time frame.
- 48) Any and all documents related to the issue of FPL being granted "roll-over" rights under the UPS agreement.
- 49) Any and all documents which will provide FPL the right of first refusal for additional firm coal-fired capacity and energy from SCSL's Miller unit.
- 50) Any and all documents which will provide FPL the right of first refusal for additional firm coal-fired capacity and energy from SCSL's Scherer unit.
- 51) Any and all documents that support Mr. Hartman's testimony on page 12 of his pre-filed testimony "that the ability to purchase off-peak power could result in substantial savings to FPL's customers, ranging between \$36 to \$33 million (2004 NPV), or an average of \$60 million over the contract term."
- 52) Any and all documents regarding the firm gas transportation contracts "between SCSL and Southern Mutual Gas Company" by which the Harris and Franklin contracts are supplied firm gas transportation.
- 53) Any and all documents related to risk assessments, if any, you have performed within the last 10 years related to FPL's "firm gas transportation paths," as that term is used on page 14 of Mr. Hartman's testimony.

- 54) Any and all documents that relate to the conclusion of Mr. Hartman on page 17 of his testimony "that 16,400 MW would be from units that are either in locations where the transmission path to FPL would be constrained, or are not directly connected to the SCSL system and consequently FPL's transmission roll-over rights would not be applicable."
- 55) Any and all documents regarding each power generator, power marketer or power developer you contacted when investigating the market for purchased power in the 2010 to 2015 time frame.
- 56) Any and all documents regarding each power generator, power marketer or power developer you identified when investigating the market for purchased power in the 2010 to 2015 time frame.
- 57) Any and all documents identified or relied upon in your responses to Churbuck's first set of Interrogatories.
- 58) Any and all documents you have provided the Commission or Commission staff regarding the PPAs.
- 59) Any and all documents you have provided your senior management at the level of vice president or higher regarding the PPAs.
- 60) Any and all documents you have provided your Board of Directors regarding the PPAs.
- 61) Any and all documents regarding self-build options you considered before executing the PPAs with SCSL.
- 62) Any and all documents reflecting the costs of self-build options you considered before executing the PPAs with SCSL.
- 63) Any and all documents regarding proposed solid fuel projects, either self-build or from third parties, that would deliver power to you during the 2010 to 2015 time frame.
- 64) A copy of the Unit Power Sale Agreement (UPS Agreement) between FPL and subsidiaries of the Southern Company referenced on page 5 of Mr. Hartman's pre-filed testimony.

- 65) Any and all documents Mr. Hartman provided to you regarding evaluating and identifying improvement opportunities to existing long term purchase power agreements.
- 66) Any and all documents Mr. Hartman provided to you regarding negotiating amendments to existing long term purchase power agreements.
- 67) Any and all documents Mr. Hartman provided to you regarding negotiating new purchase power agreements.
- 68) Any and all documents relating to analysis Mr. Hartman provided to you over the past five years to assist you in determining whether and on what terms to extend or replace expiring purchased power contracts.
- 69) Any and all documents with which Mr. Hartman assisted in the development of draft purchase power agreements for future generation capacity purchases.
- 70) Any and all documents related to the economic analysis you performed as testified to by Mr. Hartman on page 19, lines 19 to page 20, line 8, of his direct testimony.
- 71) Any and all documents related to the key benefits of entering into PPA's as testified to by Mr. Hartman on pages 9 and 10 of his pre-filed testimony.
- 72) Any and all documents related to evaluation of merchant generation in the SERC region to which Mr. Hartman testifies on Page 17 of his pre-filed testimony.
- 73) Any and all documents that support Mr. Hartman's statement at page 11, line 14-17 of his pre-filed testimony that "Retention of the Miller units to meet Alabama Power's Native load means that coal generation will be more frequently on the margin than it would otherwise be. As a result, power from coal units will be available more frequently in off-peak periods at attractive prices."
- 74) Any and all documents regarding "indications of interest from merchant generations" as that phrase is used on page 16 of Mr. Hartman's testimony.

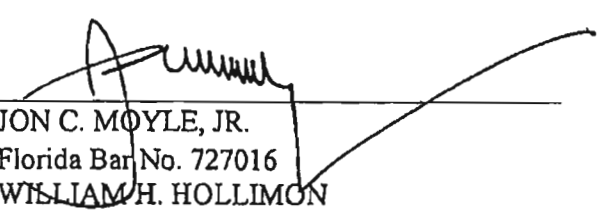
- 75) Any and all documents regarding “recent publicly disclosed purchase power agreements for energy and capacity in the SERC region” as that phrase is used on page 16 of Mr. Hartman’s testimony.
- 76) Any and all documents provided to you by a corporate affiliate of SCSJ or SCSJ in response to your Turkey Point RFP.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and Purchased Power Cost)
Recovery Clause and Generating) DOCKET NO. 040001-EI
Performance Incentive Factor) Filed: September 28, 2004
)

**NOTICE OF SERVICE OF THOMAS K. CHURBUCK'S
FIRST SET OF REQUESTS FOR ADMISSION (NOS. 1-49), FIRST SET OF REQUESTS
FOR PRODUCTION (NOS. 1-76), AND FIRST SET OF INTERROGATORIES
(NOS. 1-57) TO FLORIDA POWER AND LIGHT COMPANY**

Please take notice that THOMAS W. CHURBUCK ("Churbuck"), by and through his undersigned attorney, hereby serves his First Set of Requests for Admission (Nos. 1-49), First Set of Requests for Production (Nos. 1-76), and First Set of Interrogatories (Nos. 1-57) upon Florida Power and Light Company.



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Joseph A. Regnery, Esq.
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Island Center
2701 North Rocky Point Drive, Suite 1200
Tampa, Florida 33607

Attorneys for Thomas K. Churbuck

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Federal Express to those listed below with an asterisk and the remainder by U.S. Mail without an asterisk this day the 28th day of September, 2004.

Cochran Keating
Adrienne Vining
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee FL 32399-0850

Lee Willis
James Beasley
Ausley & McMullen
P.O. Box 391
Tallahassee FL 32302

Florida Industrial Power Users Group
c/o John W. McWhirter, Jr.
McWhirter Reeves
400 North Tampa Street, Suite 2450
Tampa FL 33602

*R. Wade Litchfield
Florida Power & Light Company
700 Universe Boulevard
Juno Beach Fl 33408-0420

Ms. Susan D. Ritenour
Gulf Power Company
One Energy Place
Pensacola FL 32520-0780

Norman H. Horton
Floyd Self
Messer, Caparello & Self, P.A.
P.O. Box 1876
Tallahassee FL 32302-1876

Jeffrey Stone
Russell Badders
Beggs & Lane
P.O. Box 12950
Pensacola Fl 32591-2950

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Tallahassee FL 32301-7740

John T. English
George Bachman
Florida Public Utilities Company
P.O. Box 3395
West Palm Beach FL 33402-3395

Vicki Kaufman
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117 S. Gadsden Street
Tallahassee FL 32301

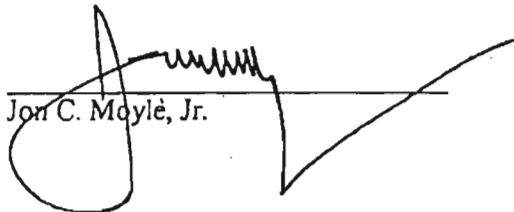
Bill Walker
Florida Power & Light Company
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Tallahassee FL 32301-1859

James McGee
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Tampa FL 33601-0111

*John T. Butler
Steel Hector & Davis LLP
200 South Biscayne Blvd, Suite 4000
Miami FL 33131-2398


Jon C. Moyle, Jr.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and Purchased Power Cost)
Recovery Clause and Generating) DOCKET NO. 040001-EI
Performance Incentive Factor)
)

THOMAS K. CHURBUCK'S
FIRST SET OF INTERROGATORIES (NOS. 1-57)
TO FLORIDA POWER & LIGHT COMPANY

Pursuant to Rule 1.340, Florida Rules of Civil Procedure, THOMAS W. CHURBUCK ("Churbuck"), by and through his undersigned attorney, hereby serves his First Set of Interrogatories (Nos. 1 through 57) 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 within twenty (20) days as ordered in PSC Order No. PSC-04-0161-PCO-EI.

DEFINITIONS

1. The words "and" and "or" should be construed either conjunctively or disjunctively as necessary to include information within the scope of a Data Request, rather than to exclude information therefrom.
2. "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.
3. The term "communication" should be interpreted to include, but not be limited to, all forms of communication, whether written, printed, electronic, oral, pictorial, or otherwise, of any means or type whatsoever, including testimony or sworn statements and including correspondence.

4. The term "correspondence" should be interpreted to include, but not be limited to, all letters, telexes, facsimiles, telegrams, notices, messages, memoranda, e-mail communications and attachments, and other written or electronic or computer generated communications.

5. The term "documents" refers to all writings and records of every type in your possession, control, or custody, including but not limited to: testimony, exhibits, memoranda, correspondence, communications, letters, electronic mail, reports (including drafts, preliminary, intermediate, and final reports), surveys, analyses, studies (including economic and market studies), summaries, comparisons, tabulations, charts, books, pamphlets, photographs, maps, bulletins, corporate or other minutes, notes, diaries, log sheets, ledgers, transcripts, microfilm, microfiche, computer data, computer files, computer tapes, computer inputs, computer outputs and printouts, vouchers, accounting statements, budgets, work papers, engineering diagrams (including "one-line" diagrams), mechanical and electrical recordings, records of telephone and telegraphic communications, recordings of telephone communications, speeches, and all other records, written, electrical, mechanical, or otherwise and drafts of any of the above.

6. The term "documents" includes copies of documents, where the originals are not in your possession, custody or control.

7. The term "documents" includes every copy of a document that contains handwritten or other notations or that otherwise does not duplicate the original or any other copy.

8. The term "documents" also includes any attachments or appendices to any document.

9. "Each" shall be construed to include the word "every," and "every" shall be construed to include the word "each." Similarly, "any" shall be construed to include "all," and "all" shall be construed to include "any."

10. "FPSC" or "Commission" means the Florida Public Service Commission.

11. "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.

12. "Parties" refers to all persons or entities who are petitioners, respondents, otherwise named parties, or who have, or may, intervene in FPSC Docket No. 040001-EI.

13. The words "Period of Inquiry" means the time FPL first initiated any action associated with the PPAs or subject matter of the PPAs to the present or January 1, 2000, whichever is the earlier

14. The term "person" or "people" means, without limiting the generality of its meaning, every natural person, corporation, partnership, association (whether formally organized or *ad hoc*), joint venture, unit operation, cooperative, municipality, commission, governmental body or agency or any other group or other organization.

15. The words “power”, “energy”, “electricity”, “electricity supplies” and “electricity products” shall be construed to include, but not be limited to, electrical energy, capacity, energy, ancillary services (various reserves, scheduling services and any other related service that may be associated with the proper operation of the electricity grid) and losses. Provide all information in MW or MWh as appropriate.

16. “Purchase Power Agreements” or “PPAs” means the three purchase agreements between FPL and Southern Company Services, Inc , as agent for Gulf Power Company, Georgia Power Company and Southern Power Company for output from Scherer Unit 3, Harris Unit 1 and Franklin Unit 1 filed in this proceeding by FPL.

17. The terms “related”, “related to” or “relating to” should be interpreted to include every document describing, discussing, analyzing, referring to, associated with, or bearing a relationship to the subject matter of the Data Request. A document is “related to” a certain subject matter if the subject matter is described, discussed or referenced at any place in the document and even if the subject matter is not a major focus of the document.

18. “RFP” means the Request for Proposal you issued on or about August 25, 2003.

19. “Staff” when used in reference to FPSC, means the Commission’s Staff in its role in this proceeding.

20. “SCSI” means Southern Company Services, Inc , and the entities it represented as agent under the PPAs (Gulf Power Company, Georgia Power Company and Southern Power Company).

21. The term “study” means an investigation, assessment, research or examination relating to an issue, subject or matter.

22. The term "workpapers" means all documents created, used, relied upon, considered, rejected and/or read by any of your experts, including persons working at such experts' direction.

23. The terms "you", "your" or "yourself" means (a) FPL and predecessors or successors in interest and any parent, subsidiary, division or affiliated entity in existence during the period of time covered by the Interrogatories; (b) all of their present and former directors, officers, employees, agents, representatives, accountants, investigators, consultants, attorneys; (c) any other person or entity acting on their behalf or on whose behalf FPL acted; (d) any other person or entity otherwise subject to FPL's control, oversight or direction; or (e) individuals not employees of FPL who were involved in any manner regarding the PPAs.

INSTRUCTIONS

1. Each interrogatory shall be answered in full for each respondent.
2. If any of the following interrogatories cannot be answered in full after exercising due diligence to secure the information, please so state and answer to the extent possible, specifying your inability to answer the remainder, and state whatever information you have concerning the unanswered portion. If your answer is qualified or limited in any respect, please set forth the details of such qualifications and/or limitations.
3. If you object to fully identifying a document or oral communication because of a privilege, you must nevertheless provide the following information, unless divulging the information would disclose privileged information:
 - a. The nature of the privilege claimed (including work product);
 - b. The date of the document or oral communication;
 - c. If a document, its type (correspondence, memorandum, facsimile, electronic mail, etc.), custodian, location, and such other information sufficient to identify the

document for a subpoena duces tecum or a document request, including where appropriate the author, the addressee, and, if not apparent, the relationship between the author and addressee;

d. If an oral communication, the place where it was made, the names of the persons present while it was made, and, if not apparent, the relationship of the persons present to the declarant; and

e. The general subject matter of the document or the oral communication.

4. If you object to all or part of any interrogatory and refuse to answer that part, state your objection, identify the part to which you are objecting, and answer the remaining portion of the interrogatory.

5. Whenever an interrogatory asks for information that is not available to you in the form requested, but is available in another form, or can be obtained at least in part from other data in your possession, so state and either supply the information requested in the form in which it is available, or supply the data from which the information requested can be obtained.

6. The singular shall include the plural and vice versa; the terms "and" and "or" shall be both conjunctive and disjunctive; and the term "including" means "including without limitation".

7. If any interrogatory fails to specify a time period from which items should be listed, identified, or described, your answer shall include information from the previous three years.

8. 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 Florida Rules of Civil Procedure or Order of the Commission.

INTERROGATORIES

1. For each organizational unit identified in the organizational chart(s) produced in response to Request for Production No. 2, describe the units' functions and responsibilities.

2. For each organizational unit identified in the organizational chart(s) produced in response to Request for Production No. 2, identify the directors, officers and senior management for that unit.

3. For each organizational unit identified in the organizational chart(s) produced in response to Request for Production No. 2, identify each individual employed by or engaged by FPL that was at any time during the Period of Inquiry involved in or privy to information concerning the PPAs or subject matter of the PPAs, and state the individual's job title and supervisor.

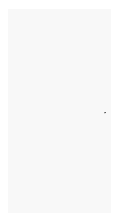
4. Identify each FPL employee that participated in the evaluation, selection, and/or negotiation processes associated with the PPAs or subject matter of the PPAs. For each such employee:

a. Identify the employee;

b. state the employee's title and supervisor;

c. describe the employee's role in the evaluation, selection, and/or negotiation processes; and

- d. identify each position that the employee has had in an organization other than FPL since January 1, 2000.

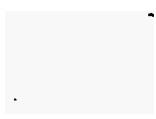


- 5. Identify each individual not an employee of FPL that participated in the evaluation, selection, and/or negotiation processes associated with the PPAs or subject matter of the PPAs. For each such individual:



- a. identify the organization that employed the individual;

- b. state the individual's title and supervisor;



c. describe the individual's role in the evaluation, selection, and/or negotiation processes; and

d. state the individual's business address, home address, and business telephone number.

6. Describe the process and criteria by which each of the individuals identified in Interrogatories No. 5 above was selected to participate in the evaluation, selection, and/or negotiation processes associated with the PPAs or subject matter of the PPAs.

7. Identify the individual or individuals who made the selection decision. (If individuals acted together, as some sort of selection committee, identify the individuals on that committee.)
8. Identify each individual identified in Interrogatory No. 5 and 7 above who, at any time, was employed by FPL. For each such individual, state the nature and time period of his employment with FPL.
9. Describe the evaluation, selection, and/or negotiation processes associated with the PPAs.
- Provide:
- a. Description;

- b. A statement of the objective of the evaluation, selection, and/or negotiation processes associated with the PPAs or subject matter of the PPAs;

- c. A timeline indicating significant processes milestones; and

- d. Identify any documents that were prepared by FPL, or at the direction of FPL, by SCSI, or at the direction of SCSI, or exchanged between FPL and SCSI during the evaluation, selection and/or negotiation processes associated with the PPAs or subject matter of the PPAs.

10. Identify for FPL and SCSJ the individual or individuals who had the final decision-making authority over the evaluation, selection, and/or negotiation processes associated with the PPAs.

11. Has FPL made, conducted, performed or otherwise authorized any investigation into SCSJ's failure to satisfy FERC's indicative market power test or any of the previous market power proceedings at FERC involving SCSJ? If yes, please describe the nature and extent of any such investigation, identify all individuals (including name, address, telephone number, and employer) involved in such investigation, and identify any documents relating to the investigation.

12. Has FPL made, conducted, performed, or otherwise uauthorized any investigation regarding the SERC energy market, including but not limited to the market position of SCSi and corporate affiliates in SERC? If yes, please describe the nature and extent of any such investigation, identify all individuals (including name, address, telephone number, and employer) involved in such investigation, and identify all documents related to the investigation.

13. Identify each employee or individual (not an employee of FPL) that participated in any investigation, as described in Interrogatories No. 11 and 12 above. For each such person:

a. identify the organization that employed the person;

b. state the person's title and supervisor; and

c. describe the person's role in the investigation.

14. Identify the date, times and participants of any telephone discussions or meetings between FPL and SCSJ at which the PPAs were discussed, and describe the substance of what was discussed.

15. Identify each employee or individual (not an employee of FPL) that participated in any analysis associated with the PPAs or subject matter of the PPAs regarding transmission losses, lack of dual fuel capability, or the generation being located outside of the South Florida area:

a. identify the organization that employed the person;

b. state the person's title and supervisor; and

c. describe the person's role in the analysis.

16. Identify each employee or individual (not an employee of FPL) that participated, during the Period of Inquiry, in any analysis associated with other Purchased Power Agreements, Requests for Proposal, or Need Determination proceedings regarding transmission losses, lack of dual fuel capability, or the generation being located outside of the South Florida area.

a. identify the organization that employed the person;

b. state the person's title and supervisor; and

c. describe the person's role in the analysis.

17. Identify each employee or individual (not an employee of FPL) that participated in any investigation of the wholesale market for power in the 2010 to 2015 time frame prior to entering into the PPAs with SCSL.

a. identify the organization that employed the person;

b. state the person's title and supervisor; and

c. describe the person's role in the investigation.

18. Identify each employee or individual (not an employee of FPL) that participated in any investigation of self build options for power in the 2010 to 2015 time frame prior to entering into the PPAs with SCS.

a. identify the organization that employed the person;

b. state the person's title and supervisor; and

c. describe the person's role in the investigation.

19. Identify each and every power generator, power marketer or developer that you identified as a possible generation source in your investigation of other market opportunities besides the PPAs, and, if contact was made with them, provide the date(s) of such contact, the identity of the person or persons contacted, and identify any documents associated with such contact.

20. Identify what investigation or forecast, if any, FPL has done into market prices for purchased power during the 2010 to 2015 time frame and identify all documents relied upon in such investigation or forecast.

21. Identify each employee or individual (not an employee of FPL) that participated in any investigation or forecast, as described in Interrogatory No. 20 above. For each such person:

a. identify the organization that employed the person;

b. state the person's title and supervisor; and

c. describe the person's role in the investigation or forecast.

22. What investigation or analysis has FPL done to conclude that these PPAs must be approved now when the energy and capacity represented by the PPAs is not needed until June 1, 2010 at the earliest?

23. What investigation or analysis has FPL done to conclude that these PPAs must be approved now when the counterparty to the Purchase Power Agreements, SCSI, has failed one of the indicative tests used by the FERC for determining market power?

24. Identify each employee or individual (not an employee of FPL) that participated in any investigation or analysis, as described in Interrogatories Nos. 22 and 23 above. For each such person:

a. identify the organization that employed the person;

b. state the person's title and supervisor; and

c. describe the person's role in the investigation or forecast.

25. Under the Scherer Contract, what is the fixed monthly capacity payment, variable O & M payment and startup payments referenced on page 4 of Mr. Hartman's testimony?

26. Under the Scherer Contract, what is the escalation rate used?

27. Under the Scherer Contract, what is the established gas index to which fuel supply is tied and what is the fixed heat rate curve for the facility?

28. Under the Harris Contract, what is the fixed monthly capacity payment, variable O & M payment and startup payments referenced on page 4 of Mr. Hartman's testimony?

29. Under the Harris Contract, what is the escalation rate used?

30. Under the Harris Contract, what is the established gas index to which fuel supply is tied and what is the fixed heat rate curve for the facility?

31. Under the Franklin Contract, what is the fixed monthly capacity payment, variable O & M payment and startup payments referenced on page 4 of Mr. Hartman's testimony?

32. Under the Franklin Contract, what is the escalation rate used?

33. Under the Franklin Contract, what is the established gas index to which fuel supply is tied and what is the fixed heat rate curve for the facility?

34. On page 14 of Mr. Hartman's testimony, he indicates the three contracts provide 930 MW after allowance for transmission losses on SCSI's system. Did FPL perform any analysis for transmission losses that will occur on FPL's transmission system, similar to the analysis performed during FPL's recent Turkey Point Request for Proposals, and if so, describe the results and identify any documents related to this analysis. If no such analysis was performed, explain why not.

35. What is the relative break down for transmission losses associated with each of the three contracts with SCSI that will occur on the Southern system?

36. Why were all three contracts linked together for the purpose of seeking Commission approval, specifically as testified to by Mr. Hartman, "termination of any one contract required the termination of all three contracts?" Who negotiated this point?

37. Identify all documents related to any analysis, investigation or studies, if any, FPL has performed related to showing whether the charged delivery points (from the existing UPS Agreement to the PPAs) cause substantial changes in the transmission provider's system flows.

38. What other power plant units (in operation, in construction, or in development) are located on the flow path between the Miller units and the Florida border?

39. What percentage of FPL's present generation portfolio does a purchase power agreement for 165 MW of energy and capacity represent?

40. Is firm transmission available as a separate commodity, not linked to these PPAs? If so, what efforts, if any, did you take to secure this commodity?

41. Describe all efforts and identify all documents related to any investigation, study or analysis, if any, FPL performed related to obtaining energy and capacity from or locating in Florida a solid fuel generating facility for the energy and capacity represented by the PPAs.

42. Describe all efforts and identify all documents related to any investigation, study or analysis, if any, FPL performed related to obtaining energy and capacity from generation (in operation, in construction or in development) located in FRCC region rather than the SERC region.

43. How much of the output of the Harris contract is supported by firm gas transportation to this plant under a contract between SCSi and Southern Natural Gas Company ("SNGC")?

44. Explain the "financial incentive" that SCSi has under the contracts with SNGC to use other resources available to them to meet FPL's needs if, for any reason, any of the units under the PPAs is not available.

45. Describe all steps and identify all documents related to those efforts FPL took to assess the potential for meeting FPL's firm energy capacity needs represented by the PPAs by pursuing self-build options.

46. Is FPL actively seeking energy and capacity to fill its 2008 and 2009 need for energy and capacity? If not, why not?

47. What is the market price for power in the Southeast Florida area for the 2010 to 2015 time period? Identify all documents you rely upon to support this answer.

48. For each expert you intend to call as a witness in this case who will express an expert opinion with regard to the issues in this case, specifically identify and/or disclose:

a. each expert's name and address and are and/or field of expertise;

b. the date you retained each expert;

c. the issue(s) on which each expert is expected to testify, as follows:

1. the subject matter about which each expert is expected to testify;

2. the substance of the facts and opinions to which each expert is expected to testify; and

3. a summary of the grounds for each opinion about which each expert intends to testify at the trial of this matter.

d. all other cases (by party names, court or administrative tribunal and case number), within the last three (3) years, in which each expert has testified by deposition or at trial and identify the law firm or if sole practitioner, the counsel, who represented the party who retained each expert;

e. identify and produce any document upon which your expert(s) will rely or otherwise base his/her opinion(s).

49. What is the assessed value for Ad Valorem tax purposes of your 4 on 1 Martin combined cycle unit?

50. What is the assessed value for Ad Valorem tax purposes of your 4 on 1 Manatee combined cycle unit?
51. How many jobs are typically created by the development and construction of a 4 on 1 self-build combined cycle unit, such as your Manatee 4 on 1 combined cycle plants?
52. Please describe the status of your efforts to obtain firm transmission rights from each generating facility represented by the PPA's and identify all documents related to these efforts.
53. As set forth at the bottom of page 8 of Mr. Hartman's testimony, why did you assume that the replacement contracts for the UPS Agreement would be based only upon natural gas fired generation?

54. Describe specifically, what Mr. Hartman did when he “oversaw an evaluation of the contracts against offers received by FPL in the last RFP conducted relative to FPL’s 2007 need for incremental capacity” and identify all documents related his involvement in the last RFP.

55. Describe all efforts you made to solicit indicative offers and identify all entities from whom you sought indications of pricing as testified to by Mr. Hartman beginning on Page 18 of his pre-filed testimony.

56. What indications, if any, have you received from SCSJ that the benefits of the PPA’s will not be available if you wait until 2007 to solicit for your 2010 need?

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57. Has SCSI communicated to you that the benefits you describe associated with the PPA's will not be available to you at any point in the future? If so, identify how that communication was made, the persons involved, the date of the communication and any documents associated with the communication.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Federal Express to those listed below with an asterisk and the remainder by U.S. Mail without an asterisk this day the 28th day of September, 2004.

Cochran Keating
Adrienne Vining
Florida Public Service Commission
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Tallahassee FL 32399-0850

John T. English
George Bachman
Florida Public Utilities Company
P.O. Box 3395
West Palm Beach FL 33402-3395

Lee Willis
James Beasley
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Vicki Kaufman
Joseph McGlothlin
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Tallahassee FL 32301

Florida Industrial Power Users Group
c/o John W. McWhirter, Jr.
McWhirter Reeves
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Tampa FL 33602

Bill Walker
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*R. Wade Litchfield
Florida Power & Light Company
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Juno Beach FL 33408-0420

James McGee
Progress Energy Company, LLC
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Ms. Susan D. Ritcnour
Gulf Power Company
One Energy Place
Pensacola FL 32520-0780

Rob Vandiver
Office of Public Counsel
c/o The Florida Legislature
111 W. Madison Street, #812
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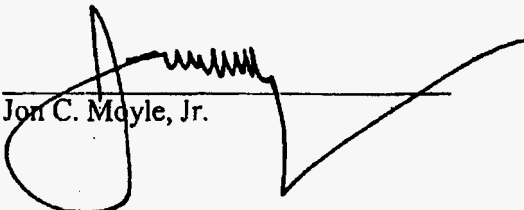
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Tallahassee FL 32301-7740


Jon C. Moyle, Jr.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and Purchased Power Cost)
Recovery Clause and Generating) DOCKET NO. 040001-EI
Performance Incentive Factor)
)

THOMAS K. CHURBUCK'S
FIRST SET OF REQUESTS FOR ADMISSION (NOS. 1-49)
TO FLORIDA POWER & LIGHT COMPANY

Pursuant to Fla.R.Civ.P. 1.370, THOMAS K. CHURBUCK ("Churbuck"), by and through his undersigned counsel, hereby serve the following Requests for Admissions of fact (Nos. 1 – 49) upon Florida Power and Light Company ("FPL") and demand that FPL specifically admit under oath or deny the facts herein within twenty (20) days after the service of these requests as ordered in PSC Order No. PSC-04-0161-PCO-EI, Order Establishing Procedure.

DEFINITIONS

1. "FERC" means the Federal Energy Regulatory Commission.
2. "FPSC" or "Commission" means the Florida Public Service Commission.
3. "FRCC" means the Florida Reliability Coordinating Council.
4. "Parties" refers to all persons or entities who are petitioners, respondents, otherwise named parties, or who have, or may, intervene in FPSC Docket No. 040001-EI.
5. The words "power", "energy", "electricity", "electricity supplies" and "electricity products" shall be construed to include, but not be limited to, electrical energy, capacity, energy, ancillary services (various reserves, scheduling services and any other related service that may be associated with the proper operation of the electricity grid) and losses. Provide all information in MW or MWh as appropriate.
6. "Purchase Power Agreements" or "PPAs" means the three purchase agreements between FPL and Southern Company Services, Inc , as agent for Gulf Power Company, Georgia Power Company and Southern Power Company for output from Scherer Unit 3, Harris Unit 1 and Franklin Unit 1 filed in this proceeding by FPL.

7. "SCST" means Southern Company Services, Inc, and the entities it represented as agent under the PPAs (Gulf Power Company, Georgia Power Company and Southern Power Company).

8. The terms "you", "your" or "yourself" means (a) FPL and predecessors or successors in interest and any parent, subsidiary, division or affiliated entity in existence during the period of time covered by the Requests for Admissions; (b) all of their present and former directors, officers, employees, agents, representatives, accountants, investigators, consultants, attorneys; (c) any other person or entity acting on their behalf or on whose behalf FPL acted; (d) any other person or entity otherwise subject to FPL's control, oversight or direction; or (e) individuals not employees of FPL who were involved in any manner regarding the PPAs.

INSTRUCTIONS

FPL is hereby advised that a failure to specifically answer any request or an evasive answer to any request will be taken as an admission of truth of such request. FPL is further advised that the answer must specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit nor deny the matter. A denial shall fairly meet the substance of the requested admission and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for a failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. The facts which you are requested to admit or deny are as follows:

REQUESTS FOR ADMISSIONS

1. Admit that SCSI failed one of the indicative tests used by the FERC for determining market power.
2. Admit that the Scherer Unit 3 PPA between FPL and SCSI does not account for a transmission loss factor for transmitting power over FPL's transmission system.
3. Admit that the Harris Unit 1 PPA between FPL and SCSI does not account for a transmission loss factor for transmitting power over FPL's transmission system.
4. Admit that the Franklin Unit 1 PPA between FPL and SCSI does not account for a transmission loss factor for transmitting power over FPL's transmission system.
5. Admit that the Scherer Unit 3 PPA between FPL and SCSI does not provide for dual fuel capacity.
6. Admit that the Harris Unit 1 PPA between FPL and SCSI does not provide for dual fuel capacity.
7. Admit that the Franklin Unit 1 PPA between FPL and SCSI does not provide for dual fuel capacity.
8. Admit that, all things being equal, power plant units with dual fuel capacity offer greater reliability as compared to power plant units without dual fuel capability.
9. Admit that the Scherer Unit 1 PPA between FPL and SCSI does not provide a pricing discount, for the generation being located outside of the South Florida area.
10. Admit that the Harris Unit 1 PPA between FPL and SCSI does not provide, by way of a pricing discount, for the generation being located outside of the South Florida area.
11. Admit that the Franklin Unit 1 PPA between FPL and SCSI does not provide a pricing discount, for the generation being located outside of the South Florida area.
12. Admit that, within the past 18 months, other than reviewing responses to its Turkey Point Request for Proposals, FPL failed to investigate the market for purchased power in the 2010 to 2015 time frame in the FRCC before entering into the PPAs with SCSI.

13. Admit that the PPAs FPL executed with SCSi represent FPL's estimate of the market price for purchased power during the 2010 to 2015 time frame.

14. Admit that the PPAs FPL executed with SCSi do not represent FPL's estimate of the market price for purchased power during the 2010 to 2015 time frame.

15. Admit that the Commission does not have to take action with respect to FPL's Purchase Power Agreements with SCSi at this time.

16. Admit that the Commission has the statutory power to require FPL to conduct a competitive procurement process for the purpose of procuring the most cost-effective purchased power for the 2010 to 2015 time frame.

17. Admit that the Commission has the statutory power to require FPL to conduct a competitive procurement process for the purpose of procuring power for the 2010 to 2015 time frame.

18. Admit that FPL did not conduct a competitive procurement process to procure the energy and capacity for the 2010 to 2015 time frame represented by the PPAs.

19. Admit that FPL did not issue a request for proposal pursuant to FPSC Rule 25-22.082 to procure the energy and capacity for the 2010 to 2015 time frame represented by the PPAs.

20. Admit that it is not critical that the PPAs between SCSi and FPL to be approved for rate recovery purposes at this time, given that energy and capacity is not to be provided until June 1, 2010 at the earliest.

21. Admit that FPL's Right of First Refusal under the PPAs regarding coal generation for sale from the Miller coal units is subordinate to use by SCSi to serve its native load needs.

22. Admit that in 2010 SCSi's projected native load needs will increase as compared to SCSi's current native load needs.

23. Admit that, as a percentage of generation to serve load, in 2010 SCSi's projected amount of coal generation will decrease as compared to SCSi's current amount of coal generation.

24. Admit that, in 2010 SCSi's projected amount of coal generation will remain the same.

25. Admit that in 2010 SCSI's projected amount of coal generation will be less than the projected native load increase.

26. Admit that the first filing in this docket specifically related to seeking approval of the PPAs was made on September 9, 2004.

27. Admit that under the PPAs even if there were excess coal generation to be purchased from the Miler coal units during the 2010 to 2015 time period pursuant to a Right of First Refusal, FPL would only be able to purchase such energy to the extent FPL reduces the amount of energy that it is purchasing from the Scherer, Harris and Franklin units due to transmission limitations.

28. Admit that the economic value of the Right of First Refusal referenced in Mr. Hartman's testimony related to the Miller coal units is the difference between the price of energy under the PPAs and the market price for coal energy produced out of Miller.

29. Admit that, all other things being equal, market forecasts for a point in time closer to the present tend to be more reliable than market forecasts for a point in time farther from the present.

30. Admit that you did not contact Competitive Power Ventures, Inc. to inquire regarding its interest in providing you energy and capacity during the 2010 to 2015 time frame before executing the PPAs with SCSI.

31. Admit that you did not contact any corporate affiliates of Competitive Power Ventures, Inc. to inquire regarding its interest in providing you energy and capacity during the 2010 to 2015 time frame before executing the PPAs with SCSI.

32. Admit that you did not contact Reliant Energy to inquire regarding its interest in providing you energy and capacity during the 2010 to 2015 time frame before executing the PPA's with SCSI.

33. Admit that you did not contact any corporate affiliates of Reliant Energy to inquire regarding its interest in providing you energy and capacity during the 2010 to 2015 time frame before executing the PPAs with SCSI.

34. Admit that you did not contact Constellation Power, Inc. to inquire regarding its interest in providing you energy and capacity during the 2010 to 2015 time frame before executing the PPA's with SCSL.

35. Admit that you did not contact any corporate affiliates of Constellation Power, Inc. to inquire regarding its interest in providing you energy and capacity during the 2010 to 2015 time frame before executing the PPAs with SCSL.

36. Admit that you did not contact Calpine Corporation to inquire regarding its interest in providing you energy and capacity during the 2010 to 2015 time frame before executing the PPA's with SCSL.

37. Admit that you did not contact any corporate affiliates of Calpine Corporation to inquire regarding its interest in providing you energy and capacity during the 2010 to 2015 time frame before executing the PPAs with SCSL.

38. Admit that you did not contact El Paso Energy to inquire regarding its interest in providing you energy and capacity during the 2010 to 2015 time frame before executing the PPA's with SCSL.

39. Admit that you did not contact any corporate affiliates of El Paso Energy to inquire regarding its interest in providing you energy and capacity during the 2010 to 2015 time frame before executing the PPAs with SCSL.

40. Admit that you did not contact Progress Energy to inquire regarding its interest in providing you energy and capacity during the 2010 to 2015 time frame before executing the PPA's with SCSL.

41. Admit that you did not contact any corporate affiliates of Progress Energy to inquire regarding its interest in providing you energy and capacity during the 2010 to 2015 time frame before executing the PPAs with SCSL.

42. Admit that Calpine Corporation has operational generation units that are in the flow path from the Miller unit to the FPL interface with the Southern Company from which energy and capacity is available for purchase during the 2010 to 2015 time period.

43. Admit that corporate affiliates of Calpine Corporation have generation units in development that are in the flow path from the Miller unit to the FPL interface with the Southern Company from which energy and capacity is available for purchase during the 2010 to 2015 time period.

44. Admit that Calpine Corporation has generation units under construction that are in the flow path from the Miller unit to the FPL interface with the Southern Company from which energy and capacity is available for purchase during the 2010 to 2015 time period.

45. Admit that corporate affiliates of Calpine Corporation have generation units under construction that are in the flow path from the Miller unit to the FPL interface with the Southern Company from which energy and capacity is available for purchase during the 2010 to 2015 time period.

46. Admit that Calpine Corporation has generation units under development that are in the flow path from Miller unit to the FPL interface with the Southern Company from which energy and capacity is available for purchase during the 2010 to 2015 time period.

47. Admit that corporate affiliates of Calpine Corporation have generation units under development that are in the flow path from the Miller unit to the FPL interface with the Southern Company from which energy and capacity is available for purchase during the 2010 to 2015 time period.

48. Admit that a contract between Southern Power Company and Georgia power executed in June 2002 does not establish a market price for energy to be delivered in 2010.

49. Admit that a contract between Southern Power Company and Georgia Power executed in June 2002 does not establish a market price for capacity to be delivered in 2010.

EXHIBIT E

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased Power)
Recovery Clause and Generating)
Performance Incentive Factor)
_____)

DOCKET NO. 040001-EI

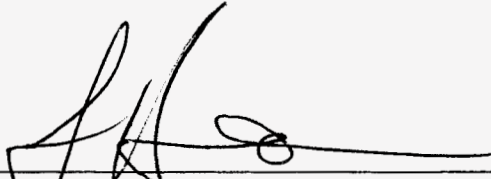
AFFIDAVIT

State of Florida)
)
County of Palm Beach)

BEFORE ME, the undersigned authority, this day personally appeared Thomas L. Hartman, who, being first duly sworn, deposes and states:

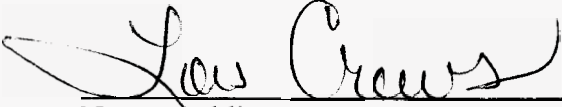
1. My name is Thomas L. Hartman. I am over eighteen (18) years of age and make this affidavit upon my personal knowledge.
2. I am Director of Business Management, Resource Assessment and Planning, Florida Power & Light Company ("FPL").
3. FPL considers the offers and negotiations surrounding purchase power proposals from third parties confidential. The disclosure of data related to offers and negotiations for power purchases from third parties would seriously injure FPL, FPL's customers and FPL's relationships with power suppliers. Disclosure of the terms and conditions, including pricing, that power suppliers have provided or offered to provide FPL would impair the power suppliers' own competitive positions in future negotiations. Moreover, the disclosure of such terms and pricing will have a chilling effect on suppliers' willingness to offer FPL favorable terms and pricing in the future, to the detriment of FPL's customers. To the best of my knowledge, FPL has maintained the confidentiality of these documents and materials.
4. Additionally, FPL considers FPL's commercial data, including fuel forecasts, load forecasts, expected dispatch schedules of the facilities in our fleet, dispatch strategies related to fuel and maintenance, highly confidential. The disclosure of FPL's commercial data could seriously injure FPL and its customers because it would send signals to the market that may lead to FPL being unable to obtain the favorable pricing and terms that it otherwise could. It would impair FPL's competitive positions in future negotiations and would have a chilling affect on suppliers' willingness to offer FPL favorable terms and pricing in the future, to the detriment of FPL's customers. To the best of my knowledge, FPL has maintained the confidentiality of these documents and materials.

5. Affiant says nothing further.

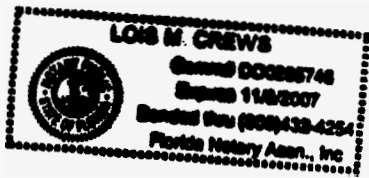


Thomas L. Hartman

Before me, the undersigned authority, appeared Thomas L. Hartman, who is personally known to me, on October 21, 2004.



Notary Public
State of Florida



Printed name and commission number:

LOIS CREWS

My commission expires on _____, _____.