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November 8, 2004

- VIA OVERNIGHT DELIVERY -

Blanca S. Bayó  
Director, Commission Clerk and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

2004 NOV -9 AM 10: 19  
DISTRIBUTION CENTER

Re: Docket No. 040001-EI

Dear Ms. Bayó:

I am enclosing for filing in the above docket the original and seven (7) copies of Florida Power & Light Company's Request for Confidential Classification of Certain Information Responsive to Staff's Third Set of Interrogatories (Nos. 22 and 24) and Staff's First Request for Production of Documents (No. 4), together with a diskette containing the electronic version of same. The enclosed diskette is HD density, the operating system is Windows XP, and the word processing software in which the documents appear is Word 2000. Pursuant to Rule 25-22.006, F.A.C., I am also enclosing one highlighted and two redacted copies of the confidential documents that are the subject of this request.

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

If there are any questions regarding this transmittal, please contact me at 305-577-2939.

Sincerely,

*Damaris Rodriguez for JT Butler*

John T. Butler

Enclosure  
cc: Counsel for Parties of Record (w/encl.)

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*conf records*  
MIA 2001 367423v1

DOCUMENT NUMBER-DATE

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Miami West Palm Beach Tallahassee Naples Key West London Caracas São Paulo Rio de Janeiro Santo Domingo

FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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

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) **Docket No. 040001-EI**  
) **Filed: November 9, 2004**  
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)  
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**FLORIDA POWER AND LIGHT COMPANY'S REQUEST FOR CONFIDENTIAL  
CLASSIFICATION OF CERTAIN INFORMATION RESPONSIVE TO STAFF'S  
THIRD SET OF INTERROGATORIES (NOS. 22 AND 24) AND STAFF'S FIRST  
REQUEST FOR PRODUCTION OF DOCUMENTS (NO. 4).**

Florida Power & Light Company ("FPL"), pursuant to Rule 25-22.006, F.A.C., and Section 366.093, Florida Statutes, requests confidential classification of certain information responsive to Interrogatories No. 22 and 24 of Staff's Third Set of Interrogatories and Staff's First Request for Production of Documents (No. 4) (the "Confidential Discovery Responses"). In support of its Request, FPL states as follows:

1. FPL provided to Staff the information responsive to Staff's Third Set of Interrogatories and Staff's First Request for Production of Documents on October 19, 2004. Contemporaneously, FPL filed a Notice of Intent to Seek Confidential Classification (the "Notice of Intent"). Rule 25-22.006, F.A.C., provides that, unless good cause is shown for delay, a party that has filed a notice of intent must then file a request for confidential classification of the information covered by the notice of intent within 21 days. This Request is being filed within 21 days of the Notice of Intent, and is intended to request confidential classification of the Confidential Discovery Responses consistent with Rule 25-22.006.

2. The following exhibits are included with this Request:

a. Composite Exhibit A consists of a copy of the Confidential Discovery Responses, in which all information that FPL asserts is entitled to confidential treatment has been highlighted. Composite Exhibit A is submitted separately in a sealed folder marked "CONFIDENTIAL."

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

b. Composite Exhibit B consists of two copies of the Confidential Discovery Responses in which all information that FPL asserts is entitled to confidential treatment has been redacted.

c. Exhibit C is a table containing a line-by-line and page-by-page identification of the information in the Confidential Discovery Responses for which confidential treatment is sought, together with references to the specific statutory basis for the claim of confidentiality and to the affidavit in support of the requested classification.

d. Exhibit D is the affidavit of Gerard J. Yupp, Manager of Regulated Wholesale Power Trading in FPL's Energy Marketing and Trading Division. The affidavit attests to the asserted basis for confidential classification.

4. FPL seeks confidential protection for the information highlighted in Exhibit A. The highlighted information is confidential because it contains or constitutes vendor-specific information regarding contract prices and other contract-related information. Disclosure of this information may impair the competitive business interests of FPL and/or the vendors, as well as FPL's ability to contract on favorable terms. Additionally, the documents contain proprietary confidential business information that are comprised of trade secrets of FPL, which allow FPL to purchase and sell fuel and electric power on favorable terms for FPL and its customers. *See* §§ 366.093(3)(d) and (e), Fla. Stat (2002)

5. FPL submits that the highlighted information is proprietary confidential business information within the meaning of Section 366.093(3). Pursuant to Section 366.093, such information is entitled to confidential treatment and is exempt from the disclosure provisions of the public records law.

6. The material in Exhibit A for which FPL seeks confidential classification is intended to be and is treated by FPL as private, and its confidentiality has been maintained.

7. Upon a finding by the Commission that the material in Exhibit A for which FPL seeks confidential treatment is proprietary confidential business information within the meaning of Section 366.093(3), pursuant to Section 366.093(4) such materials should not be declassified for at least eighteen (18) months and should be returned to FPL as soon as the information is no longer necessary for the Commission to conduct its business.

**WHEREFORE,** FPL respectfully requests that its Request for Confidential Classification be granted.

Respectfully submitted,

R. Wade Litchfield, Esq.  
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Florida Power & Light Company  
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Juno Beach, Florida 33408-0420  
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Telephone: 305-577-2939

By: *Pamario Rodriguez for JT Butler*  
John T. Butler  
Fla. Bar No. 283479

**CERTIFICATE OF SERVICE**

**Docket No. 040001-EI**

I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Request for Confidential Classification of Certain Information Responsive to Staff's Third Set of Interrogatories (Nos. 22 and 24) and Staff's First Request for Production of Documents (No. 4) without exhibits (\*) has been furnished by overnight delivery (\*\*) or United States Mail on the 8<sup>th</sup> day of November, 2004, to the following:

Adrienne E. Vining, Esq.(\*\*)  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

Patricia A. Christensen, Esq.  
Office of Public Counsel  
c/o The Florida Legislature  
111 West Madison Street, Room 812  
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Jon C. Moyle, Jr., Esq.  
Moyle, Flannigan, Katz, Raymond  
& Sheehan, P.A.  
The Perkins House  
118 North Gadsden Street  
Tallahassee, FL 32301

\* Redacted copies of exhibits furnished upon request

By: Damaris Rodriguez for JT Butler  
John T. Butler

**EXHIBIT C**

**11/09/04**

**COMPANY:** Florida Power & Light Company  
**TITLE:** List of Confidential Discovery Responses

**DISCOVERY:** Staff's Third Set of Interrogatories

<b>Question No.</b>	<b>Description</b>	<b>No. of Pages</b>	<b>Conf Y/N</b>	<b>Line No./Col No.</b>	<b>Florida Statute 366.903(3) Subsection</b>	<b>Affiant</b>
22	Contracts Page 2 of 2	1	Y	Lines 1-66, Cols A-F	(d) (e)	G.YUPP
24	Contracts Page 1 of 1	1	Y	Lines 1-7, Cols A-E	(d) (e)	G.YUPP

**DISCOVERY:** Staff's First Request for Production of Documents

<b>Question No.</b>	<b>Description</b>	<b>No. of Pages</b>	<b>Conf Y/N</b>	<b>Line No./Col No.</b>	<b>Florida Statute 366.903(3) Subsection</b>	<b>Affiant</b>
4	Hedging Information Page FCR-4006	1	Y	Lines 1-10	(d) (e)	G.YUPP
4	Hedging Information Page FCR-4007	1	Y	Lines 1-16	(d) (e)	G.YUPP

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and Purchased Power ) DOCKET NO. 040001-EI
Cost Recovery Clause with Generating )
Performance Incentive Factor ) DATED: November 4, 2004

STATE OF FLORIDA )
) AFFIDAVIT OF GERARD YUPP
PALM BEACH COUNTY )

BEFORE ME, the undersigned authority, personally appeared Gerard Yupp who, being first duly sworn deposes and says:

1. My name is Gerard Yupp. I am currently employed by Florida Power & Light Company ("FPL") as Manager of Regulated Wholesale Power Trading in the Energy Marketing and Trading Division. I have personal knowledge of the matters stated in this affidavit.

2. I have reviewed the documents and information for which I am listed as Affiant in Exhibit C and which are included in Exhibit A to FPL's Request for Confidential Classification of Certain Information Responsive to Staff's Third Set of Interrogatories (Nos. 22 and 24) and Staff's First Request for Production of Documents (No. 4). The documents and materials that I have reviewed and that FPL asserts in Exhibit C to be proprietary confidential business information contain or constitute vendor-specific information regarding contract prices and other contract-related information. Disclosure of this information would impair the competitive interests of FPL and/or the vendors, as well as FPL's ability to contract on favorable terms. Additionally, the documents and materials that I have reviewed and that FPL asserts in Exhibit C to be proprietary confidential business information are comprised of trade secrets of FPL, which allow FPL to purchase and sell fuel and electric power on favorable terms for FPL and its customers. The disclosure of this trade-secret information would provide other participants in the fuel and electric power markets insight into FPL's marketing and trading practices that would impair FPL's ability to negotiate, to the detriment of FPL and its customers. To the best of my knowledge, FPL has maintained the confidentiality of these documents and materials.

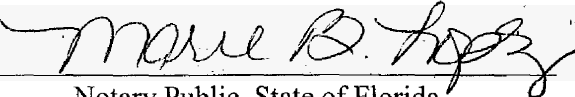
3. Consistent with the provisions of the Florida Administrative Code, such materials should remain confidential for a period of eighteen (18) months. In addition, they should be returned to FPL as soon as the information is no longer necessary for the Commission to conduct its business so that FPL can continue to maintain the confidentiality of these documents.

4. Affiant says nothing further.

Handwritten signature of Gerard Yupp over a horizontal line, with the printed name Gerard Yupp below it.

SWORN TO AND SUBSCRIBED before me this 4th day of November, 2004, by Gerard Yupp, who is personally known to me or who has produced (type of identification) as identification and who did take an oath.

Affidavit of Gerard Yupp  
Revised Request for Confidential Classification  
Docket No. 040001-EI/ Audit No. 02-340-4-1  
Page 2 of 2

  
Notary Public, State of Florida

My Commission Expires: 7/17/08

