

ORIGINAL

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January 18, 2002

FEDERAL EXPRESS

Blanca S. Bayó, Director
Division of Records and Reporting
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0870

Re: Docket No.: 000824-EI
Publix Super Market Inc., Notice of Intent to Seek Confidential
Classification

Dear Ms. Bayó:

Enclosed please find the original and fifteen (15) copies of Publix Super Markets Inc., Notice of Intent to Seek Confidential Classification in the above-referenced docket. A copy of this filing has also been provided on a 1.44MB floppy disc in Word.

Sincerely,



Thomas A. Cloud

GRAY, HARRIS & ROBINSON, P.A.

TAC:gcj

Enclosures

cc: All individuals on docketing service list

DOCUMENT NUMBER-DATE

00683 JAN 18 02

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Review of Florida Power Corporation's earnings, including effects of proposed acquisition of Florida Power Corporation by Carolina Power & Light.

DOCKET NO. 000824-EI

Filed: January 18, 2002

**PUBLIX SUPER MARKETS, INC.'s NOTICE OF INTENT
TO SEEK CONFIDENTIAL CLASSIFICATION**

Pursuant to Section 366.093, Florida Statutes, and Fla. Admin. Code R. 25-22.006, Publix Super Markets, Inc. ("Publix") by and through its undersigned attorneys, hereby files notice of its intent to request confidential classification for the pre-filed direct testimony of Publix expert Sheree L. Brown, and in support thereof states as follows:

1. Publix requested and obtained through discovery from Florida Power Corporation ("FPC") various documents and other information which have been deemed by Florida Power Corporation as confidential business records.
2. In order to receive such information from FPC, Publix was required to enter into a written Confidentiality Agreement dated January 9, 2002, a copy of which is attached hereto as Exhibit "A".
3. Publix expert Sheree L. Brown, after signing the confidentiality acknowledgement required in the Agreement, reviewed such confidential information and incorporated by reference certain portions of that confidential information in her direct testimony which is being filed on January 18, 2002 in this docket (the "Testimony").
4. Publix has notified counsel for FPC that the Testimony will contain confidential FPC information and that FPC must file a request for confidential classification.

DOCUMENT NUMBER DATE

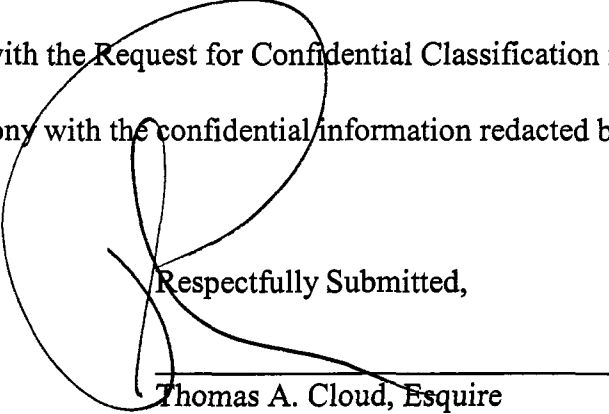
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FPSC-COMMISSION CLERK

Based on that conversation, it is the understanding of Publix that FPC will seek such classification pursuant to Fla. Admin. Code R. 25-22.006.

5. An unredacted version of the Testimony will be delivered to the Florida Public Service Commission Division of Records and Recording in a sealed envelope with the confidential information highlighted by page or line (as appropriate) for confidential treatment. **This unredacted version of the Testimony should be afforded confidential treatment pending the filing by FPC of a Request for Confidential Classification and a decision on FPC's request by the Florida Public Service Commission.**

6. Publix will also submit with the Request for Confidential Classification fifteen edited sets of the Testimony with the confidential information redacted by line or page (as applicable).



Respectfully Submitted,

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Attorneys for Publix Super Markets, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by

Facsimile and/or Federal Express to the following parties of record and interested parties, this

18th day of January 2002:

Parties of Record:

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Attorneys for Publix Super Markets, Inc.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Florida Power Corporation's
earnings, including effects of proposed acquisition
of Florida Power Corporation by Carolina Power
Corporation by Carolina Power & Light

Docket No.: 000824-EI

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (hereinafter referred to as the "Agreement") is entered into as of the 9th day of January, 2002 (hereinafter referred to as the "Effective Date") by and between Florida Power Corporation, (hereinafter referred to as "Florida Power") and the Publix Super Markets, Inc., (hereinafter referred to as "Publix"). Florida Power and Publix shall be individually referred to as the "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, Publix has propounded certain discovery requests in this docket to Florida Power and anticipates serving additional discovery in the future;

WHEREAS, Florida Power may propound certain discovery requests in this docket to Publix in the future;

WHEREAS, Florida Power contends that some of the information sought in discovery by Publix is confidential proprietary business information;

WHEREAS, the Parties desire to facilitate the prompt exchange of information between them without undue delay while protecting its confidential status;

WHEREAS, the Parties agree that entering into a confidentiality agreement will expedite the discovery of information by parties seeking to prepare for hearing, and will afford the necessary protection to confidential and proprietary information;

NOW THEREFORE, in consideration of the foregoing recitals and the mutual agreements hereinafter set forth and other good and valuable consideration, the sufficiency of which is acknowledged, the Parties agree as follows:

1. **SCOPE OF THE PARTIES**

The terms "Party" or "Parties" as used in this Agreement include each Party's affiliates, and their respective directors, officers and employees.

2. **TERM**

This Agreement shall be effective from the date it is executed by the Parties until the date the Commission issues its final decision or order in this proceeding, unless any decision of the Commission in Docket No. 000824-EI is appealed, in which case the Agreement shall continue until the earlier of (i) the date on which all appellate review is completed or (ii) five years after the Effective Date.

3. **DEFINITION OF CONFIDENTIAL AND PROPRIETARY**

The term "Confidential and Proprietary Information" shall mean any and all information, items and documentation which the party disclosing the information ("Disclosing Party") designates in writing as "Confidential" or "Proprietary," whether written, electronically encoded or oral (orally disclosed information shall be designated as confidential prior to oral disclosure and reduced to writing and marked as "Confidential" or "Proprietary" within ten days), hereafter disclosed by the Disclosing Party to the party receiving the information ("Receiving Party"), including, but not limited to, business records, financial records, operating data, technical data, software programs, costs, profits, suppliers, customers, production methods, designs and engineering data, patent drawings, research and market data; provided, however, that Confidential and Proprietary Information shall not include information which (a) is or becomes generally available to the public in accordance with law other than as a result of a disclosure by the Receiving Party, (b) becomes available to the Receiving Party on a non-confidential basis prior to its disclosure by the Disclosing Party, (c) becomes available to the Receiving Party on a non-confidential basis from a third person who is not otherwise bound by a confidentiality agreement with the Disclosing Party or is not otherwise prohibited from transmitting the information to the Receiving Party, or (d) is independently and lawfully developed by the Receiving Party without the use of the Confidential and Proprietary Information disclosed by the Disclosing Party.

In the event the Receiving Party is requested or required (by law or regulation, interrogatories, request for information or documents, subpoena, civil investigative demand or similar process) to disclose any Confidential and Proprietary Information, the Receiving Party shall provide the Disclosing Party with notice so that the Disclosing Party may seek an appropriate protective order and/or waive the Receiving Party's compliance with this Agreement. If, in the absence of a protective order or the receipt of a waiver hereunder, the Receiving Party is nonetheless legally compelled to disclose such Confidential and Proprietary Information, the Receiving Party may do so without liability hereunder.

4. **DISCLOSURE AND USE OF CONFIDENTIAL AND PROPRIETARY INFORMATION**

The Receiving Party shall keep confidential all Confidential and Proprietary Information disclosed by the Disclosing Party, and shall not, without the Disclosing Party's prior written consent, disclose, divulge, reveal, report, publish or transfer the Confidential and Proprietary Information to any third party, nor shall the Receiving Party use any such Confidential and Proprietary Information for purposes other the preparation for and conduct of these proceedings, and then solely as contemplated herein, and shall keep the Confidential and Proprietary information secure as confidential and proprietary in accordance with this Agreement. Without limiting the foregoing, the Receiving Party shall limit disclosure of Confidential and Proprietary Information to only those officers, employees, agents, and member representatives (including attorneys, accountants and consultants) necessary for the purposes stated herein; provided that any such person shall have agreed in writing to be subject to the terms hereof in a form consistent with that contained in Exhibit A hereto.

5. **CHALLENGE TO CONFIDENTIALITY**

This Agreement establishes a procedure for the expeditious handling of information that the Disclosing Party claims is confidential; it shall not be construed as an Agreement or ruling on the confidentiality of any information. Any party reserves the right to challenge the confidentiality of the Confidential Information produced pursuant to this Agreement.

6. **PREHEARING PROCEDURE**

Prior to using any Confidential and Proprietary Information in testimony or exhibits in this docket, Receiving Party shall notify Disclosing Party so Disclosing Party can take appropriate steps to protect the information pursuant to Commission procedures. At least seven working days before the final hearing in the above-styled docket, Receiving Party's counsel shall provide Disclosing Party's counsel with a list of Confidential Documents, if any, that the Receiving Party intends to use at the final hearing. Upon receipt of the list from Receiving Party's counsel, Disclosing Party's counsel shall, pursuant to Commission rule, file a Request for Confidential Classification covering the Confidential Documents on the list. The Parties shall work together to develop a process to permit utilization of Confidential and Proprietary Information at hearing while maintaining its confidential status.

7. **RETURN OF DOCUMENTS**

Upon the expiration of this Agreement, the Receiving Party shall return to the Disclosing Party, or shall destroy, all Confidential and Proprietary Information in its possession given to the Receiving Party by the Disclosing Party pursuant to this Agreement.

8. **INJUNCTIVE RELIEF**

Each Party understands and agrees that the Disclosing Party shall suffer irreparable harm in the event

that the Receiving Party breaches any of the obligations under this Agreement and that monetary damages shall be inadequate to compensate a Disclosing Party for such breach. Accordingly, in the event of a breach or threatened breach by the Receiving Party of any of the provisions of this Agreement, the Disclosing Party shall, in addition to and not in limitation of any other rights, remedies or damages available to the Disclosing Party at law or in equity, be entitled to a temporary restraining order, preliminary injunction and permanent injunction in order to prevent any such breach by the Receiving Party, or by any or all of the Receiving Party's partners, co-venturers, employers, employees, servants, agents, representatives, and any and all persons directly or indirectly acting for, on behalf of, or with the Receiving Party.

9. INDEMNIFICATION

Each Party shall indemnify, defend and hold harmless the Disclosing Party against any and all direct damages, claims, losses, costs, liabilities and expenses (including reasonable attorneys' fees and court costs) directly resulting from or arising out of any breach of this Agreement by any of them or the enforcement of this Agreement.

10. LIMITATION OF LIABILITY

In no event shall either Party be liable to the other Party for any indirect, incidental, special, consequential, exemplary, punitive or multiple losses or damages whatsoever, including, loss of anticipated profits, revenues or sales or goodwill, whether based on contract, tort (including negligence and strict liability), under any warranty or otherwise arising out of, in connection with, or relating to this Agreement.

11. GOVERNING LAW

This Agreement shall be interpreted, governed, and construed under the laws of the State of Florida. The Parties further agree that jurisdiction and venue of any action brought pursuant to this Agreement to enforce the terms hereof or otherwise shall properly lie in the Florida Public Service Commission.

12. ENTIRE AGREEMENT

This Agreement constitutes the entire understanding between the Parties relating to the subject matter hereof superseding any previous agreements or understandings between the Parties. The Parties shall not be bound by or be liable for any statement, prior negotiations, correspondence, representation, promise, draft agreements, inducement or understanding of any kind or nature not set forth or provided for herein. No prior course of dealing, usage of trade or course of performance shall be used to supplement or explain any term, condition, or instruction used in this Agreement.

13. MODIFICATION

No statements or agreements, oral or written, made prior to the date hereof, shall vary or modify the

written terms set forth herein, and neither Party shall claim any amendment, modification or release from any provision hereof by reason of a course of action or mutual agreement unless such agreement is in writing, signed by both Parties and specifically states it is an amendment to this Agreement.

14. **WAIVER**

No failure or delay by any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right or privilege hereunder. Furthermore, nothing herein shall constitute the Disclosing Party's waiver of any proprietary or trade secret rights it may otherwise enjoy with respect to Confidential and Proprietary Information disclosed pursuant hereto.

15. **SEVERABILITY**

If any provision of this Agreement is deemed or defined by any law, regulation, ordinance, or order any court or any governmental agency, or regulatory body having jurisdiction over either Party, or held or declared by a court of competent jurisdiction to be unlawful, invalid, void or otherwise unenforceable, the rights and obligations of the Parties shall be reduced or abated only to the extent required to remove or cure such illegal or unenforceable portion, so long as the Agreement is not affected in a manner or to the extent which would render it economically, technically, materially, or commercially infeasible to either Party.

16. **HEADINGS**

Headings in this Agreement are for reference only. In case of a conflict between a heading and the content of a section, the content shall control the meaning.

17. **ACKNOWLEDGMENT**

Both Parties acknowledge that they have had the opportunity to have this Agreement reviewed by legal counsel of their choice and that they understand the terms and conditions herein, and in the event of any ambiguity in any of the terms set forth herein, such ambiguity shall not be construed against either party.

IN WITNESS WHEREOF, the Parties have caused duplicate originals of this Agreement to be executed as of the Effective Date thereof.

FLORIDA POWER CORPORATION

By: *Jan H R*

Title: *Attorney for Florida Power Corp*

PUBLIX SUPER MARKETS, INC.

By: *[Signature]*

Title: *General Counsel & Secretary*

EXHIBIT A

In return for, and as a condition precedent to, access to Confidential and Proprietary Information provided pursuant to the Confidentiality Agreement between Florida Power Corporation and Publix Super Markets, Inc. dated January 9, 2002, I, the undersigned, acknowledge that I have read or understand through explanation of counsel the prohibitions and restrictions against disclosure of such Information contained in the Agreement and agree to be bound and abide by such prohibitions and restrictions.

By _____

Company and Title

Date