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April 24, 2002

VIA HAND DELIVERY

RECEIVED-FPSC
02 APR 23 AM 10:50
COMMISSION CLERK

Blanca Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oaks Blvd.
Tallahassee, Florida 32399-0850

RE: Petition of Florida Power & Light Co. for a determination
of need for a power plant proposed to be located in
Martin Co.,
Docket No. 020262-EI

RE: Petition of Florida Power & Light Co. for a determination
of need for a power plant proposed to be located in
Manatee Co.,
Docket No. 020263-EI

Dear Ms. Bayo:

Please find the original and fifteen copies of the Joint
Motion for Entry of Order Governing Handling and Disclosure of
Information Asserted to be Confidential to be filed in the above-
styled cases. Also attached is a copy to be stamped and returned
to our offices for our files.

Thank you for your attention to this matter. Should you have
any questions or need any additional information, please contact
me.

Very truly yours,

Suzanne Brownless
Suzanne Brownless
Attorney for Mirant Corporation

- AUS _____
- CAF _____
- CMP _____
- COM 5 _____
- CTR _____
- ECR _____
- GCL _____
- OPC _____
- MMS _____
- SEC 1 _____
- OTH Richard _____

cc: Parties
Beth Bradley

Margaret

RECEIVED & FILED

RJM
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

04428 APR 23 02

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Petition of Florida Power & Light Company for a determination of need for a power plant proposed to be located in Martin County.) DOCKET NO. 020262-EI

IN RE: Petition of Florida Power & Light Company for a determination of need for a power plant proposed to be located in Martin County.) DOCKET NO. 020263-EI

JOINT MOTION FOR ENTRY OF ORDER GOVERNING HANDLING AND DISCLOSURE OF INFORMATION ASSERTED TO BE CONFIDENTIAL

Florida Power & Light Company (FPL), Mirant Corporation (Mirant), Calpine Energy Services, L.P. (Calpine), Reliant Energy Power Generation, Inc. (Reliant) and South Pond Energy Park LLC (South Pond)(collectively referred to herein as Intervenors), pursuant to Rules 28-106.204 and 28-106.206, Florida Administrative Code, file this Joint Motion For Entry of Order Governing Handling and Disclosure of Information Asserted to be Confidential, and in support thereof state as follows:

1. On March 22, 2002, FPL filed petitions initiating the above dockets requesting that it be awarded determinations of need for the construction of Martin Unit 8 and Manatee Unit 3. Associated with the need determination petitions filed on March 22, FPL has requested confidentiality for Appendices C-1 through C-6 to the Need Study supporting its petition and Document No. AST-2 contained in the prefiled testimony of FPL's witness Alan S. Taylor.
2. Mirant, Calpine, South Pond and Reliant have each filed petitions to intervene in

DOCUMENT NUMBER 04428 APR 23 2002
FPSC-COMMISSION CLERK

these dockets.¹ On April 18, 2002, the Commission granted Reliant's petition to intervene. All of the other petitions to intervene are pending at this time. FPL has indicated to all of the Intervenors that it will not oppose their intervention.

3. Due to the compressed hearing schedule in these need determination dockets, the Commission Staff convened an informal meeting to discuss procedural matters prior to the date on which FPL filed its petitions. Staff also noticed and conducted a series of additional informal meetings on April 3, April 10, April 17 and April 19, 2002 to discuss procedural matters and issues to be litigated in these dockets. At the meeting on April 3, access by the Intervenors to Appendices C-1 through C-6 and Exhibit AST-2 and to materials which have been requested by Staff and Intervenors for which FPL is asserting a claim of confidentiality, was discussed. FPL and Intervenors agreed that a confidentiality agreement would be necessary for access to this information as well as some type of sublicensing agreement satisfactory to EPRI, the owner of the EGEAS computer model used by FPL in its evaluation of bid proposals, for access to the version of the EGEAS model used by FPL.

4. As the result of these meetings, during which Staff, FPL, Intervenors and other participants in the RFP who have not chosen to intervene took an active part², the attached

¹ The Bidder's petitions for intervention were filed in both need determination dockets on the following dates: Reliant - March 29, 2002; Mirant - April 10, 2002; Calpine - April 11, 2002; CPV - April 15, 2002; and South Pond - April 19, 2002.

² FPL notified all of the RFP participants prior to the April 10, April 17 and April 19 meetings that the disclosure of their bid information pursuant to a confidentiality agreement was to be discussed. The notices provided the Commission's "call-in number", time and date of the meetings and urged bidders concerned about this issue to participate. Several RFP participants (Enron, El Paso, AES, TECO) have, in fact, used the Commission's call-in line to participate in the meetings. It should also be noted that in FPL's RFP bidders were advised that all bid information would be subject to disclosure to the Commission in need determination

Confidentiality Agreement was negotiated and agreed to by all parties to the Agreement.

5. This Agreement represents considerable effort and compromise on the part of FPL and Intervenors. The Agreement protects the confidentiality of information that the parties and RFP participants believe to be confidential while allowing that designation to be challenged and the issue resolved by the Commission. The Agreement allows distribution of FPL's confidential filing information and other confidential materials that are, or may be, requested by parties in discovery in accord with the expedited time schedule established in these proceedings. The dissemination of this information is crucial to a meaningful evaluation of FPL's case and to the preparation of Intervenors' testimony which is due on May 15.

6. Pursuant to Rule 28-106.206, Florida Administrative Code, a prehearing officer has the power to "issue appropriate orders to effectuate the purposes of discovery and to prevent delay".

7. FPL has presented a sublicense agreement that if executed by a party would permit the party to use EPRI's EGEAS software model capable of being run on a mainframe computer at no cost.

8. FPL and the Intervenors have contacted CPV Cana, Ltd., through its counsel, who states that CPV supports the motion with regard to the Confidentiality Agreement

WHEREFORE, Intervenors and FPL request that the Commission issue an order which:

1) Approves and adopts the terms and conditions of the attached Confidentiality Agreement ;

2) Allows FPL to provide to each Intervenor who has executed the Confidentiality


proceedings.

Agreement an unredacted copy of the previously filed Appendices C-1 through C-6 and prefiled testimony Exhibit AST-2 immediately upon issuance of this order pursuant to the terms and conditions contained in the Confidentiality Agreement and to provide Intervenor with all confidential discovery materials not otherwise objected to as they become due;

3) Upon execution of the sublicense agreement by an Intervenor, allows FPL to immediately provide that Intervenor with a copy of the EGEAS model used by FPL in its evaluation of the RFP proposals. (FPL understands that access to the model is of limited benefit without also having access to the model's manual and installation instructions and is working diligently to secure those materials as well.) and;

4) Such other relief as the Commission deems just and proper.

Respectfully submitted this 23rd day of April, 2002 by:


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Charles A. Guyton
Bonnie E. Davis
Steel Hector & Davis, LLP
215 South Monroe Street
Suite 601
Tallahassee, FL 32301
Attorneys for Florida Power & Light Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was provided by (*) Hand Delivery or United States Mail this 23rd day of April, 2002 to the persons listed below:

*Martha C. Brown, Esq.
Florida Public Service Comm.
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Jack Shreve, Esq.
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111 West Madison St., Room 812
Tallahassee, FL 32399-1400

*Charles Guyton, Esq.
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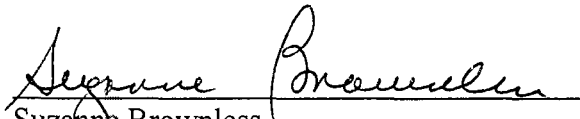
*Joe McGlothlin, Esq.
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*Karen Walker
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Tallahassee, FL 32302


Suzanne Brownless

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Power and Light
Company for a Determination of Need
For a power plant proposed to be located
In Martin County

Docket No. 020262-EI

In re: Petition of Florida Power and Light
Company for a Determination of Need
For a power plant proposed to be located
In Manatee County

Docket No. 020263-EI

Filed: April 22, 2002

CONFIDENTIALITY AGREEMENT

This Agreement is entered into by and between Florida Power and Light Company (FPL)
and _____

by and through their respective counsel (hereinafter referred to as the Parties).

RECITALS

Due to the nature of the above-styled and captioned docket, the Parties anticipate the necessity to include certain confidential information in testimony, discovery responses and exhibits filed with the Florida Public Service Commission (hereinafter referred to as the FPSC).

FPSC Rule 25.22-006, Administrative Code (hereinafter referred to as the Rule), governs the use of proprietary confidential business information. Under the Rule, the Party claiming that information is proprietary confidential business information must file a Request for Confidential Classification before such information is submitted to the FPSC. FPL has done so in this proceeding with regard to portions of its direct testimony and exhibits filed on March 22, 2002. Under paragraph 7(b) of the Rule, the FPSC has encouraged the Parties to seek mutual agreement regarding access to confidential documents prior to bringing a controversy over such

access to the FPSC for decision. Under the Rule, such agreements do not constitute a waiver to any claim of/or objection to confidentiality a Party may otherwise have a right to make.

The purposes of this Agreement are to:

- (a) make information that has been found to be confidential pursuant to Rule 25-22.006 by the FPSC (hereinafter referred as Confidential Information) available for review by the Parties during the discovery phase of these dockets while at the same time preserving the confidential status of the information;
- (b) preserve the confidential nature of information designated confidential by a Party (hereinafter referred to as Designated Confidential Information) during the discovery phase of this docket without invoking the provisions and procedures of Rule 25-22.006.

AGREEMENT

In accordance with paragraph 7(b) of the Rule, and to facilitate the timely provision of information between the Parties the undersigned promise and agree as follows:

1. Applicability.

The terms of this Agreement shall apply to:

- (a) all information found to be confidential by the FPSC pursuant to Rule 25-22.006, Florida Administrative Code, and Section 366.093(3), Florida Statutes (Confidential Information); and
- (b) all other information, regardless of format, which a Party to this Agreement designates confidential (Designated Confidential Information). This Agreement applies only to the Confidential Information and Designated Confidential Information disclosed between

the Parties or filed with the FPSC in Docket Nos. 020262-EI and 020263-EI, Determinations of Need for Martin Unit and Manatee Unit.

1. Obligation to Act in Good Faith.

- (a) By signing this Agreement, no Party accepts the validity of, or waives the right to contest a claim of confidentiality on any grounds. However, in the event of a dispute over a claim of confidentiality, Parties to this Agreement shall safeguard the confidentiality of the subject material pending a ruling on the matter by the Commission.
- (b) Any Party who believes information designated confidential by another Party would not be found to be confidential pursuant to Rule 25-22.006 because the information was a matter of public record or was otherwise in the public domain prior to its designation as confidential under this Agreement may so advise the Party designating the information as confidential. Thereafter the Parties shall use their best efforts to resolve the matter. If the Parties are unable to resolve the matter, the Party designating the information confidential shall promptly seek a ruling from the FPSC. The Party asserting the information to be non-confidential shall preserve the confidentiality of the information as provided in this Agreement pending resolution of the matter by the FPSC. The Parties understand invocation of this subsection may entail expenditures of time and resources and they will attempt to resolve any such ~~questions~~^{ISSUES} on an informal basis without resort to the provisions and procedures of Rule 25-22.006. All Parties agree to act reasonably and in good faith in both claiming or questioning the claim of confidentiality of information provided pursuant to this Agreement.

3. Procedure for Production of Confidential Information or Designated Confidential Information.

- (a) All Confidential Information or Designated Confidential Information provided by a Party to this Agreement shall be identified as such to the extent permitted by the format in which it is provided.
- (b) All Confidential Information or Designated Confidential Information provided in paper format shall be clearly marked by the Party claiming confidentiality as "Confidential" or otherwise clearly designated as such. Information provided in other formats, as for example, electronic format, shall be marked "Confidential" to the extent practicable.
- (c) All Confidential Information which as of this date has been filed by FPL as part of its case in chief to support its Petitions for Determination of Need shall be furnished promptly to each Party upon execution of this Agreement;
- (d) Thereafter, all Confidential Information or Designated Confidential Information shall be furnished to each Party to this Agreement on the same time schedule and in the same manner as any non-confidential information.

4. Procedure for Review of Confidential Information.

- (a) Each person acting on behalf of a Party to this Agreement who will have access to Confidential Information or Designated Confidential Information shall, before such access is granted, sign a written Acknowledgement, in the form attached as Exhibit A, that he or she has read this Agreement and agrees to abide by its terms. (Exhibit "A", Non-Disclosure Acknowledgement). The Confidential Information or Designated Confidential Information may be disclosed to the Party's attorneys, outside consultants/expert witnesses, and employees and officers of the Party who have

responsibility for formulating and/or presenting the Party's litigation position and therefore have a need to know the confidential information. The total number of persons who may be designated by a Party to have access to the Confidential Information or Designated Confidential Information shall not exceed ten (10) without the express written permission of the Party providing the Confidential Information or Designated Confidential Information. Each person given access to Confidential Information or Designated Confidential Information shall sign the Acknowledgement attached to this Agreement as Exhibit A.

- (b) Each person who has signed the Acknowledgment on behalf of a Party to this Agreement may have access to Confidential Information or Designated Confidential Information for the sole purpose of the Party's participation in Docket Nos. 020262-EI and 020263-EI. Each person who has been given access to the Confidential Information or Designated Confidential Information provided pursuant to this Agreement shall not disclose any Confidential Information or Designated Confidential Information to anyone other than a person who has been given access under the terms of this Agreement.
- (c) A Party may reproduce Confidential Information or Designated Confidential Information only to the extent necessary to provide a copy to persons who have executed the Acknowledgement appended to this Agreement as Exhibit A. Each Party will maintain a copy control log.
- (d) While any Confidential Information or Designated Confidential Information is in the possession of a Party to this Agreement, each person who has access to the information shall individually and collectively implement procedures that are adequate to ensure

that Confidential Information or Designated Confidential Information shall not be disclosed to anyone other than those persons covered by this Agreement. The Parties agree to use all reasonable means to preserve confidentiality, including, but not limited to, measures customarily undertaken by each Party to prevent disclosure of its own confidential information.

- (e) The Confidential Information or Designated Confidential Information, provided by a Party pursuant to this Agreement shall remain the property of the Party who provided it. Confidential Information or Designated Confidential Information shall not be used for any purposes unrelated to Docket Nos. 020262-EI and 020263-EI.
- (f) Any Party who includes Confidential Information in prefiled testimony or exhibits shall follow the procedure for use of such information prescribed by order of the prehearing officer, or Rule 25-22.006.
- (g) Any Party who intends to include Designated Confidential Information in prefiled testimony or exhibits shall file a Notice of Intent to Request Confidential Classification under Rule 25-22.006 (3) (a) and comply with the procedures of the Rule for the handling of information for which confidential classification will be sought. The Notice of Intent shall be provided by facsimile or e-mail to the Party who provided the Designated Confidential Information. The purpose of this requirement is to afford the Party asserting confidentiality an adequate opportunity to invoke the provisions of Rule 25-22.006, to protect the confidentiality of the information.

5. Terms and Termination.

This Agreement shall be effective from the date it is executed by the Parties until all Confidential Information or Designated Confidential Information has been destroyed by the

Party to whom it is provided, or returned to the Party who provided it, or as to any information for which a determination of confidential status has been sought, until the FPSC has made a final adjudication as to the confidential status of the information. Except for information for which the FPSC has issued a final order holding that the information is not granted confidential status, each Party's obligation not to disclose Confidential Information or Designated Confidential Information continues unless or until the information is otherwise publicly disclosed in a manner not in violation of this Agreement. The continuing obligation not to disclose of each Party and each person who has been granted access to Confidential Information or Designated Confidential Information under the terms of this Agreement, shall survive the expiration of this Agreement. All Confidential Information or Designated Confidential Information shall be returned to the Party who provided or it shall be certified to that Party that it has been destroyed no later than 45 days after the date the FPSC issues its final decision or order in the final phase of this proceeding, unless any decision of the FPSC in Docket Nos. 020262-EI and 020263-EI is appealed, in which case the Agreement shall continue until all appellate review is completed. At the end of the term of this Agreement, or before, each Party shall either return all Confidential Information or Designated Confidential Information remaining in its possession to the Party from whom it was obtained or, alternatively, certify in writing to said Party that all Confidential Information and Designated Confidential Information has been destroyed.

6. Remedies.

Each Party agrees that: (i) divulgence or unauthorized use of Confidential Information or Designated Confidential Information could damage the owner of the information; (ii) the amount of resulting damages could be difficult to ascertain; (iii) the owner of the information

may not reasonably or adequately be compensated for the loss of such information in damages alone; and (iv) the owner of the information shall be entitled to injunctive or other equitable relief to prevent or remedy a breach of this Agreement or any part of it. In any action to enforce the provisions of this Agreement, the prevailing Party shall be entitled to any and all costs and attorneys' fees incurred in that action. Each Party agrees to defend, indemnify, and hold the other harmless, for any claim or liability, civil or criminal, brought or imposed on such other Parties by any person caused by or resulting from breach of this Agreement by that Party, including any person to whom that Party granted access to Confidential Information or Designated Confidential Information under the terms of this Agreement. Furthermore, nothing herein is intended to restrict any remedies available to the owner of Confidential Information or Designated Confidential Information Party for the unauthorized disclosure, dissemination or release of proprietary information by any of the Parties to this Agreement. This Agreement shall be interpreted, governed, and construed under the laws of the State of Florida.

7. Authority.

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

8. Modifications.

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

Dated this _____ day of April 2002.

Counsel signature page

EXHIBIT "A"

NON-DISCLOSURE ACKNOWLEDGEMENT

Each of the undersigned hereby certifies that prior to the disclosure to him or her of certain information and documents belonging to, or in the possession of, or made available through a Party to this Agreement, which are Confidential Information or Designated Confidential Information as those terms are defined in this Agreement the undersigned has read the Non-Disclosure Agreement for the purposes of Docket Nos. 020262-EI and 020263-EI, and agrees to be bound by its terms.
