



**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**

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**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 Manatee County**

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**Docket No. 020263-EI  
Dated: August 5, 2002**

**FLORIDA POWER & LIGHT COMPANY'S  
OBJECTIONS TO AND REQUESTS FOR CLARIFICATION  
OF CALPINE ENERGY SERVICES, L.P.'S FIRST REQUEST  
FOR PRODUCTION OF DOCUMENTS (NOS. 1-53) ADDRESSING  
AMENDED PETITIONS FOR DETERMINATION OF NEED**

Florida Power & Light Company ("FPL") hereby submits the following objections to and requests for clarification of Calpine Energy Services, L.P.'s ("Calpine's") First Request for Production of Documents Addressing Amended Petitions for Determination of Need ("Calpine's First Set").

**I. Preliminary Nature of These Objections**

The objections stated herein are preliminary in nature and are made at this time consistent with procedural Order PSC-02-0992-PCO-EI of the Florida Public Service Commission ("Commission"), which requires a respondent to raise objections or requests for clarification within ten days of receipt of discovery requests. Should additional grounds for objection be discovered as FPL develops its response, FPL reserves the right to supplement or modify its objections up to the time it serves its responses. Should FPL determine that a protective order is

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necessary regarding any of the requested information, FPL reserves the right to file a motion with the Commission seeking such an order at the time its response is due.

## **II. General Objections**

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

FPL objects to providing information that is proprietary, confidential business information without provisions in place to protect the confidentiality of the information. FPL has not had sufficient time to make a final determination of whether the discovery requests call for the disclosure of confidential information. However, if it determines that any of the discovery requests would require the disclosure of confidential information, FPL will either file a motion for protective order requesting confidential classification and procedures for protection or take other actions to protect the confidential information requested. FPL in no way intends to waive claims of confidentiality.

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

in developing FPL's response. Rather, FPL's responses will provide all the information that FPL obtained after a reasonable and diligent search conducted in connection with this discovery request. To the extent that the discovery requests propose to require more, FPL objects on the grounds that compliance would impose an undue burden or expense on FPL.

FPL objects to Calpine's First Set to the extent that it calls for the creation of information, rather than the reporting of presently existing information, as purporting to expand FPL's obligation under the law.

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

Numerous of the requests for production of documents in Calpine's First Set are not expressly limited to data or analyses performed in connection with the evaluation of the Martin and Manatee projects that are the subjects of these dockets. FPL assumes that, unless expressly stated to the contrary, the requests for production of documents in Calpine's First Set are intended to refer to data or analyses related to those projects and objects to the extent that any such discovery requests are not so limited, on the grounds that they would be overly broad, irrelevant and burdensome.

FPL incorporates by reference all of the foregoing general objections into each of its specific objections set forth below as though stated therein.

### **III. Specific Objections and Request for Clarification**

Request for Production Nos. 1, 2, 7, 8, 9, 10, 21, 24, 27, 30, 33, 36, 39, 42, and 45. These requests seek many documents already gathered in response to CPV Cana's Second Request for Production Nos. 37 and 38 ("CPV Cana's Nos. 37 and 38"). FPL's counsel and Calpine's

counsel have agreed that FPL will not have to sort the documents already gathered in response to CPV Cana's Nos. 37 and 38 to correspond to each of these individual requests.<sup>1</sup> FPL will provide Calpine with any additional documents responsive to these individual requests not already produced in response to CPV Cana's Nos. 37 and 38 and not subject to the objections below.

FPL objects to these requests to the extent that they require the production of confidential documents that detail the pricing and negotiated pay schedule of combustion and steam turbines and HRSGs that FPL is required by contract to maintain as confidential. FPL's vendors require that the terms and conditions of its combustion and steam turbine and HRSG contracts be kept confidential. FPL can only secure favorable terms and conditions for its combustion and steam turbines and HRSG contracts if the vendors with whom it negotiates are confident that the terms and conditions they are will not become public knowledge and then be used against them in subsequent negotiations with other prospective customers. The parties to this docket, including those that have signed the nondisclosure agreement, may be prospective customers for the types of combustion and steam turbines and HRSGs detailed in documents responsive to these requests. Because of these concerns, FPL is not in a position to provide copies of the confidential documents subject to these requests, but will contact counsel for Calpine and the vendors to discuss further the form that a mutually agreeable response could take.

FPL also objects to these requests to the extent that they request documents containing confidential proprietary tools unique to FPL to manage and budget projects. These tools are protected trade secrets of FPL.

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<sup>1</sup> Except that communications between Alan Taylor and FPL will be provided separately without attachments in response to Calpine's Request for Production No. 1 in addition to being provided in CPV Cana's Nos. 37 and 38.

FPL also objects to these requests to the extent that they request confidential documents containing heat rate projections, that if disclosed, would harm FPL's ability to negotiate short-term purchase power agreements beneficial to FPL's customers.

Request for Production No. 6. FPL objects to this request to the extent it seeks confidential documents regarding negotiations that FPL conducted with El Paso under a confidentiality agreement that do not effect Calpine's ability to duplicate the EGEAS evaluations and test the validity of FPL's cost-effectiveness analysis. FPL objects to this request because the documents requested contain detailed information about confidential negotiations with El Paso, because El Paso and a vendor of El Paso's require that this information be kept confidential, and because the disclosure of information would ultimately harm FPL's customers. FPL can only secure favorable terms and conditions if the vendors with whom it negotiates are confident that the terms and conditions they offer will not become public knowledge and then be used against them in subsequent negotiations with other prospective customers. The parties to this docket, including those that have signed the nondisclosure agreement, are competitors of El Paso and FPL. Disclosure of this information would harm FPL's customers because if disclosed, FPL would not be able to negotiate as favorable deals for FPL's customers. Because of these concerns, FPL is not in a position to provide an unredacted copy of the documents responsive to this request, but will provide Calpine a partially redacted copy of these documents. FPL will not redact any information that prevents Calpine or any other intervenor from duplicating the EGEAS evaluations and/or test the validity of FPL's cost-effectiveness analysis.

Request for Production Nos. 12 and 14. FPL objects to these requests to the extent that they require the production of confidential documents that detail the pricing and negotiated pay schedule of combustion and steam turbines and HRSGs that FPL is required by contract to

maintain as confidential. FPL's vendors require that the terms and conditions of its combustion and steam turbine and HRSG contracts be kept confidential. FPL can only secure favorable terms and conditions for its combustion and steam turbines and HRSG contracts if the vendors with whom it negotiates are confident that the terms and conditions they are will not become public knowledge and then be used against them in subsequent negotiations with other prospective customers. The parties to this docket, including those that have signed the nondisclosure agreement, may be prospective customers for the types of combustion and steam turbines and HRSGs detailed in documents responsive to this request. Because of these concerns, FPL is not in a position to provide copies of the confidential documents subject to these requests, but will contact counsel for Calpine and the vendors to discuss further the form that a mutually agreeable response could take.

FPL also objects to these requests to the extent that they request documents containing confidential proprietary tools unique to FPL to manage and budget projects. These tools are protected trade secrets of FPL.

Request for Production Nos. 13 and 15. FPL is unaware of a single document that by itself explains the differences in estimated costs of the proposed units. Nonetheless, FPL will provide Calpine with a select group of documents that demonstrate the basis for the differences.

Request for Production No. 18. This request seeks a "consumptive use permit issued by the Southwest Florida Management District for the Manatee project" referenced at page 22 of Mr. Yeager's testimony, however, no such permit exists. Mr. Yeager's testimony on page 22 refers to a "water use agreement" with the Southwest Florida Management District for the Manatee Plant, Unit 3. FPL assumes that this "water use agreement" is the document Calpine

seeks in this request and unless notified otherwise, this document will be provided in response to this request.

Request for Production No. 49. FPL objects to this request because it is both vague and ambiguous and uses the undefined terms “detract from” and “contradict.” FPL also objects to this request because it asks FPL to draw a legal conclusion as to a selection of documents. Without waiving these objections, FPL is unaware of any document inconsistent to the position stated in its amended petitions for determination of need.


Request for Production Nos. 52 and 53. FPL objects to providing all documents sought by these requests because the requests are overly broad and unduly burdensome and seek documents that are irrelevant to any issue in this proceeding. Without waiving these objections, FPL agrees to provide relevant budget information and actual cost information for the repowering of FPL’s Sanford and Ft. Myers units.

Respectfully submitted,

R. Wade Litchfield, Esq.  
Attorney  
Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, Florida 33408-0420  
Telephone: 561-691-7101

Steel Hector & Davis LLP  
Attorneys for Florida Power & Light Company  
200 South Biscayne Boulevard  
Suite 4000  
Miami, Florida 32301  
Telephone: 305-577-2859

By: \_\_\_\_\_



Robert L. Powell, Jr.  
Florida Bar No. 0195464



**CERTIFICATE OF SERVICE**

**Docket Nos. 020262-EI and 020263-EI**

I HEREBY CERTIFY that a true and correct copy or a courtesy copy (\*) of Florida Power & Light Company's Objections to and Request for Clarification of Calpine's First Request for Production of Documents (Nos. 1-53) Addressing Amended Petitions for Determination of Need has been furnished by electronically (\*\*) and/or U.S. Mail this 5th day of August, 2002, to the following:

Martha Carter Brown, Esq.\*\*  
Lawrence Harris, Esq.  
Legal Division  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850  
Mbrown@psc.state.fl.us

Joseph A. McGlothlin, Esq.\*  
Vicki Gordon Kaufman, Esq.  
Timothy J. Perry, Esq.  
McWhirter, Reeves, McGlothlin, Davidson,  
Decker, Kaufman, & Arnold, P.A.  
117 South Gadsden Street  
Tallahassee, Florida 32301  
Jmcglothlin@mac-law.com

Jon C. Moyle, Jr., Esq.\*\*  
Cathy M. Sellers, Esq.  
Moyle Flanigan Katz Raymond &  
Sheehan, P.A.  
118 North Gadsden Street  
Tallahassee, Florida 32301  
Jmoylejr@moylelaw.com

D. Bruce May, Jr., Esq.\*\*  
Karen D. Walker, Esq.  
Holland & Knight LLP  
315 S. Calhoun Street, Suite 600  
Tallahassee, Florida 32301  
Dbmay@hklaw.com

John W. McWhirter \*  
McWhirter, Reeves, McGlothlin, Davidson,  
Decker, Kaufman, & Arnold, P.A.  
400 North Tampa Street, Suite 3350  
Tampa, Florida 33602


Robert Scheffel Wright, Esq.\*\*  
Diane K. Kiesling, Esq.  
John T. LaVia, III  
Landers & Parsons, P.A.  
310 West College Avenue  
Tallahassee, Florida 32301  
Schef@landersandparsons.com

Michael Twomey.\*\*  
P.O. Box 5256  
Tallahassee, Florida 32301  
miketwomey@talstar.com

Ernie Bach, Executive Director \*\*  
Florida Action Coalition Team  
P.O. Box 100  
Largo, Florida 33779-0100  
ernieb@gte.net

R.L. Wolfinger  
South Pond Energy Park, LLC  
c/o Constellation Power Source  
111 Market Place, Suite 500  
Baltimore, Maryland 21202-7110

Joseph A. Regnery, Esq.  
Timothy R. Eves  
Calpine Eastern Corporation  
2701 North Rocky Point Drive  
Suite 1200  
Tampa, Florida 33607

By:   
Robert L. Powell, Jr.