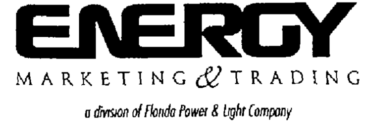

October 23, 2002

Florida Public Service Commission
Attention: Blanca S. Bayo, Director
Division of Commission Clerk & Administrative Services
Capital Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

VIA OVERNIGHT MAIL (850) 413-6330

Re: Docket No. 001148-EI, Florida Power and Light Company's Request For Confidential Classification of Material Provided Pursuant to Audit No. 01-249-4-1

Dear Director Bayo:

Enclosed, please find an original and fifteen (15) copies of Joseph Stepenovitch's affidavit to be filed in the referenced docket and proceeding. This affidavit is submitted in response to a September 26, 2002 request of the Commission's Robert Freeman.

Should you have any questions, please feel free to call me at (561) 625-7707. Thank you.

Sincerely,

Garson Knapp
Attorney

DOCUMENT NUMBER-DATE
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FPSC-COMMISSION CLERK

Encl: As Stated

cc: William Hill, Esq. w/attach
Joseph Stepenovitch w/attach
Robert Bruce w/attach
Wally Goldscheck w/attach
Tom Kennedy w/attach

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of the Retail Rates of)	Docket No. 001148-EI
Florida Power & Light Company.)	Dated: October 23, 2002

Affidavit of Joseph Stepenovitch

STATE OF FLORIDA)
) ss
COUNTY OF PALM BEACH)

BEFORE ME, the undersigned authority, personally appeared Joseph Stepenovitch, who, upon being duly sworn, deposes and says:

1. My name is Joseph Stepenovitch. I am the Director, Wholesale Operations, Florida Power & Light Company ("FPL"). I make this affidavit on my own personal knowledge.

2. By letter, dated September 26, 2002, and addressed to William K. Hill, Esq., the Florida Public Service Commission ("Commission") noted that FPL's April 24, 2002 supplemental filing had resolved most, but not all, of its Staff's questions regarding the confidentiality of working papers 69-4/3-2 through 69-4/4. In general, and to be addressed at greater length herein, the staff is still not yet entirely convinced how the release of certain information, pertaining primarily to the identity of financial derivatives trading counterparties, monies received or paid out due to a financial derivative trade, monthly hedge account totals, etc., can reveal FPL's hedging strategy and therefore harm same. For the reasons set forth herein, FPL, again, requests this information be held confidential pursuant to Section 366.093(3)(d) and (e), Florida Statutes, and exempt, accordingly, from disclosure pursuant to Section 119.07(1), Florida Statutes.

3. More particularly, the Commission's staff requests FPL to further justify its position that the information below is appropriately entitled to receive confidential treatment:

(a) Monthly and annual totals of monies received or paid out form derivative trades.

(b) Information concerning financial hedges reported within the utility's financial accounts to include:

(1) Account titles and numbers,

(2) Name of a trading party(s) reported in an account title,

(3) Individual transaction amounts reporting monies received or paid out, and

(4) Monthly hedge account totals.

(c) Identity of all parties involved in a financial derivative trade [the buyer(s) and seller(s) and other parties].

(d) Monies received or paid out due to a financial derivative trade.

(e) The above information reported upon associated or supporting documents, such as, sales advices, invoices, order forms, worksheets, or reports.

The Staff further notes that the additional justification needed to ensure the confidentiality of the information above would need to describe the market and the market forces which would cause harm to FPL if such information were not to receive confidential status.

4. At the outset, it is universally accepted practice and protocol within the financial derivatives industry that not only will the parties to a derivatives transaction maintain the confidentiality of the commercial terms of their transactions, but the identity of the parties themselves as well. Quite often, the contractual arrangements between the parties not only

contemplate but also require such confidentiality. In the case of FPL, as a matter of course, its financial derivative agreements contain the following or similar standard confidentiality provision:

> **"The contents of this Agreement and all other documents relating to this Agreement, and any information made available by one party or its Credit Support Provider with respect to this Agreement is confidential and shall not be disclosed to any third party (nor shall any public announcement relating to this Agreement be made by either party),** except for such information (i) as may become generally available to the public, (ii) as may be required or appropriate in response to any summons, subpoena, or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, or accounting disclosure rule or standard, (iii) as may be obtained from a non-confidential source that disclosed such information in a manner that did not violate its obligations to the non-disclosing party or its Credit Support Provider in making such disclosure, (iv) as may be furnished to a regulator with jurisdiction over the Party, or (v) as may be furnished to the disclosing party's Affiliates, and to each of such person's auditors, attorneys, advisors or lenders which are required to keep the information that is disclosed in confidence." (Emphasis added).

Framing the background against which FPL seeks the confidential treatment of the information referenced above, FPL notes the Commission is not required to weigh the merits of public disclosure relative to the interests of utility customers. The issue presented to the Commission, in this instance, is whether the information sought to be protected fits within the statutory definitions of proprietary confidential business information, as set forth in Section 366.093, Florida Statutes. To establish what material is proprietary confidential business information under Section 366.093(d), Florida Statutes, a utility must demonstrate that (i) the information is contractual data, and (ii) the disclosure of the data would impair the efforts of the utility to contract for goods or services on favorable terms. With regard to the latter, the Commission has previously recognized that a showing of actual impairment or the more demanding standard of actual adverse results is not required; rather, it must be simply shown that

the disclosure is "reasonably likely" to impair a utility's contracting for goods or services on favorable terms. Likewise, a similar showing by a utility is required to maintain the confidentiality of material under Section 366.093(e), Florida Statutes.

At page three of its September 26, 2002 letter, the Staff asks, "What specific harm results from the delayed disclosure of the identity of a trading partner which would affect a trading strategy?" This question can best be answered by a brief examination of the financial derivatives marketplace. There are basically two ways in which financial derivative transactions can be conducted – on one of the national exchanges, the NYMEX and Chicago Mercantile Exchange for example, or over-the-counter ("OTC"). The key difference between an exchange and an OTC transaction is the level of regulation each receives. National exchanges are regulated by the U.S. Commodities Futures Trading Commission, while OTC derivative products remain largely self-regulated.

Some of the more common financial derivative products FPL trades include options, futures, forward contracts and swaps. Options, swaps, and forward contracts are generally traded over-the-counter. Futures and certain options are generally traded on the national exchanges, and, in the case of FPL and many others, through brokers.

In the largely unregulated environment of OTC trading transactions, the parties thereto enter into same with an explicit expectation that their identities as well as the commercial terms of their transactions will remain confidential – in essence, both the commercial terms of the transactions and the identities of the parties involved are proprietary confidential business information, that is contractual data. Similarly, where FPL engages in financial derivative transactions on a national exchange through a broker, the brokerage arrangement inherently operates to ensure the anonymity and confidentiality of the parties involved as well as the

confidentiality of the commercial terms of the parties' transactions.[1] Were the identities of parties to OTC derivatives transactions to be placed in the public domain, every such party would know with whom every other party was transacting resulting in a significant chilling financial effect. Similarly, were the identities of parties, utilizing the services of a broker, to exchange derivative transactions, to be disclosed every such party would know with whom every other party was transacting also resulting in a significant chilling financial effect. Consider the situation where FPL has an important banking relationship with a major financial institution which also happens to engage in OTC derivatives trading. In such instance, it is highly probable that this financial institution, knowing that FPL also engages in OTC derivatives trading, would expect FPL to reciprocally transact with it with regard to derivatives products. But, what if, were the identities of FPL's trading partners to be disclosed, FPL's financial derivatives records disclosed a far greater trading relationship with a rival financial institution? The harm to FPL in such instance is the placing of its relationship with the first financial institution in jeopardy, and thereby impairing its ability to subsequently secure favorable loan and/or financing terms. This typifies the highly personal, subjective and complex nature of the commercial relationships between trading partners in the financial derivatives marketplace. Another example; FPL is looking to secure long-term natural gas supplies for its generation facilities with a particular supplier which also trades OTC derivative products and which has a severely strained and litigious relationship with another supplier that trades OTC derivative products. If, under this scenario, the supplier FPL is in negotiation with to secure long-term gas supplies were able to ascertain FPL's financial derivatives relationship with the rival supplier it is entirely reasonable that such knowledge could adversely impair FPL's ability to not only secure long-term gas

[1] In non-broker exchange transactions, the anonymity and confidentiality of the parties is largely absent.

supplies, but also on highly favorable terms often found only between commercial parties on very good terms with one another.

Yet another reason for maintaining the confidentiality of the identities of parties to OTC financial derivatives transactions is that were the identities to be a matter of public record, all of those who trade in the marketplace would know who is hedging. For sophisticated market players, willing and able to engage in arbitrage activities, and there are many, such information can be extremely telling and rewarding. In this regard, for example, FPL and one highly regarded market maker enter into a long-term natural gas swap agreement. FPL's motivation in this instance is predicated upon its belief, based upon its proprietary forward curve models, that the price of natural gas will rise significantly. What does the public release of the identities of the parties reveal to other market participants? One, even when disclosure is delayed, it provides a clear signal that FPL has deemed it necessary, based upon its proprietary models producing commodity forward price curves, to take a forward position as to the price of a commodity, most commonly oil and natural gas for FPL, in the future. Two, armed with this public information, oil or natural gas suppliers from which FPL typically would purchase either on a spot or short-term basis could, and likely, would use such knowledge to negotiate higher commodity prices thereby increasing the costs of electricity to FPL's ratepayers. Alternatively, the suppliers, giving credence to FPL's forecast of an increase in oil or natural gas prices, could likewise enter into swap arrangements with other purchasers thereby eliminating potentially significant sources of oil or natural gas from the spot market which, in turn, reasonably could be expected to raise the price of oil or natural gas FPL would have to pay in the spot market. In such instance, FPL's ratepayers would bear a greater cost with respect to electricity. Absent publication of the identities of the parties to the swap transaction, the ability of FPL to secure oil or natural gas on

favorable terms would not be impaired. Likewise, such disclosure would impugn the competitive advantage FPL would have otherwise enjoyed. **Finally, and of, perhaps, the greatest import, such disclosure would result in potential financial derivatives counterparties becoming extremely hesitant or wholly unwilling to transact with FPL. At the very least, where a potential trading partner is faced with a choice of counterparties for a given trade, FPL would be at a disadvantage to counterparties operating under industry-standard confidentiality practices, and may have to pay a higher price to enter into a given hedge or lose the benefit of the hedge altogether, thereby depriving FPL's ratepayers of the acknowledged benefits of its hedging program.**

In the foregoing instances, it is clear that the public disclosure of the identity of FPL's OTC and exchange financial derivatives trading partners, proprietary confidential business information, presents an obvious and highly probable harm to its ability to effectively carry out its hedging strategy – the same strategy recognized by the Staff as being beneficial to FPL's ratepayers. This is precisely the type of harm set forth in Section 366.093(3)(d) and (e), Florida Statutes (impairment of FPL efforts to contractually secure goods or services on favorable terms and impairment of FPL's competitive position), and, as such ought to be exempt from disclosure under Section 119.07(1), Florida Statutes.

Placing the identity of those parties with which FPL enters into financial derivatives transactions together with ostensibly innocuous information regarding same into the public domain is even more problematic and threatening to FPL's hedging program. The Commission staff, in its September 26, 2002 letter, asks, "What specific cyclical or seasonal or varying volume patterns of a trading strategy would be revealed through the delayed release of information from the utility's hedge accounts?" Briefly, and simply put, more than enough to

place into serious peril FPL's hedging program and strategy and the benefits of same to its ratepayers. For all of the foregoing reasons offered with respect to identity, FPL also requests the Commission to preserve the confidentiality of such information, as is involved in its financial derivatives transactions, as: account titles and numbers, individual transaction amounts reporting monies received or paid out, monthly hedge account totals, and information relating to same reported upon associated or supporting documents such as sales advices, invoices, order forms, worksheets or reports.

The financial derivatives marketplace is extremely competitive and, with respect to a single transaction, one marked with a "winner" and a "loser." **What separates the two, in large measure, is the difference in the quality of the proprietary models that extrapolate forward commodity price curves and the confidentiality afforded financial derivatives transactions by the industry and market players themselves.** The point to be made here is that in the super-competitive environment of financial derivatives, the competitive edge one market participant possesses over others is often extremely slight. Permitting, even on a delayed basis, FPL's monthly cash flow and hedge account information together with the identities of its counterparties to be made public can reasonably be expected to jeopardize the success of its hedging program. Notwithstanding, as the Staff notes in its September 26, 2002 letter, that there is no certainty that the conditions tomorrow or the next month or the next year will be the same as when a particular hedge is made, sophisticated and market-savvy hedge market participants, housing internal market intelligence groups, have the ability to piece together seemingly unrelated and insignificant bits of one entity's hedges and thus ascertain, with a remarkable degree of certainty, the other party's portfolio hedging strategy. Market participants with this ability combined, possessing high quality forward markets models, and access to certain

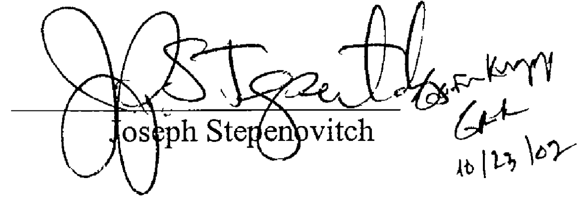
components of another's hedges are positioned to strengthen their competitive edge relative to other market participants. **Placing into the public domain information regarding FPL's monthly hedge account totals collectively and individually, monies received or paid out due to derivatives trades, and the identity of those parties with whom FPL enters into financial derivatives transactions, all proprietary contractual business information data intended to remain confidential, will more than reasonably impair FPL's ability to contract for goods and services, financial derivatives products included, on favorable terms and conditions as well as adversely impact its competitive position**. Further, such competitive disadvantage to FPL would confer an unfair advantage to merchant power marketers and generators, not subject to such disclosure requirements, ever pressing for entry into Florida's power markets. As such, such information is entitled to confidential treatment pursuant to Section 366.093(3)(d) and (e), Florida Statutes, and exempt, accordingly, from disclosure pursuant to Section 119.07(1), Florida Statutes.

5. For the above and foregoing reasons, FPL respectfully requests the identities of FPL's hedging counterparties as well as the ancillary information set forth in the Commission Staff's September 26, 2002 letter be held confidential pursuant to Section 366.093(3)(d) and (e), Florida Statutes, and, in consequence, be exempted from disclosure pursuant to Section 119.07(1), Florida Statutes.

In sum, FPL, respectfully submits, that its has satisfied the pertinent statutory requirements for receiving and maintaining the confidentiality of the information herein identified by the Commission; information which FPL and the financial derivatives industry consider to be proprietary confidential business information, the release of which would

substantially and significantly impair both FPL's ability to contract for goods and services on favorable terms and its competitive business

Affiant says nothing further.



Joseph Stepenovitch

I HEREBY CERTIFY that before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Joseph Stepenovitch, who is personally known to me, and he acknowledged before me that he executed the foregoing Affidavit as his free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and seal in the State and County aforesaid on this 23rd day of October, 2002.

Patricia Lynn Moore
MY COMMISSION # DD082469 EXPIRES
January 7, 2006
BONDED THRU TROY FAIN INSURANCE, INC.

Notary, State of Florida

Notary's Name

DD082469

Commission or Serial Number

My Commission Expires: January 7, 2006