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October 2, 2003

Ms. Blanca S. Bayo, Director  
Commission Clerk and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Betty Easley Conference Center, Room 110  
Tallahassee, Florida 32399-0850

**HAND DELIVERY**  
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COMMISSION CLERK

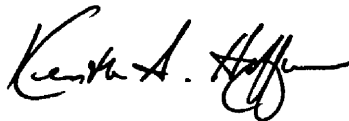
Re: Docket No. 030623-EI

Dear Ms. Bayo:

Enclosed herewith for filing on behalf of Florida Power & Light Company ("FPL") are an original and fifteen copies of FPL's Second Request for Confidential Classification.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me. Thank you for your assistance with this filing.

Sincerely,



Kenneth A. Hoffman

KAH/rl

Enclosures

FAUSERS\ROXANNE\FPL\Bayosept1001.ltr

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cc: cont records

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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

09529 OCT-28

FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

Complaints by Southeastern Utility Services,  
Inc. on behalf of various customers, against )  
Florida Power & Light Company concerning )  
thermal demand meter error )  
\_\_\_\_\_ )

Docket No. 030623-EI

Filed: October 2, 2003

**FLORIDA POWER AND LIGHT COMPANY'S SECOND  
REQUEST FOR CONFIDENTIAL CLASSIFICATION**

Florida Power and Light Company ("FPL") by and through its undersigned counsel, and pursuant to Section 366.093, Florida Statutes, and Rule 25-22.0061, Florida Administrative Code, hereby requests confidential classification of certain information and documents provided by FPL on September 12, 2003, to the Florida Public Service Commission ("Commission") Staff as follow up, supplemental information, concerning Staff Data Request No. 3 included in the Staff Data Request No. 3 included in he Staff Data Requests dated July 29, 2003, served on FPL and Southeastern Utility Services, Inc. ("SUSI"). In support of its request, FPL states as follows:

1. Staff Data Request No. 3 served July 29, 2003 states as follows:

3. For Florida Power and Light Company ("FPL"), please provide detailed calculations used by FPL to determine the refund that it thinks is appropriate for each meter for which a refund is sought by SUSI under a pending complaint before the Commission. If billing history was used in any of the calculations, please show how such records were used. If formula was used to estimate months where no billing data was available with the new meter, please explain the method and all assumptions used.

2. On August 18, 2003, FPL served a narrative response and supporting documents in response to Staff Data Request No. 3. FPL contemporaneously filed on August 18, 2003 a Notice of Intent to Seek Confidential Classification of the information reflected in the supporting documents

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FPSC-COMMISSION CLERK

provided in response to Staff Data Request No. 3 on the ground that such information constitutes “proprietary confidential business information” as defined by Section 366.093(3), Florida Statutes. FPL provided the staff and the parties to this docket a redacted version of the documents supporting FPL’s response to Staff Data Request No. 3 and filed an unredacted version of such documents with the Commission Clerk. On September 8, 2003, FPL filed a Request for Confidential Classification of the confidential, redacted information and documents provided in response to Staff Data Request No. 3.

3. Staff orally requested FPL to provide follow-up data and information regarding FPL’s original response to Staff Data Request No. 3 (hereinafter referred to as Staff’s “Supplement to Data Request No. 3”). On September 12, 2003, FPL provided the requested information and documents, with confidential portions redacted, and contemporaneously filed its Second Notice of Intent to Seek Confidential Classification.

4. Section 366.093(3) defines “proprietary confidential business information” to include information that is subject to a “private agreement that provides that the information will not be released to the public”. The redacted information provided in response to Staff Supplement to Data Request No. 3 contains the names of FPL customers represented by SUSI and accompanying customer specific data including meter test results, usage data and potential refund calculations for purposes of settlement. The redacted information provided by FPL in response to Staff’s Supplement to Data Request No. 3 is information that FPL has developed for purposes of settlement negotiations with SUSI, in connection with FPL customers represented by SUSI, and FPL and SUSI have agreed to treat such information as confidential pursuant to a certain Agreement regarding Confidentiality of Settlement Communications entered into by FPL and SUSI. That agreement, a

copy of which is attached hereto as Exhibit "A", provides, in pertinent part:

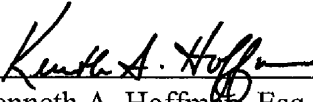
SUSI and FPL hereby agree and stipulate that all discussions, materials, admissions, and any other communications, whether written, oral, or other, which have occurred or been exchanged, or which may occur or may be exchanged between the parties during or as a direct result of the settlement meetings and/or discussions concerning the SUSI/FPL Disputes (collectively "Settlement Communications") are hereby considered confidential, shall be treated as such, and shall not be used by either party for any purpose and shall not be deemed an admission by the disclosing party of any fact or circumstance or any absence of facts, or of any conclusion of law, and shall not be submitted to or placed in evidence by the receiving party before any court, regulatory agency, arbitral tribunal, or other governmental authority . . . .

5. FPL submits that the information contained in the documents supporting its response to Staff's Supplement to Data Request No. 3 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. Such information and documents for which FPL seeks confidential classification is intended to be and is treated by FPL as private and such information has not been publicly disclosed.

6. Upon a finding of the Commission that the information and documents provided by FPL in response to Staff's Supplement to Data Request No. 3 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, for the above and forgoing reasons, Florida Power and Light Company respectfully requests that its Second Request for Confidential Classification be granted.

Respectfully submitted,

  
\_\_\_\_\_  
Kenneth A. Hoffman, Esq.  
Rutledge, Ecenia, Purnell & Hoffman, P.A.  
P. O. Box 551  
Tallahassee, Florida 32302  
Telephone: 850-681-6788  
Telecopier: 850-681-6515

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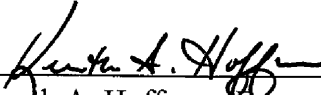
R. Wade Litchfield, Esq.  
Law Department  
Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, Florida 33408-0420  
Telephone: 561-691-7101

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy true and correct copy of Florida Power & Light Company's Second Request for Confidential Classification has been furnished by Hand Delivery (\*--U.S. Mail) this 2<sup>nd</sup> day of October, 2003, to the following:

Cochran Keating, Esq.  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Room 370  
Tallahassee, FL 32399-0850

Daniel Joy, Esquire (\*)  
785 SouthTrust Bank Plaza  
1800 2nd Street  
Sarasota, FL 34236

  
\_\_\_\_\_  
Kenneth A. Hoffman, Esq.

F:\USERS\ROXANNE\FPL\confidentialrequest.2

**AGREEMENT REGARDING CONFIDENTIALITY  
OF SETTLEMENT COMMUNICATIONS**

This Confidentiality Agreement (this "Agreement") is made and entered into as of March 25, 2003 (the "Effective Date"), by and between Southeastern Utility Services, Inc. ("SUSI"), a Florida corporation, and Florida Power & Light Company ("FPL"), a Florida corporation, SUSI and FPL sometimes hereinafter referred to individually as a "party" and collectively as "parties."

WHEREAS, SUSI is authorized to represent and does represent certain customers of FPL who have received or currently receive electric service metered by one or more IV Thermal Demand Meters ("TDMs"); and

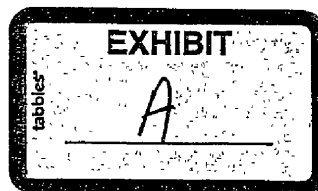
WHEREAS, disputes have arisen between SUSI and FPL regarding a number of issues concerning such TDMs used by FPL to meter the provision of electric service to FPL customers represented by SUSI, including but not limited to the procedures for testing such TDMs, the accuracy of registration of tested TDMs, prior under-billings for electric service provided through any such TDMs, and prior over-billings for electric service provided through any such TDMs (hereinafter referred to collectively as the "SUSI/FPL Disputes"); and

WHEREAS, in the spirit of compromise and because of the uncertainty and expense of litigation or administrative proceedings and the need to balance the risk of loss against the potential for gain, SUSI and FPL entered into discussions for the purpose of attempting to achieve an amicable resolution of the SUSI/FPL Disputes; and

WHEREAS, SUSI is authorized to and has entered into this Confidentiality Agreement on behalf of SUSI's existing and future clients, who have received or receive electric service provided by FPL and metered by such TDMs.

NOW, THEREFORE, in recognition of the foregoing premises and for other good and valuable consideration the adequacy of which is hereby acknowledged, the parties hereto agree as follows:

1. SUSI and FPL hereby agree and stipulate that all discussions, materials, admissions, and any other communications, whether written, oral, or other, which have occurred or been exchanged, or which may occur or may be exchanged between the parties during or as a direct result of the settlement meetings and/or discussions concerning the SUSI/FPL Disputes (collectively "Settlement Communications") are hereby considered confidential, shall be treated as such, and shall not be used by either party for any purpose and shall not be deemed an admission by the disclosing party of any fact or circumstance or any absence of facts, or of any conclusion of law, and shall not be submitted to or placed in evidence by the receiving party before any court, regulatory agency, arbitral tribunal, or other governmental authority; provided, however that the receiving party shall not be precluded by this Agreement from discovery and disclosure to a governmental authority of Settlement Communications that the disclosing party is lawfully



required to disclose to the receiving party, pursuant to regulatory or legal proceedings initiated after the date of this Agreement, and provided that in each case, prior to any such disclosure or discovery, the receiving party (i) complies with the procedures set forth in Section 3 hereof, and (ii) shall not initiate any such proceedings, or base any claim, defense, or discovery request in any such proceeding, on the basis of any state of facts, or absence of facts, or any circumstances disclosed in or developed from Settlement Communications, unless and only to the extent such state of facts or absence of facts became known to the receiving party from a source other than Settlement Communications.

2. This Agreement shall apply to all Settlement Communications concerning the SUSI/FPL Disputes. Each of the parties agrees that the Settlement Communications will be kept strictly confidential by the receiving party as provided herein. Each of the parties agrees that, without the prior written consent of the disclosing party, Settlement Communications will not be disclosed by the receiving party, in whole or in part, to any person or entity in violation of this Agreement. Each of the parties hereby agrees that it has not and will not disclose Settlement Communications to its employees, officers, directors, members, affiliates, agents, consultants, or representatives who do not need to know Settlement Communications for the purposes described in Section 1. Each of the parties further agrees to be responsible for the actions, uses and disclosures of any of their employees, officers, directors, members, affiliates, agents, consultants, or representatives with respect to the Settlement Communications.

3. Notwithstanding the provisions of Section 1 and 2, each of the parties may disclose Settlement Communications to: (a) its employees, officers, directors, and members of the parties for the purposes described in Section 1, subject to Section 2; (b) any attorney, professional consultant, or agent retained by it for the purposes described in Section 1, subject to Section 2, provided that any such consultant or agent executes and delivers prior to such disclosure a certificate of non-disclosure in the form attached hereto as Exhibit A or (c) any Governmental Authority to which the parties or any of their affiliates are required to disclose such Settlement Communications to comply with any applicable law (including any rules or regulations of any exchange or similar facility on which the securities of the parties may be traded); provided, that if a receiving party desires to disclose Settlement Communications in order to comply with any such applicable law, or becomes lawfully compelled or required to disclose any of the Settlement Communications pursuant to any applicable law, such receiving party will, to the extent practicable, provide the disclosing party with prompt notice so that the disclosing party may, if practicable, seek a protective order, confidential treatment, or other appropriate remedy. If such protective order, confidential treatment, or other remedy has not been obtained when such disclosure is required, the receiving party will furnish only that portion of the Confidential Communications which is lawfully required to be furnished, and will cooperate with the disclosing party and its counsel to enable the disclosing party to seek to obtain a protective order or other reliable assurance that confidential treatment or other appropriate remedy will be accorded the same.

4. Notwithstanding anything herein to the contrary, Settlement Communications shall not include any matters: (i) that are in the public domain at the time of this Agreement, or which enter the public domain subsequent to this Agreement, through no violation of this Agreement or



other fault of a party; (ii) which, respectively, are given to SUSI or FPL, subsequent to this Agreement by a third party with the right to do so, without notice of any restriction against its further disclosure; (iii) which, respectively, SUSI or FPL, can demonstrate through written records (a) to have been in its possession prior to the Settlement Communications (b) to have been independently developed by such party prior to the Settlement Communications, or (c) to have been developed by such party subsequent to the Settlement Communications, provided, however, that such demonstration in this latter case must be by clear and convincing evidence; or (iv) that are not otherwise within the subject matter of this Agreement.

5. Each party acknowledges that its obligations hereunder are of a special and unique character which gives them peculiar value to the other party, and the parties acknowledge that in the event of a breach of such obligations, the non-breaching party cannot be reasonably or adequately compensated in damages in an action at law in the event of a breach. Therefore, each party agrees that the other party shall be entitled to injunctive relief and other equitable relief in the event of such breach or threatened breach. Further, each party acknowledges the potential economic value of information included in the Settlement Communications and any ultimate Settlement Agreement and the significant damage caused to the non-disclosing party in the event the confidentiality and secrecy of this information is breached or any disclosure of such information occurs. In the event a party is compelled to initiate legal proceedings to enforce any provision of this agreement, to protect the confidential nature of the information described herein, or to recover damages for breach of this agreement, then the party found to be in breach of this Confidentiality Agreement shall be obligated to pay all costs incurred by the party initiating legal proceedings for enforcement of this Confidentiality Agreement, including but not limited to attorneys' fees at the trial and appellate levels, as well as all costs of litigation. Furthermore, each party acknowledges that damages to the other party in the event of disclosure or use of any of the information provided pursuant to this Agreement shall be significant, but very difficult to quantify. As such the parties agree that in the event of any such disclosure or use of the information, the party found to have breached this Confidentiality Agreement shall pay, as liquidated damages and not as a penalty, the sum of One Hundred Thousand Dollars (\$100,000.00) to the other party, plus such other party's costs, expenses and attorneys' fees. Finally, in the event SUSI breaches or threatens to breach this Confidentiality Agreement, FPL shall cease any and all future Settlement Communications, as well as any other future communications, discussions or negotiations, with SUSI on behalf of customers of FPL.

6. To the extent that either party wishes any person other than such party's employees to participate in the above-referenced settlement discussions, said party shall require such person to evidence his/her willingness to be bound by this Agreement by executing a certificate of non-disclosure in the form attached hereto as Exhibit A.

7. If any provision of this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

8. This Agreement may be executed and delivered in any number of counterparts, and may be delivered by facsimile transmission.

IN WITNESS WHEREOF, Southeastern Utility Services, Inc. and Florida Power & Light Company have executed this Agreement by their duly authorized representatives of the date first above written.

SOUTHEASTERN UTILITY SERVICES,  
INC.

FLORIDA POWER & LIGHT COMPANY

BY: *George C. Brown* *3/25/2003*  
GEORGE C. BROWN

BY: \_\_\_\_\_

TITLE: *VICE PRESIDENT*

TITLE: \_\_\_\_\_