

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition to Determine Need for ) Docket No. 040206-EI  
Turkey Point Unit 5 Power Plant )  
by Florida Power & Light Company. ) Dated: April 29, 2004  
\_\_\_\_\_ )

**FLORIDA POWER & LIGHT COMPANY'S SUPPLEMENTAL OBJECTIONS  
TO CALPINE ENERGY SERVICES, L.P.'S FIRST REQUEST FOR  
PRODUCTION OF DOCUMENTS (NOS. 1-71) AND FIRST SET OF  
INTERROGATORIES (NOS. 1-19)**

Pursuant to Rule 28-106.206, Florida Administrative Code, and Rules 1.340 and 1.350, Florida Rules of Civil Procedure, Florida Power & Light Company ("FPL") submits the following Supplemental Objections to Calpine Energy Services, L.P.'s ("Calpine's") First Request for Production of Documents (Nos. 1-71) and First Set of Interrogatories (Nos. 1-19) that were served by hand delivery on April 16, 2004.

**I. Premature Nature of Calpine's Discovery**

On April 26, 2004, FPL made its general objections to Calpine's First Request for Production of Documents (Nos. 1-71) and First Set of Interrogatories (Nos. 1-19). In part, FPL objected to each and every request for production of documents or interrogatory filed by Calpine before being granted status as a party in this proceeding. Rules 1.340 and 1.350, Florida Rules of Civil Procedure, and Rule 28-106.206, Florida Administrative Code, provide that only a party may serve discovery on another party. As of the date FPL made its general objections, Calpine had not been granted status as a party. Accordingly, FPL objected to responding to discovery from an entity not a party to the proceeding. FPL made its objections as a procedural courtesy and not because the objections were due. However, in making its general objections, FPL reserved the right

to file specific objections to Calpine's First Set of Interrogatories and First Request for Production of Documents in the event Calpine was granted party status in these proceedings and to the extent that Calpine's requests were deemed properly served.

Because Calpine was not a party at the time it served discovery, it had no right to serve discovery and no entitlement to receive any response. Numerous administrative rules and decisions establish that an intervenor must accept a case as it finds it and has no standing to participate, e.g., by serving discovery, unless and until granted intervention, and only then if it can do so in accordance with the procedures that govern the case. *See* Fla. Admin. Code R. 25-22.039; *Panda Energy Intern. v. Jacobs*, 813 So. 2d 46, FN. 4 (Fla. 2002), *citing*, *Coast Cities Coaches, Inc. v. Dade County*, 178 So. 2d 703 (Fla. 1965).

By Order No. PSC-04-0432-FCO-EI, issued April 28, 2004, Calpine was granted party status in these proceedings. Notwithstanding and without waiving its objection to Calpine's premature discovery, FPL files the following supplemental objections to Calpine's First Request for Production of Documents (Nos. 1-71) and First Set of Interrogatories (Nos. 1-19).

## **II. Preliminary Nature of These Objections**

FPL's objections stated herein are preliminary in nature. 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 necessary regarding any of the information requested of FPL, FPL reserves the right to file a motion with the Commission seeking such an order at the time its response is due.

### **III. General Objections.**

FPL adopts and incorporates by reference as its General Objections, FPL's Objections to Calpine Energy Services, L.P.'s First Request For Production of Documents (Nos. 1-71) and First Set of Interrogatories (Nos. 1-19) made on April 26, 2004.

Additionally, FPL notes that, in certain circumstances, FPL may determine upon investigation and analysis that information responsive to certain requests to which objections are not otherwise asserted is confidential and proprietary and should not be produced or should be produced only under an appropriate confidentiality agreement or protective order. Certain confidential, proprietary, highly commercially sensitive business information held by FPL (such as information and documents relating to specific contracts or negotiations for contracts relating to Turkey Point Unit 5 or other business operations) contain competitively sensitive information that FPL should not be required to produce to competitors such as Calpine who, on a regular basis, seek to contract with many of the same vendors for the same kinds of materials, equipment and services. This information should be protected from disclosure entirely where indicated as the harm to FPL's present and future ability to obtain similar contracts or favorable terms far outweighs Calpine's purported need for this level of detailed information in this proceeding.

Moreover, numerous counterparties to contracts with FPL have required FPL to sign non-disclosure agreements related to the terms and conditions of the contracts, or have included non-disclosure provisions in the contractual agreements. FPL has issued a letter to each counterparty indicating that Calpine has obtained leave to intervene in this

proceeding and requesting that each counterparty take a position as to whether Calpine can be provided with the vendor's confidential, proprietary, commercially sensitive information. Before withdrawing from FPL's last need proceeding involving Martin Unit 8 and Manatee Unit 3, Calpine had requested much of the same commercially sensitive information. FPL's vendors had refused to allow Calpine access to such material. Disclosure of the terms and conditions, including pricing, that vendors have provided or offered to provide FPL would impair their own competitive positions in future negotiations with Calpine. Vendors' positions on this subject will not likely have changed. Accordingly, FPL does not intend to produce such information in response to Calpine's competitive "fishing expedition" absent a direct order from the Commission or the express written consent of the counterparty.

As to any other confidential, proprietary business information, irrespective of whether FPL agrees to provide such information in response to such interrogatory or request for production of documents, FPL is not waiving its right to insist upon appropriate protection of confidentiality by means of a confidentiality agreement and/or protective order. FPL hereby asserts its right to require such protection of any and all documents and information it has agreed to or may be required to produce that may qualify for protection under the Florida Rules of Civil Procedure and other applicable statutes, rules and legal principles.

FPL further objects to producing any information or documents reflecting the confidential information received from proposers that submitted responses to its RFP solicitation except pursuant to a suitable confidentiality agreement, or order of the

Commission. FPL has issued a letter to each proposer indicating that Calpine has obtained leave to intervene in this proceeding and has asked FPL to provide bidder data.

FPL notes that in FPL's need determination proceedings for its Martin and Manatee units, several proposers who chose not to participate in the proceeding filed motions for protective order, which were granted, to protect their confidential bid information from disclosure to their direct competitors. *See* Order No. PSC-02-0611-PCO-EI in Docket Nos. 020262-EI and 020263-EI.

FPL incorporates by reference all of the foregoing general objections into each of its specific objections set forth below as though stated therein. To the extent not subject to and without waiving these objections, documents will be produced and interrogatories will be answered.

#### **IV. Specific Objections and Clarifications to Calpine's First Request for Production of Documents**

Definitions. FPL made a general objection to the definitions set forth in Calpine's First Request For Production of Documents to the extent that they purport to impose upon FPL obligations that FPL does not have under the law. Specifically, FPL objects to the definitions contained in paragraph A., B. and F. of the DEFINITIONS section of Calpine's First Request For Production of Documents. Paragraph A in the DEFINITIONS section is impermissibly overbroad to the extent it expands the definition of "Documents" beyond the meaning of that term in the Florida Rules of Civil Procedure. Additionally, the definition of "Documents" is vague and ambiguous to the extent it refers to documents in the possession of "Defendant" or "Plaintiff," terms foreign to these proceedings. Paragraph B in the DEFINITIONS section impermissibly expands the definition of "You" or "Your" to include FPL's "corporate affiliate." FPL's corporate

affiliates are not parties to this action. It is not FPL's legal obligation to produce responsive documents that are solely in the possession, custody or control of its "corporate affiliate". See Rule 1.350(a), Fla. R. Civ. P. Additionally, FPL's corporate affiliates are not involved in the construction of Turkey Point Unit 5. Any documents in the hands of FPL's corporate affiliates are wholly irrelevant to this need determination proceeding. For purposes of Calpine's First Request For Production of Documents, FPL will accept the definition of the words "You" or "Your" to mean Florida Power & Light Company.

Paragraph F in the DEFINITIONS section impermissibly requests FPL to provide certain information about documents that may no longer be in FPL's possession, custody or control. Rule 1.350(a), Florida Rules of Civil Procedure pertains to producing documents "... that *are* in the possession, custody, or control of the party to whom the request is directed." (emphasis added). There is no legal obligation pursuant to Rule 1.350(a), Florida Rules of Civil Procedure to provide information about documents that are no longer in FPL's possession, custody or control. Accordingly, FPL objects to these "definitions" since they do not comply with the requirements of the Florida Rules of Civil Procedure regarding discovery or the Commission's Order Establishing Procedure.

Request for Production Nos. 3, 7-8, 39. FPL objects to Request Nos. 3, 7-8 and 39 to the extent they call for FPL to disclose information that is protected by the work product doctrine. These requests seek documents that would include materials prepared in anticipation of litigation and subject to the attorney work product privilege against disclosure. FPL also objects to these requests because they are overly broad, unduly burdensome, seeking documents outside the scope of this proceeding, and not reasonably

calculated to lead to the discovery of admissible evidence to the extent it relates to something other than Turkey Point Unit 5. In the course of its analysis of the RFP proposals and FPL self-build options, FPL performed hundreds of EGEAS simulations. Moreover, for each EGEAS simulation there are literally thousands of data entries supported by hundreds of documents. Providing all these documents would be extremely burdensome to FPL, particularly because the vast majority of the EGEAS runs are in the nature of preliminary runs that were not ultimately relied upon to assess the relative cost effectiveness Turkey Point Unit 5. FPL is concerned that if it produced all the documents that are arguably responsive to these broad requests it would be accused of attempting to bury Calpine in largely irrelevant documents.

FPL further objects to this request as calling for the disclosure of proprietary, confidential business information. The documents requested in these requests may contain two types of information considered by FPL as confidential. The first type is information provided to FPL by RFP proposers. This includes, but is not limited to, capacity costs, energy prices, fixed and variable O&M, heat rates and unit availability. The RFP proposers requested that FPL treat their RFP proposal terms as confidential. Disclosure of this information could impair the competitive interests of the RFP proposers and jeopardize their ability to negotiate contract terms. Disclosure might also afford Calpine an improper competitive advantage relative to such proposers in future solicitations, whether conducted by FPL or other utilities. Disclosure of this information also would impair FPL's prospective ability to solicit capacity proposals, to the detriment of FPL's customers.

The second type of information FPL considers as proprietary and confidential is information regarding the cost and operation of FPL's generating units. This information is confidential to FPL just as this type of information is confidential to the RFP proposers. However, unlike information furnished by proposers that relates to potential units that may never be built, FPL's information relates to actual costs and operations of existing units. FPL competes in the wholesale power market, and the disclosure of this information would injure FPL's competitive interests and FPL's ability to favorably negotiate contractual terms. The disclosure of this information would disadvantage FPL in making off-system sales to benefit FPL's customers. This information has not been disclosed to the public and is protected by FPL from disclosure.

The information discussed above is the type of information recognized by the Legislature in Section 366.093, Florida Statutes as proprietary confidential business information, specifically, information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms and information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

Finally, FPL requests clarification to Request No. 39 to the extent it is not aware of a "Mr. Alan Sedway" who is involved in any aspect of these proceedings.

Notwithstanding and without waiving these objections, FPL will produce documents exchanged between Alan Taylor and Florida Power & Light Company that relate to FPL's 2003 RFP and evaluation and the Turkey Point Unit 5 project that is the



subject of these proceedings and certain other documents in response to the above-referenced requests, consistent with FPL's objections described above.

Request for Production Nos. 4-5, 34, 47. FPL objects to Request Nos. 4, 5, 34 and No. 47 to the extent they purport to invade the work product doctrine or the attorney-client privilege. FPL also objects to Request No. 4 on the grounds that it is overly broad in scope to the extent that it includes documents that the witnesses have reviewed over their entire careers that form the basis of the level of experience and education on the subjects to which they will testify.

Request for Production No. 6. FPL objects to Request No. 6 as calling for the disclosure of proprietary, confidential business information. This request calls for the production of the Sedway Consulting Response Surface Model which is proprietary to Sedway Consulting and is not in the possession of FPL. Sedway Consulting will permit FPL to release a copy of its model only upon execution of a confidentiality agreement satisfactory to Sedway Consulting.

Request for Production No. 9 FPL objects to Request No. 9 on the ground that it is overly broad in scope and time. This request asks for any and all documents reflecting assumptions about future natural gas costs. The scope of this request includes documents that are not limited to FPL's 2003 RFP and Turkey Point Unit 5. To the extent that the request seeks documents other than those limited to Turkey Point Unit 5 and FPL's 2003 RFP, the request is overly broad. The request is also unlimited by time, requiring FPL to produce data which could be more than a decade (and maybe two) old. This would require the retrieval of information from archives, a lengthy and time consuming process, especially given the corporate reorganizations the company has experienced over the

period in question. The breadth of the search necessary to respond to this request and the unlimited time frame for which the data is sought make the request unduly burdensome and unreasonable. Moreover, the relevance of such old and stale data is highly questionable. Such a request is unlikely to lead to the discovery of admissible evidence and, relative to the burden imposed, should not be permitted. Notwithstanding and without waiving these objections, FPL will produce documents reflecting FPL assumptions about future natural gas costs related to the assumptions underlying FPL's 2003 RFP and selection of Turkey Point Unit 5.

Request for Production Nos. 10, 12-14, 36, 45. FPL objects to these requests as an improper attempt to obtain FPL's confidential, proprietary business information. Please see FPL's specific objections to providing vendor-specific information in the general objections above. FPL's underlying cost information is confidential and highly sensitive as it relates to Calpine, a direct competitor. FPL is willing to comment on the status of contracts for such equipment, but it does not believe that producing detailed negotiated contracts, or spreadsheets and backup workpapers that contain proprietary, confidential information provided by vendors is material or probative of the ultimate issues in this proceeding. FPL has thoroughly described how it arrived at its cost estimate for Turkey Point Unit 5, and a fishing expedition into detailed terms -- if known -- surrounding certain components is nothing more than a thinly veiled attempt by Calpine to obtain competitive intelligence. FPL also objects to these requests to the extent they call for highly commercially sensitive confidential and proprietary business information that may consist of or constitute trade secrets. "Trade secrets are privileged under section 90.506, Florida Statutes (2000), and Florida cases recognize that their

disclosure creates the potential for irreparable harm.” *Harley Shipbuilding Corp. v. Fast Cats Ferry Service, LLC*, 820 So. 2d 445 (Fla. 2DCA 2002). Trade secrets are also recognized by the Legislature in Subsection 366.093(3)(a), Florida Statutes as proprietary confidential business information. FPL also objects to Request No. 10 on the ground that it references page 161 line 11 of Mr. Taylor’s testimony. No such page and line number exists in the testimony of Alan Taylor filed by FPL. FPL requests clarification from Calpine as to the correct page and line number.

Request for Production No. 16. FPL objects to Request No. 16 on the ground that it is overly broad, seeking documents outside the scope of this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence to the extent it relates to something other than Turkey Point Unit 5. It would be unduly burdensome for FPL to respond to this request.

Request for Production No. 18. The EGEAS software sought by this Request is the property of the Electric Power Research Institute, Inc. (“EPRI”), which FPL licenses from EPRI. FPL’s license agreement with EPRI restricts FPL’s ability to share the EGEAS software with non-licensees. FPL objects to this request on the basis that it cannot comply with this request consistent with its contractual obligations to EPRI. However, FPL has made arrangements with EPRI for parties to this proceeding to obtain a limited use license for the EGEAS software. Calpine may obtain a limited use license for the software by contacting Diana Babcock at EPRI, 650-855-8583. Thus, FPL also objects to this request because Calpine is seeking documents that are readily available to Calpine directly through EPRI.

Request for Production Nos. 19 and 20. FPL objects to Request Nos. 19 and 20 as overbroad and unduly burdensome. Further, FPL objects to the extent these requests call for FPL to disclose information that is protected by the attorney-client privilege or the work product doctrine. Request No. 19 seeks all internal correspondence, including emails, regarding the bid process FPL used to select Turkey Point Unit 5. This request would include documents between FPL's attorneys and the client. Such documents are protected by the attorney-client privilege. Request No. 20 seeks all documents related to FPL's "decision to self supply the energy for which [FPL] sought proposals pursuant to the RFP." This request also may include attorney-client communications as well as documents prepared at the direction of counsel in anticipation of litigation. Some of the documents that may be responsive to this request consist of or contain confidential bid information. FPL objects to these requests to the extent they seek confidential bid information. Please see FPL's more detailed objection above. FPL objects to producing any information or documents reflecting the confidential information received from proposers that submitted responses to its RFP solicitation except pursuant to a suitable confidentiality agreement, or order of the Commission. FPL has issued a letter to each proposer indicating that Calpine has obtained leave to intervene in this proceeding and has asked FPL to provide bidder data. Finally, FPL objects to these requests to the extent they seek documents otherwise objected to herein. Notwithstanding and without waiving these objections, FPL will provide the final analysis used by FPL's Resource Planning department and provided to management upon the execution of a confidentiality agreement satisfactory to FPL.

Request for Production No. 21. FPL objects to Request No. 21 to the extent it calls for the disclosure of proprietary, confidential business information. Some of the documents that may be responsive to this request consist of or contain confidential bid information. Please see FPL's more detailed objection above. FPL objects to producing any information or documents reflecting the confidential information received from proposers that submitted responses to its RFP solicitation except pursuant to a suitable confidentiality agreement, or order of the Commission. FPL has issued a letter to each proposer indicating that Calpine has obtained leave to intervene in this proceeding and has asked FPL to provide bidder data.

Request for Production No. 22. FPL reasserts the objections asserted in response to No. 21 above. FPL also objects to Request to Produce No. 22 on the ground that it is overly broad in scope and time and should be limited to the 2003 RFP and evaluation.

Request for Production Nos. 23 and 24. FPL reasserts the objections asserted in response to No. 21 above. FPL also objects to Request No. 23 to the extent it calls for FPL to disclose information that is protected by the attorney-client privilege or the work product doctrine. Further, FPL objects on the grounds that the request is overbroad and unduly burdensome. The printouts of the EGEAS runs performed in connection with the evaluation process would fill many file boxes.

Request for Production No. 25. FPL objects to Request No. 25 on the ground that it is overly broad, unduly burdensome and not likely to lead to the discovery of admissible evidence to the extent that it calls for the production of documents that are unrelated to Turkey Point Unit 5. Further, even the agreement that relates specifically to version 7.3.2 of EGEAS is wholly irrelevant to any potential issue in this case. Finally,

FPL has made arrangements with EPRI for parties to this proceeding to obtain a limited use license for the EGEAS software, as indicated above in FPL's objection to Request No. 18.

Request for Production No. 26 FPL objects to Request No. 26 to the extent it calls for the disclosure of proprietary, confidential business information. Some of the documents that may be responsive to this request consist of or contain confidential bid information. Further, some of the information requested is confidential to FPL. The information requested is the type of information recognized by the Legislature in Section 366.093, Florida Statutes as proprietary confidential business information, specifically, information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms and information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information. Please see FPL's more detailed objection above. FPL objects to producing any information or documents reflecting the confidential information received from proposers that submitted responses to its RFP solicitation except pursuant to a suitable confidentiality agreement, or order of the Commission. FPL has issued a letter to each proposer indicating that Calpine has obtained leave to intervene in this proceeding and has asked FPL to provide bidder data. FPL also objects to Request No. 26 to the extent it calls for FPL to disclose information that is protected by the attorney-client privilege or the work product doctrine.

Request for Production Nos. 28-29. FPL objects to Request Nos. 28 and 29 to the extent they call for the disclosure of proprietary, confidential business information. Some of the documents that may be responsive to this request consist of or contain confidential

bid information. Also, some of the information requested is confidential to FPL. Please see FPL's more detailed objection above. FPL objects to producing any information or documents reflecting the confidential information received from proposers that submitted responses to its RFP solicitation except pursuant to a suitable confidentiality agreement, or order of the Commission. FPL has issued a letter to each proposer indicating that Calpine has obtained leave to intervene in this proceeding and has asked FPL to provide bidder data. The information requested is the type of information recognized by the Legislature in Section 366.093, Florida Statutes as proprietary confidential business information, specifically, information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms and information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information. FPL also objects to Request Nos. 28 and 29 on the ground they are overly broad in scope and time and should be limited to FPL's 2003 RFP and evaluation.

Request for Production No. 30. FPL objects to Request No. 30 to the extent it calls for the disclosure of proprietary, confidential business information. Some of the documents that may be responsive to this request consist of or contain confidential bid information. Please see FPL's more detailed objection above. FPL objects to producing any information or documents reflecting the confidential information received from proposers that submitted responses to its RFP solicitation except pursuant to a suitable confidentiality agreement, or order of the Commission. FPL has issued a letter to each proposer indicating that Calpine has obtained leave to intervene in this proceeding and has asked FPL to provide bidder data. Also, some of the documents that may be

responsive to this request are confidential to FPL. Further, FPL objects to this request to the extent it seeks documents related to FPL vendor agreements. FPL is willing to comment on the status of contracts for such equipment, but does not believe that producing detailed negotiated contracts, or drafts of contracts, is material or probative with respect to the ultimate issues in the case. Please refer to FPL's more detailed objection regarding vendor information above.

Request for Production No. 31. FPL objects to Request No. 31 to the extent it calls for the disclosure of attorney-client privileged information or information protected by the work product doctrine. Further, FPL objects to the extent it calls for the disclosure of proprietary, confidential business information. Some of the documents that may be responsive to this request consist of or contain confidential bid information. Please see FPL's more detailed objection above. FPL objects to producing any information or documents reflecting the confidential information received from proposers that submitted responses to its RFP solicitation except pursuant to a suitable confidentiality agreement, or order of the Commission. FPL has issued a letter to each proposer indicating that Calpine has obtained leave to intervene in this proceeding and has asked FPL to provide bidder data. Also, some of the documents that may be responsive to this request are confidential to FPL.

Request for Production No. 35, 41-42, 64. FPL objects to Request No. 35 to the extent it is vague and ambiguous with respect to the meaning of "generation strategy." Further, FPL objects to these requests as overbroad, unduly burdensome, seeking documents outside the scope of this need determination proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. FPL's plans relating to the



addition of new generation, as well as some information regarding transmission upgrades, are reflected in documents filed with the Commission and publicly available. These requests amount to an improper effort to use this proceeding to gain access to confidential, proprietary business information. FPL objects to these requests to the extent they call for highly commercially sensitive confidential and proprietary business information that may consist of or constitute trade secrets. "Trade secrets are privileged under section 90.506, Florida Statutes (2000), and Florida cases recognize that their disclosure creates the potential for irreparable harm." *Harley Shipbuilding Corp. v. Fast Cats Ferry Service, LLC.*, 820 So. 2d 445 (Fla. 2DCA 2002). Trade secrets are also recognized by the Legislature in Subsection 366.093(3)(a), Florida Statutes as proprietary confidential business information.

Request for Production No. 40. FPL objects to Request No. 40 on the ground that it is overly broad and it would be unduly burdensome for FPL to respond. Additionally, FPL objects to Request No. 40 to the extent it calls for FPL to disclose information that is protected by the attorney-client privilege or the work product doctrine. Finally, FPL objects to Request to Produce No. 40 to the extent that information sought is already in the public record before the Florida Public Service Commission and available to Calpine through normal procedures.

Request for Production No. 43. FPL objects to Request No. 43 on the grounds that it is overly broad in scope to the extent that it includes documents that the witness has reviewed over his entire career that form the basis of the level of experience and education on the subjects to which he will testify.

Request for Production No. 46. FPL objects to Request No. 46 as calling for the disclosure of proprietary, confidential business information. The information requested is confidential to FPL. Its disclosure would cause harm to FPL's customers or FPL's business operations by disclosing highly sensitive information regarding security measures, systems, or procedures. This information has not been disclosed to the public and is protected by FPL from disclosure. The information requested is the type of information recognized by the Legislature in Section 366.093, Florida Statutes as proprietary confidential business information, specifically, information regarding security measures, systems, or procedures. FPL also asserts that certain documents that may be responsive to this request contain "Safeguards Information" that cannot be disclosed to unauthorized third parties pursuant to Section 147 of the Atomic Energy Act of 1954, as amended, 42 USC 2167, and implementing regulations of the U.S. Nuclear Regulatory Commission set forth at 10 CFR 73.21.

Request for Production Nos. 49-50. FPL objects to these requests as overbroad, seeking documents outside the scope of this need proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. The only relevant issue in this proceeding is whether Turkey Point Unit 5 is the most cost-effective alternative to meet FPL's need. Further, FPL objects to these requests to the extent they seek confidential, proprietary business information related to vendor agreements and other highly commercially sensitive information that FPL objects to providing to a direct competitor, like Calpine.

Request for Production Nos. 51-57, 60, 62-63, 66. FPL objects to these requests as an improper attempt by Calpine to obtain FPL's confidential, proprietary business

information. FPL is willing to comment on the status of contracts for equipment and services, but does not believe that producing detailed negotiated contracts, or spreadsheets and backup workpapers that contain proprietary, confidential information provided by vendors is material or probative of the ultimate issues in this case. FPL has thoroughly described how it arrived at its cost estimate for Turkey Point Unit 5, and a fishing expedition into detailed terms -- if known -- surrounding certain components is nothing more than a thinly veiled attempt by Calpine to obtain competitive intelligence. Indeed, such disclosure to Calpine could impair FPL's ability to bring the best possible result to its customers. FPL also objects to these requests on grounds that they call for highly commercially sensitive confidential and proprietary business information that may consist of or constitute trade secrets. "Trade secrets are privileged under section 90.506, Florida Statutes (2000), and Florida cases recognize that their disclosure creates the potential for irreparable harm." *Harley Shipbuilding Corp. v. Fast Cats Ferry Service, LLC.*, 820 So. 2d 445 (Fla. 2DCA 2002). Trade secrets are also recognized by the Legislature in Subsection 366.093(3)(a), Florida Statutes as proprietary confidential business information.

Request for Production Nos. 58-59. FPL objects to Request Nos. 58 and 59 as calling for the disclosure of proprietary, confidential business information. FPL objects to these requests as an improper attempt by Calpine to obtain FPL's confidential, proprietary business information. FPL is willing to comment on the status of contracts for equipment and services, but does not believe that producing detailed negotiated contracts is material or probative of the ultimate issues in this case. FPL has thoroughly described how it arrived at its cost estimate for Turkey Point Unit 5, and a fishing

expedition into detailed terms -- if known -- surrounding certain components is nothing more than a thinly veiled attempt by Calpine to obtain competitive intelligence. Indeed, such disclosure to Calpine could impair FPL's ability to bring the best possible result to its customers.

Request for Production Nos. 67-69. FPL objects to Request Nos. 67-69 as overly broad in scope and time, seeking documents outside the scope of this need proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. The only relevant issue in this proceeding is whether FPL's petition to determine need for Turkey Point Unit 5 should be granted. Calpine's request amounts to a collateral attack on a Commission final order. Since FPL is subject to the Commission-approved reserve margin of 20 percent, any requests for documents relating to whether a 15 percent reserve margin is sufficient are irrelevant to this proceeding. Documents relating to reserve margins in other states are equally irrelevant to these need proceedings. Finally, documents responsive to these requests are available to Calpine in the public domain.

**V. Specific Objections and Clarifications to Calpine's First Set of Interrogatories**

Interrogatories Nos. 2-4. FPL incorporates by reference and reasserts its objections to Calpine's Request for Production Nos. 67-69 above.

Interrogatory No. 16. FPL objects to Interrogatory No. 16 on grounds that it is not an interrogatory, but rather, is a request for production of documents.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of Florida Power & Light Company's Supplemental Objections to Calpine's First Request for Production of Documents (Nos. 1-71) and First Set of Interrogatories (Nos. 1-19) has been furnished by hand delivery (\*) and by United States Mail this 29th day of April, 2004, to the following:

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