

May 5, 2004

VIA HAND DELIVERY

Blanca S. Bayó, Director
Division of the Commission Clerk &
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

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MAY -5 PM 4:59
COMMISSION
CLERK

Re: Petition to Determine Need for Turkey Point Unit 5 Power Plant by Florida Power & Light Company - Docket No. 040206-EI

Dear Ms. Bayó:

Enclosed for filing on behalf of Florida Power & Light Company ("FPL") are an original and seven (7) copies of the following:

- 1) FPL's Objections to Calpine Energy Services, L.P.'s Cross- Notice of Taking Deposition Duces Tecum (regarding Steve Sim) **05278-04**
- 2) FPL's Objections to Calpine Energy Services, L.P.'s Cross-Notice of Taking Deposition Duces Tecum (regarding Rene Silva) **05279-04**
- 3) FPL's Objections to Calpine Energy Services, L.P.'s Notice of Taking Deposition Duces Tecum (regarding Steven Scroggs) and; **05280-04**
- 4) FPL's Objections to Calpine Energy Services, L.P.'s Notice of Taking Deposition Duces Tecum (regarding Moray Dewhurst). **05281-04**

CMP _____
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Also included in this submittal is a computer diskette containing FPL's Objections in Word format. Please contact me if you or your Staff have any questions regarding this filing.

RECEIVED & FILED

FPSC BUREAU OF RECORDS

CAG:gcm
Enclosure

Copy to: Parties of Record w/enclosures

Very truly yours,

Charles A. Guyton / by E. Daley
Charles A. Guyton

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: May 5, 2004
_____)

**FLORIDA POWER & LIGHT COMPANY'S OBJECTIONS TO
CALPINE ENERGY SERVICES, L.P.'S CROSS-NOTICE OF
TAKING DEPOSITION DUCES TECUM**

Florida Power & Light Company ("FPL") submits the following Objections to the Calpine Energy Services, L.P.'s ("Calpine") May 4, 2004 Cross-Notice Of Taking Deposition Ducus Tecum regarding Steve Sim:

I. Preliminary Nature of These Objections.

FPL's objections stated herein are preliminary in nature. FPL is furnishing its objections consistent with the time frames set forth in the Commission's Order Establishing Procedure, Order No. PSC-04-0325-PCO-EI, dated March 30, 2004 (the "Order Establishing Procedure"), and Rules 1.310(b)(5) and 1.350(b), Florida Rules of Civil Procedure. 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.

DOCUMENT NUMBER-DATE

05278 MAY-5 3

FPSC-COMMISSION CLERK

II. General Objections.

FPL objects to each and every request 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 adequate provisions in place to protect the confidentiality of the information. FPL in no way intends to waive claims of confidentiality. In particular, FPL objects to providing certain commercially sensitive information to a direct competitor.

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 Florida Public Service Commission 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, these responses 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 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.

FPL notes that the cumulative effect of the discovery requests in these proceedings make Calpine's requests for irrelevant or marginally relevant information or documents overly burdensome. Even if an individual request on its own may not seem overly burdensome, the fact that FPL is responding to numerous requests with overlapping expedited deadlines creates a cumulative burden on FPL, which must be taken into account when looking at whether responding to a discovery request is overly burdensome.

FPL objects to each request and any definitions and instructions that purport to expand FPL's obligations under applicable law. FPL objects to these "definitions" and instructions to the extent they do not comply with the Florida Rules of Civil Procedure regarding discovery or the Commission's Order Establishing Procedure.

FPL objects to each request to the extent that the information requested constitutes "trade secrets" which are privileged pursuant to Section 90.506, Florida Statutes.

FPL objects to the definition of "you" in Calpine's instructions in that it refers to entities other than the deponent.

III. Specific Objections.

In the Cross-Notice of Taking Deposition Duces Tecum served upon FPL's counsel on May 4, 2004, regarding Dr. Sim's May 10, 2004, deposition, the deponent was instructed to bring "Copies of documents set forth in Exhibit A." FPL states the following specific objections regarding each of the categories of documents set forth in Exhibit A:

1. a. This request is not in compliance with Rule 1.350, Florida Rules of Civil Procedure as required by Rule 1.310(b)(5). Specifically, it does not provide the time set forth in Rule 1.350(b) to respond to the request, nor does it provide the shorter period of time established by the

Prehearing Officer for discovery responses in the Order Establishing Procedure. If restated as a request for production or if confirmed in writing by counsel for Calpine that he requests that this improper notice be treated as a request for a production of documents, FPL will, upon receipt of such restatement or written confirmation, treat the notice as a request for production and begin the timelines for objections and responses. However, it will not make Dr. Sim available for a subsequent deposition by Calpine.

b. This request is unduly burdensome. Calpine has already requested, "Any and all documents each witness relied upon in preparing his testimony." {Calpine Request to Produce # 4} Calpine has also requested, FPL is already in the process of responding to this request, and the documents responsive to this request are to be made available for Calpine's review at FPL's General Office in Miami, Florida the morning of May 7, 2004. It is unduly burdensome for Calpine to make this redundant request and to attempt to require production of the same documents three days later in Tallahassee, particularly when the second production fails to comply with applicable time lines.

Notwithstanding its objections, FPL will accommodate Calpine and have Dr. Sim make these documents available at his deposition.

c. As to documents requested that have also been requested in other Calpine discovery, FPL is not waiving and, indeed, is incorporating by reference all previously stated objections.

2. a. This request is not in compliance with Rule 1.350, Florida Rules of Civil Procedure as required by Rule 1.310(b)(5). Specifically, it does not provide the time set forth in Rule 1.350(b) to respond to the request, nor does it provide the shorter period of time established by the Prehearing Officer for discovery responses in the Order Establishing Procedure. If restated as a request for production or if confirmed in writing by counsel for Calpine that he requests that this

improper notice be treated as a request for a production of documents, FPL will, upon receipt of such restatement or written confirmation, treat the notice as a request for production and begin the timelines for objections and responses. However, it will not make Dr. Sim available for a subsequent deposition by Calpine.

b. This request is overly broad in scope and unlimited by reference in time. There is no limitation to the RFP, the RFP evaluation or even the need case.

c. This request is unduly burdensome. Calpine has previously requested that FPL produce "All internal correspondence, including e-mails, regarding the bid process you used to select Turkey Point Unit 5." {Calpine's First Request to FPL for Production of Documents, # 19} FPL is already in the process of responding to this request, and FPL's response is due to be reviewed by Calpine the morning of May 7, 2004 at FPL's General Office in Miami, Florida, three days before Dr. Sim's deposition in Tallahassee, Florida. It is unduly burdensome for Calpine to make this redundant request and to attempt to require production of some of the same documents at two different places five days apart, particularly when the second production ignores applicable time lines.

d. As to documents requested that have also been requested in other Calpine discovery, FPL is not waiving and, indeed, is incorporating by reference all previously stated objections.

3. a. This request is not in compliance with Rule 1.350, Florida Rules of Civil Procedure as required by Rule 1.310(b)(5). Specifically, it does not provide the time set forth in Rule 1.350(b) to respond to the request, nor does it provide the shorter period of time established by the Prehearing Officer for discovery responses in the Order Establishing Procedure. If restated as a request for production or if confirmed in writing by counsel for Calpine that he requests that this improper notice be treated as a request for a production of documents, FPL will, upon receipt of

such restatement or written confirmation, treat the notice as a request for production and begin the timelines for objections and responses. However, it will not make Dr. Sim available for a subsequent deposition by Calpine.

b. This request is unduly burdensome. Calpine has previously requested that FPL produce “All internal correspondence, including e-mails, regarding the bid process you used to select Turkey Point Unit 5.” {Calpine’s First Request to FPL for Production of Documents, # 19} Calpine has also previously requested that FPL produce “All documents related to the development of the RFP, including drafts of the RFP document. {Calpine’s First Request to FPL for Production of Documents, # 27} FPL is already in the process of responding to these requests, and FPL’s response is due to be reviewed by Calpine the morning of May 7, 2004 at FPL’s General Office in Miami, Florida. It is unduly burdensome for Calpine to make this redundant request and to attempt to require production of some of the same documents three days later in a different location, particularly when the second production ignores applicable time lines.

c. As to documents requested that have also been requested in other Calpine discovery, FPL is not waiving and, indeed, is incorporating by reference all previously stated objections.

4. a. This request is not in compliance with Rule 1.350, Florida Rules of Civil Procedure as required by Rule 1.310(b)(5). Specifically, it does not provide the time set forth in Rule 1.350(b) to respond to the request, nor does it provide the shorter period of time established by the Prehearing Officer for discovery responses in the Order Establishing Procedure. If restated as a request for production or if confirmed in writing by counsel for Calpine that he requests that this improper notice be treated as a request for a production of documents, FPL will, upon receipt of such restatement or written confirmation, treat the notice as a request for production and begin

the timelines for objections and responses. However, it will not make Dr. Sim available for a subsequent deposition by Calpine.

b. This request is unduly burdensome. Calpine has previously requested that FPL produce “All documents related to objections to FPL’s RFP filed by the Florida Partnership for Affordable Competitive Energy (“PACE”) with the Florida Public Service Commission.” {Calpine’s First Request to FPL for Production of Documents, # 40 } FPL is already in the process of responding to this request, and FPL’s response is due to be reviewed by Calpine the morning of May 7, 2004 at FPL’s General Office in Miami, Florida. It is unduly burdensome for Calpine to make this redundant request and to attempt to require production of the same at a different location five days later, particularly since the later production ignores applicable time lines.

c. As to documents requested that have also been requested in other Calpine discovery, FPL is not waiving and, indeed, is incorporating by reference all previously stated objections.

5. a. This request is not in compliance with Rule 1.350, Florida Rules of Civil Procedure as required by Rule 1.310(b)(5). Specifically, it does not provide the time set forth in Rule 1.350(b) to respond to the request, nor does it provide the shorter period of time established by the Prehearing Officer for discovery responses in the Order Establishing Procedure. If restated as a request for production or if confirmed in writing by counsel for Calpine that he requests that this improper notice be treated as a request for a production of documents, FPL will, upon receipt of such restatement or written confirmation, treat the notice as a request for production and begin the timelines for objections and responses. However, it will not make Dr. Sim available for a subsequent deposition by Calpine.

b. This request is unduly burdensome. Calpine has previously requested that FPL produce "All documents related to the environmental permitting of the Turkey Point Unit 5 facility. {Calpine Request for Production of Documents # 47 } FPL is already in the process of responding to this request, and FPL's response is due to be reviewed by Calpine the morning of May 7, 2004 at FPL's General Office in Miami, Florida. It is unduly burdensome for Calpine to make this redundant request and to attempt to require production of some of the same documents five days after Calpine has access in another location, particularly given that Calpine's request does not follow applicable time lines.

c. As to documents requested that have also been requested in other Calpine discovery, FPL is not waiving and, indeed, is incorporating by reference all previously stated objections.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of Florida Power & Light Company's Objections to Calpine Energy Services, L.P.'s Cross-Notice of Taking Deposition Duces Tecum has been furnished by hand delivery and by United States Mail this 5th day of May, 2004, to the following:

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