

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Florida Power & Light Company's	)	Docket No. 040206-EI
Petition to Determine Need for	)	
Turkey Point Unit 5 Electrical Power Plant.	)	Dated: May 6, 2004
_____	)	

**FLORIDA POWER & LIGHT COMPANY'S  
MOTION TO COMPEL ANSWERS TO INTERROGATORIES AND  
PRODUCTION OF DOCUMENTS BY CALPINE ENERGY SERVICES, L.P.**

Florida Power & Light Company ("FPL"), pursuant to Rules 28-106.206 and 28-106.303 of the Florida Administrative Code and Florida Rules of Civil Procedure 1.280, 1.340, 1.350 and 1.380, moves to compel Calpine Energy Services, L.P. ("Calpine") to respond to FPL's First Set of Requests for Production of Documents (Nos. 1-20) ("Requests for Production"), a copy of which is attached as Exhibit A, FPL's First Set of Interrogatories (Nos. 1-50) ("Interrogatories"), and FPL's First Request for Admissions (Nos. 1-26), a copy of which is attached as Exhibit B (collectively "the First Set of Discovery"). The grounds for this motion are as follows:

1. On April 16, 2004, Calpine, a non-party at that time, propounded on FPL its First Request for Production of Documents (Nos. 1-71) and First Set of Interrogatories (Nos. 1-19).<sup>1</sup> FPL had delayed serving Calpine with discovery until it was granted party status, but decided to serve the discovery on Calpine then reach agreement with Calpine as to the time for responding to discovery.

2. On April 23, 2004, FPL served its First Request for Production of Documents and First Set of Interrogatories on Calpine. The purpose of the discovery was: 1) to obtain any documents or information that supports or contradicts the assertions set forth in Calpine's Petition to Intervene, dated March 31, 2004, in the present action; 2) to obtain any documents or

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<sup>1</sup> The title to Calpine's First Set of Interrogatories incorrectly states "(1-18)." In fact, there are 19 interrogatories in Calpine's First Set.

information related to Calpine's issues in the case, as reflected in or suggested in Calpine's Petition to Intervene; 3) to obtain any documents or information related to Calpine's witnesses, if any; and 4) to determine generally the evidence and materials upon which Calpine intends to rely on. FPL served its First Requests for Admission on Calpine on April 30, 2004.

3. FPL entered into discussions with Calpine in an attempt to reach a mutual accommodation for the time for responding to discovery. In the mean time, Calpine served its objections to FPL's First Set of Discovery on FPL (attached). FPL was advised that Calpine expected FPL's responses on the twentieth day from service as called for in the Order Establishing Procedure in this docket, ignoring the fact that Calpine was not yet a party at the time it served discovery. In return, Calpine would only state that it "might" respond to FPL's discovery.

4. FPL's position remains that it believes the time for FPL to Calpine's discovery begins to run from the date Calpine was granted intervention, or April 28, 2004. Still, as an accommodation to Calpine, and despite the fact that Calpine impermissibly served discovery as a non-party on FPL, FPL is providing answers to Calpine's interrogatories within twenty days from the date such discovery was served. Further, FPL expects to have available for Calpine's review most, if not all, documents requested that are not otherwise subject to FPL's objections or subject to motions for protective order filed in this docket.

5. However, FPL has no confidence that it can obtain any commitment from Calpine that it will respond to FPL's discovery, particularly now that FPL has accommodated Calpine with respect to its discovery. Thus, in the interest of time, FPL requests that the Commission compel Calpine to respond to FPL's discovery. Notwithstanding FPL's accommodation to Calpine with respect to the timeline for responding to discovery, FPL is acceptable to the clock

running on Calpine's discovery as of the date it was granted intervention. FPL respectfully requests the Commission to order Calpine to serve specific objections to FPL's Requests for Production and Interrogatories by May 8, 2004 (at this point, Calpine's objections served on FPL are only general objections), or waive the right to file such objections, and to respond to FPL's Requests for Production and Interrogatories by May 18, 2004. Further, FPL requests that the Commission order Calpine to Respond to FPL's First Request for Admissions by May 20, 2004.

6. With respect to Calpine's objections made to FPL's First Set of Interrogatories and First Request for Production, FPL asks the Commission to confirm that service was effective on Calpine and overrule Calpine's objections on these grounds. Calpine's objections state "FPL's discovery was not properly served and thus need not be answered" and amount to a "legal nullity" for two reasons: 1) Calpine states FPL's discovery is a legal nullity because Susan F. Clark, Esq., signed the discovery for FPL, but yet she has not entered a notice of appearance in this case; and 2) Calpine asserts FPL's discovery is a legal nullity because Ms. Clark signed the discovery on behalf of at least one attorney who is not a member of the Florida Bar, R. Wade Litchfield.

7. Calpine cited no legal rule or precedent for the first of its grounds for not responding to FPL's discovery -- that Susan Clark cannot sign discovery until she enters a notice of appearance in this case. FPL has located no legal rule or precedent that supports the contention that signing and serving discovery as an agent for counsel of record constitutes an "appearance" in the case for which a notice of appearance must be filed. Regardless, Jon Moyle, Jr., counsel for Calpine had actual notice of Ms. Clark's representation of FPL in this docket, as evidenced by the fact that Mr. Moyle contacted Ms. Clark by phone the week of April 5, 2004, in relation to the need case. When Ms. Clark met with Mr. Moyle on April 13, 2004, she learned

that Mr. Moyle had contacted her to inquire whether FPL would be amenable to rescheduling the hearing in this docket. FPL requests that the Commission overrule Calpine's first objection to FPL's Requests and Interrogatories as a legal nullity.

8. Calpine's second assertion is that FPL's First Set of Interrogatories and First Requests for Production are a legal nullity because R. Wade Litchfield is not a member of the Florida Bar and has not been granted status as a qualified representative in this proceeding. On March 10, 2004, the Commission entered Order No. PSC-04-0281-FOF-OT, Docket No. 040064-OT, authorizing R. Wade Litchfield qualified representative status to appear on behalf of FPL in any undocketed or docketed matter opened by January 31, 2005. FPL requests that the Commission overrule Calpine's objection that FPL's discovery is a legal nullity because R. Wade Litchfield is qualified representative for FPL in this docket.

9. Although Calpine has not served objections to FPL's First Requests for Admission, Calpine has indicated that it objects to such requests on similar grounds. Counsel for Calpine has questioned the validity of FPL's discovery on grounds that Lynne Adams, FPL Manager of Regulatory Issues, signed the Requests for Admission as agent for R. Wade Litchfield. FPL requests that the Commission confirm that such Requests for Admission were properly served.

10. FPL requires the discovery sought from Calpine so that it may evaluate and anticipate Calpine's challenges to FPL's Petition to Determine Need for Turkey Point Unit 5. Calpine has not filed a direct case, nor has it indicated to FPL whether it intends to call any witnesses in the case. FPL's only insight into Calpine's challenge to FPL's Petition is Calpine's Petition to Intervene and the written discovery Calpine has served on FPL. FPL is entitled to Calpine's responses to FPL's written discovery, and requires it to prepare for the hearing in this

case. Parties naturally need to know what information supports or contradicts their adversaries' position, background on their adversaries' witnesses, and what information their adversaries will rely upon at trial. See generally, Elkins v. Syken, 672 So.2d 517, 522 (Fla. 1996). FPL is also entitled to documents or information upon which Calpine intends to rely in the present action.

11. Please note that FPL expects that Calpine will continue to resist discovery, and will ask for reconsideration of any prehearing order compelling discovery. Therefore, on Tuesday, May 4, 2004, FPL re-served to Calpine its entire First Set of Discovery, signed by Charles A. Guyton, counsel for FPL in this docket, and filed notices of reserving discovery in this docket. FPL did so as an added precaution and in an attempt to remove any opportunity for Calpine to attempt to deflect discovery on these grounds. FPL submits such reservice was only to help ensure that Calpine does not keep this ball in the air past the discovery cut-off date of May 26, 2004, and not because FPL believes there is merit to Calpine's claims.

### **Conclusion**

There is no reasonable basis for Calpine's objections to FPL's First Set of Discovery. Accordingly, FPL seeks an order compelling Calpine to produce the documents requested in FPL's First Request for Production and an order compelling Calpine to answer FPL's First Set of Interrogatories and First Requests for Admission.

FPL represents that Calpine has indicated it will oppose FPL's Motion to Compel. FPL is open to further discussion with Calpine to attempt to resolve the aforementioned issues, but FPL believes it must file this Motion to Compel in the interest of time.

Time is of the utmost concern in the present proceeding. Therefore, FPL respectfully requests expedited treatment of this Motion to Compel. Finally, FPL reserves the right to

supplement this Motion pending Calpine's filing of specific objections due May 8, 2004, and pending Calpine's discovery responses due to be filed May 18, 2004.

**Certificate of Counsel**

Counsel for FPL, Charles A. Guyton, Esq., certifies that he has consulted with Counsel for Calpine in an attempt to resolve the issues raised in this Motion, but that counsel were unable to agree.

Respectfully submitted this 6<sup>th</sup> of May, 2004.

R. Wade Litchfield, Senior Attorney  
Natalie F. Smith, Esq.  
Florida Power & Light Company  
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700 Universe Boulevard  
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Attorneys for Florida Power & Light  
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Attorneys for Florida Power & Light  
Company

By: Charles A. Guyton by E.C. Daley  
Charles A. Guyton, Esquire  
Fla. Bar No.: 0398039  
FBN 0104507

## CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of Florida Power & Light Company's Motion to Compel has been furnished by hand delivery (\*) and by United States Mail this 6<sup>th</sup> day of May, 2004, to the following:

Jennifer Brubaker, Esq.\*  
Senior Attorney  
Florida Public Service Commission  
Gerald L. Gunter Building  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Black & Veatch Corporation (KS)  
Myron Rollins  
11401 Lamar Avenue  
Overland Park, KS 66211

Department of Community Affairs  
Paul Darst  
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2555 Shumard Oak Blvd.  
Tallahassee, FL 32399-2100

Department of Environmental Protection  
(Siting)  
Buck Oven  
Siting Coordination Office  
2600 Blairstone Road, MS 48  
Tallahassee, FL 32301

Jon C. Moyle, Jr., Esq.\*  
Cathy M. Sellers, Esq.  
Moyle Flanigan Katz Raymond &  
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Bruce May, Esquire  
Holland & Knight LLP  
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By: Charles A. Guyton / by C.C. Bailey  
Charles A. Guyton, Esquire  
Fla. Bar No.: 0398039  
FBN  
0104507

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# **EXHIBIT A**

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to Determine Need )  
for Turkey Point Unit 5 Electrical )  
Power Plant by Florida Power and )  
Light Company )  
\_\_\_\_\_)

DOCKET NO. 040206-EI

Date: April 23, 2004

**FLORIDA POWER & LIGHT COMPANY'S  
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS  
TO CALPINE ENERGY SERVICES, L.P. (NOS. 1-20)**

Pursuant to Rule 28-106.206, Florida Administrative Code and Rule 1.350, Florida Rules of Civil Procedure, Florida Power & Light Company ("FPL"), serves the following request for production of documents upon Calpine Energy Services, L.P., and requests that responsive documents be produced pursuant to the timeframes established in the Commission's Order Establishing Procedure in the above-referenced docket.

**DEFINITIONS**

1. "You," "yours" and/or "yourselves" means "Calpine."
2. Unless the interrogatory states otherwise, "Calpine" means Calpine Energy Services, L.P., its parent, Calpine Corporation, any affiliated entities, and any attorney, employee, agent, representative, or other person acting or purporting to act on your behalf.
3. "Person" or "persons" means all natural persons and entities, including but not limited to: corporations, companies, partnerships, limited partnerships, joint ventures, trusts, estates, associations, public agencies, departments, bureaus, or boards.
4. "Document or documents" means "documents" as defined in Rule 1.350 of the Florida Rules of Civil Procedure. In addition, the words "document" or "documents" shall mean any writing, recording, computer-stored information, or photograph in your possession, custody,

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to Determine Need )  
for Turkey Point Unit 5 Electrical )  
Power Plant by Florida Power and )  
Light Company )

DOCKET NO. 040206-EI

Date: April 23, 2004

NOTICE OF SERVICE  
OF FLORIDA POWER & LIGHT COMPANY'S  
FIRST SET OF INTERROGATORIES (NOS. 1-50) AND FIRST REQUEST  
FOR PRODUCTION OF DOCUMENTS (NOS. 1-20) TO  
CALPINE ENERGY SERVICES, L.P.

Florida Power & Light Company ("FPL") gives Notice of Service of its First Set of Interrogatories (Nos. 1-50) and First Request for Production of Documents (Nos. 1-20) to Calpine Energy Services, L.P. with a copy to all counsel on the attached Certificate of Service, this 23 day of April, 2004.

Respectfully submitted,

R. Wade Litchfield, Senior Attorney  
Natalie F. Smith, Esq.  
Florida Power & Light Company  
Law Department  
700 Universe Boulevard  
Juno Beach, FL 33408  
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Attorneys for Florida Power & Light  
Company

Attorneys for Florida Power & Light  
Company

By: *Lisa J. Clark for*  
R. WADE LITCHFIELD

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of Florida Power & Light Company's Notice of Service of Florida Power & Light Company's First Set of Interrogatories (Nos. 1-50) and First Request for Production of Documents (Nos. 1-20) to Calpine Energy Services, L.P. have been hand delivered (\*) and have been furnished by United States Mail this 23 day of April, 2004, to the following:

Jennifer Brubaker, Esq.\*  
Senior Attorney  
Florida Public Service Commission  
Gerald L. Gunter Building  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Black & Veatch Corporation (KS)  
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By:   
R. WADE LITCHFIELD

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care or control, which pertain directly or indirectly, in whole or in part, to any of the subjects listed below, or which are themselves listed below as specific documents, including, but not limited to: correspondence, memoranda, notes, messages, e-mails, diaries, minutes, books, reports, charts, ledgers, invoices, computer printouts, computer discs, microfilms, video tapes, or tape recordings.

5. "FPL" means Florida Power & Light Company.

6. Unless the request states otherwise, "Calpine" means Calpine Energy Services, L.P., its parent, Calpine Corporation, and any affiliated entities.

7. "Relate to" shall mean contain, discuss, describe or address.

8. "All" means all or any.

9. The singular of any word contained herein shall include the plural and vice versa; the terms "and" and "or" shall be both conjunctive and disjunctive; and the term "including" means "including without limitation."

### **INSTRUCTIONS**

10. Scope of Production. In responding to this request to produce, produce all responsive documents, including any and all non-identical copies of each such document.

11. Manner of Objections and Inability to Respond. If you object to a part of a request and refuse to respond to that part, state your objection and answer the remaining portion of that request. If you object to the scope of a request and refuse to produce documents for that scope, state your objection and produce documents for the scope you believe is appropriate.

12. If any of the requests cannot be responded to in full after exercising due diligence to secure the requested documents, please so state and respond and produce documents to the extent possible, specifying your inability to respond further. If your response or production is

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qualified or limited in any particular way, please set forth the details and specifics of such qualification or limitation.

13. Privileged Information or Documents. In the event you wish to assert attorney/client privilege or the work product doctrine, or both, or any other claim of privilege, then as to such documents allegedly subject to such asserted privileges, you are requested to supply an identification of such documents, in writing, with sufficient specificity to permit the Prehearing Officer or Commission to reach a determination in the event of a motion to compel as to the applicability of the asserted objection, together with an indication of the basis for the assertion of the claim of attorney/client privilege or the work product doctrine, or any other claim of privilege. The identification called for by this instruction shall include the nature of the document (e.g., interoffice memoranda, correspondence, report, etc.), the sender or author, the recipient of each copy, the date, the name of each person to whom the original or any copy was circulated, the names appearing on any circulation list associated with such document, and a summary statement of the subject matter of the document in sufficient detail to permit the Court to reach a determination in the event of a motion to compel.

14. Computer-Generated Documents. If a requested document is on computer or word processing disc or tape, produce an electronic copy of the document and a printout of the document.

14. Organization of Documents. With respect to the documents produced, you shall produce them as they are kept in the usual course of business, labeling them to correspond with each numbered paragraph of this Request in response to which such documents are produced. All pages now stapled or fastened together and all documents that cannot be copied legibly should be produced in their original form.

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## DOCUMENTS REQUESTED

1. Provide copies of all documents relating in any way to Calpine's participation in FPL's 2003 RFP.
  2. Provide copies of all documents, analyses and reports supporting or otherwise addressing the firmness of Calpine's proposal submitted to FPL's 2003 RFP.
  3. Provide the most recently compiled financial statements for the entity that would construct, operate, and/or own the Blue Heron Energy Center if it were constructed.
  4. Provide the most recently compiled financial statements for the entity that would raise the capital necessary to finance and construct the Blue Heron Energy Center.
  5. Provide all documents that relate to Calpine's ability or plans to finance the construction of the Blue Heron Energy Center.
  6. Provide the documents that evidence Calpine's ownership, lease, or control of the site for the Blue Heron Energy Center.
  7. Provide all documents, including but not limited to correspondence, discussing, evaluating, analyzing or commenting on Calpine's inability, alleged inability, previous inability, or alleged previous inability to provide service pursuant to any purchased power contracts within the last three years or with respect to any future period.
  8. Provide all charts, tables and/or graphs that describe or depict Calpine's business or corporate structure, or affiliations, including but not limited to, organizational charts and tables showing the relationship among Calpine's affiliates and subsidiaries.
  9. Provide all documents that relate to Calpine's plans for meeting debt service requirements, including but not limited to all documents related to Calpine's contingency plan for meeting debt service.
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10. Provide all documents that relate to Calpine's contingency plans for meeting debt service requirements if any or all of Calpine's construction projects are delayed.

11. Provide all versions and revisions of the construction schedules associated with Calpine's current construction projects or Calpine's projects that have come into service within the last year.

12. Provide copies of any documents (complaints, orders, petitions, etc.) initiating administrative or civil proceedings against Calpine in the last three years.

13. Provide all notices of default, demands for compliance, performance or other correspondence or documents related to any failure or alleged failure by Calpine to perform under a purchased power contract or a contract relating to the development or construction of a power project in the last three years. For purposes of this request, failure to perform does not include routine short-term power outages.

14. Provide all reports or submissions to financial analysts and rating agencies regarding Calpine in the last two years.

15. Provide all financial analyst reports and rating agency reports regarding Calpine for the last three years.

16. Provide the most recently compiled financial statements for Calpine Energy Services, L.P.

17. Provide the most recently compiled financial statements for any other entity that is "involved in" (¶4, Calpine's Petition to Intervene) or is expected to be "involved in" the Blue Heron Energy Center project.

18. Provide copies of each of Calpine's Securities & Exchange Commission Forms 10-K and 10-Q filed during the past three years.

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19. Provide all documents related to the Securities & Exchange Commission raising objections or concerns regarding Calpine's reported financial information.

20. Provide the documents identified, referenced, or relied upon in answering each interrogatory included in FPL's First Set of Interrogatories to Calpine.

Respectfully submitted this 23 day of April, 2004.

R. Wade Litchfield, Senior Attorney  
Natalie F. Smith, Esq.  
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Attorneys for Florida Power & Light  
Company

By: *Rossan J. Clark*  
R. WADE LITCHFIELD



**CERTIFICATE OF SERVICE**

**Docket No. 040206-EI**

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By:

  
R. WADE LITCHFIELD

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# **EXHIBIT B**

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to Determine Need )  
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DOCKET NO. 040206-EI

Date: April 23, 2004

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Fax: (561) 691-7135

Attorneys for Florida Power & Light  
Company

Charles A. Guyton, Esq.  
Florida Bar No. 398039  
Steel Hector & Davis LLP  
215 S. Monroe St., Suite 601  
Tallahassee, Florida 32301  
Tel: (850) 222-2300

Attorneys for Florida Power & Light  
Company

By:   
R. WADE LITCHFIELD

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DOCKET NO. 040206-EI

Date: April 23, 2004

**FLORIDA POWER & LIGHT COMPANY'S  
FIRST SET OF INTERROGATORIES  
TO CALPINE ENERGY SERVICES, L.P. (NOS. 1-50)**

Florida Power & Light Company ("FPL") propounds the following interrogatories on Calpine Energy Services, L.P., and requests that they be answered separately, fully and under oath pursuant to the timeframes established in the Commission's Order Establishing Procedure in the above-referenced docket.

**DEFINITIONS**

1. "You," "yours" and/or "yourselves" means "Calpine."
2. Unless the interrogatory states otherwise, "Calpine" means Calpine Energy Services, L.P., its parent, Calpine Corporation, any affiliated entities, and any attorney, employee, agent, representative, or other person acting or purporting to act on your behalf.
3. "Person" or "persons" means all natural persons and entities, including but not limited to: corporations, companies, partnerships, limited partnerships, joint ventures, trusts, estates, associations, public agencies, departments, bureaus, or boards.
4. "Document or documents" means "documents" as defined in Rule 1.350 of the Florida Rules of Civil Procedure. In addition, the words "document" or "documents" shall mean any writing, recording, computer-stored information, or

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photograph in your possession, custody, care or control, which pertain directly or indirectly, in whole or in part, to any of the subjects listed below, or which are themselves listed below as specific documents, including, but not limited to: correspondence, memoranda, notes, messages, e-mails, diaries, minutes, books, reports, charts, ledgers, invoices, computer printouts, computer discs, microfilms, video tapes, or tape recordings.

5. "FPL" means Florida Power & Light Company.

6. "MW" means megawatts.

7. "Florida electric utility" means "electric utility" as that term is defined in Section 366.02(2), Florida Statutes.

8. The "Bid Rule" means Rule 25-22.082, Florida Administrative Code.

9. "SEC" means the federal Securities and Exchange Commission.

10. "RFP" means Request for Proposals.

11. "Identify" shall mean to denote, list, state, or respond in similar fashion.

12. "Identify" shall also mean: (1) when used with respect to a person, to state the person's full name, present or last known business address; and present or last known employer and position; (2) when used in respect to a document, to describe the document by character (e.g., letter, report, memorandum, etc.), author, date, and to state its present location and custodian; and (3) when used with respect to an oral communication, to identify the persons making and receiving the communication, the approximate date of and time of the communication, and a summary of its content or substance.

13. "Relate to" shall mean contain, discuss, describe or address.

14. "All" means all or any.

## INSTRUCTIONS

15. If any of the following interrogatories cannot be answered in full after exercising due diligence to secure the information, please so state and answer to the extent possible, specifying your inability to answer the remainder, and state whatever information you have concerning the unanswered portion. If your answer is qualified or limited in any respect, please set forth the details of such qualifications and/or limitations.

16. If you object to fully identifying a document or oral communication because of a privilege, you must nevertheless provide the following information, unless divulging the information would disclose the privileged information:

- a. the nature of the privilege claimed (including work product);
- b. the date of the document or oral communication;
- c. if a document; its type (correspondence, memorandum, facsimile electronic mail, etc.), custodian, location, and such other information sufficient to identify the document for a subpoena duces tecum or a document request, including where appropriate the author, the addressee, and, if not apparent, the relationship between the author and addressee;
- d. if an oral communication; the place where it was made, the names of the persons present while it was made, and, if not apparent, the relationship of the persons present to the declarant; and
- e. the general subject matter of the document or the oral communication.

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17. If you object to all or part of any interrogatory and refuse to answer that part, state your objection, identify the part to which you are objecting, and answer the remaining portion of the interrogatory.

18. Whenever an interrogatory calls for information that is not available to you in the form requested, but is available in another form, or can be obtained at least in part from other data in your possession, so state and either supply the information requested in the form in which it is available, or supply the data from which the information requested can be obtained.

19. The singular shall include the plural and vice versa; the terms "and" and "or" shall be both conjunctive and disjunctive; and the term "including" means "including without limitation."

20. If any interrogatory fails to specify a time period from which items should be listed, identified or described, your answer shall include information from the previous three years.

21. These interrogatories shall be answered under oath by you or through your agent who is qualified to answer and who shall be fully identified, with said answers being served as provided pursuant to the Florida Rules of Civil Procedure or order of the Commission.



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**INTERROGATORIES**

1. Identify and describe in detail the injury Calpine has suffered as a result of “certain terms” of FPL’s 2003 RFP, identifying the specific terms in question and explaining how they specifically “injured” Calpine (Calpine’s Petition to Intervene, ¶ 14).

---

2. Identify each and every way in which Calpine believes that FPL's 2003 RFP does not enable the Commission to fulfill its statutory responsibility to determine the most cost-effective generating unit under Section 403.519, Florida Statutes, and explain any and all bases for each such assertion. (¶ 18.a., Calpine's Petition to Intervene).

---

3. Identify each and every criterion in FPL's 2003 RFP that Calpine believes is inappropriate to be applied in the comparison of generating alternatives and explain in detail any and all bases for each such assertion. (¶ 18.b., Calpine's Petition to Intervene).

---

4. Identify each and every term in FPL's 2003 RFP that Calpine believes is unfair, onerous, commercially infeasible, or unduly burdensome in violation of the Bid Rule, specifying for each such term whether it is "unfair," "onerous," "commercially infeasible," or "unduly burdensome," and explaining in detail the basis for such belief. (§ 18.c., Calpine's Petition to Intervene).

---

5. Identify each and every way in which Calpine believes FPL failed to properly evaluate security risks of locating an additional 1,144 MW (summer rating) and 1,181 MW (winter rating) of electric generating capacity power supply at Turkey Point and explain in detail any and all bases for each such assertion. (¶ 18.d., Calpine's Petition to Intervene).

---

6. Explain in detail each and every way in which Calpine believes FPL failed to apply the criteria in its RFP fairly and correctly to its own self-build proposal as compared to proposals submitted, including the proposal submitted by Calpine, specifying each criterion Calpine alleges was not applied fairly and correctly and describing any and all bases for such contention(s). (¶ 18.e., Calpine's Petition to Intervene).

---

7. Identify each and every risk and cost that Calpine alleges was imposed on respondents and not on FPL's self-build options, and explain in detail each and every way in which Calpine believes the imposition of such risk or cost prejudiced the comparison of alternatives, including Calpine's proposal, in favor of FPL's self-build option and quantify and describe the nature and extent of the alleged prejudice. (§ 18.f., Calpine's Petition to Intervene).

---

8. Identify and quantify each and every cost associated with FPL's Turkey Point Unit 5 that Calpine believes FPL failed to include in its 2003 RFP, and for each such cost, describe in detail the basis for your belief. (¶ 18.g., Calpine's Petition to Intervene).



---

9. Identify each and every cost attributable to Turkey Point Unit 5 that Calpine believes FPL understated in its 2003 RFP, and, for each such cost, describe in detail the basis for your belief, and quantify and describe the extent to which Calpine believes such costs were understated. (¶ 18.g., Calpine's Petition to Intervene).

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10. Identify each and every cost attributable to Turkey Point Unit 5 that Calpine alleges FPL failed to include in its comparison of alternatives, and explain in detail each and every way in which Calpine believes the failure to include such cost attributable to FPL's self-build option prejudiced the comparison of alternatives, including Calpine's proposal, in favor of Turkey Point Unit 5, and quantify and describe the nature and extent of the alleged prejudice. (¶ 18.h., Calpine's Petition to Intervene).

---

11. Identify, describe and quantify each and every way in which Calpine believes FPL's proposal to construct, own, and operate 1,144 MW (summer rating) and 1,181 MW (winter rating) of additional capacity does not serve to cost effectively manage the risks borne by ratepayers, relative to alternative resources that include more purchased power, including power purchased from Calpine. (¶ 18.i., Calpine's Petition to Intervene).

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12. Identify each and every way in which Calpine believes FPL failed to comply with the terms of its 2003 RFP, explain in detail any and all bases for each such assertion, and describe and quantify the alleged adverse impact on the RFP evaluation process. (¶ 18.gg<sup>1</sup>, Calpine's Petition to Intervene).

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<sup>1</sup> The "gg" reference is to the second subparagraph bearing the letter "g" in paragraph 18 of Calpine's Petition to Intervene.

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13. Identify each and every way in which Calpine believes FPL's method of grouping respondent proposals is inappropriate, and describe in detail any and all bases for such contention(s), and describe and quantify the alleged adverse impact on the RFP or evaluation process. (¶ 18.j., Calpine's Petition to Intervene).

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14. Identify each and every way in which Calpine believes FPL's use of an equity penalty or adjustment is inappropriate, and describe in detail the basis for such contention(s). (¶ 18.k., Calpine's Petition to Intervene).

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15. Identify each and every way in which Calpine believes FPL's Petition to Determine Need for Turkey Point Unit 5 Electrical Power Plant and supporting documents fails to demonstrate that the proposed Turkey Point Unit 5 is the most cost-effective alternative for meeting FPL's capacity needs, explain in detail any and all bases for each such assertion, and describe what, in Calpine's view, is the most cost-effective alternative for meeting FPL's capacity needs. (§ 18.1., Calpine's Petition to Intervene).

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16. Identify each and every way in which Calpine believes FPL's Petition to Determine Need for Turkey Point Unit 5 Electrical Power Plant and supporting documents fails to demonstrate its entitlement to an affirmative determination of need for Turkey Point Unit 5 and explain in detail any and all bases for each such assertion. (¶¶ 18.m., 22.c., Calpine's Petition to Intervene).



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17. Identify each and every way that Calpine believes that FPL's 2003 RFP or RFP process violated the Bid Rule, and explain in detail any and all bases for each such assertion. (¶ 19.a., 22.a., Calpine's Petition to Intervene).

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18. Identify each and every way that Calpine was deprived of an opportunity to meaningfully participate in the RFP process and specifically explain how such alleged limitation(s) affected the price of Calpine's proposal or particular terms or characteristics of the proposal. (§ 19.a., 22.a., Calpine's Petition to Intervene).

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19. Identify each and every way that Calpine believes FPL has failed to demonstrate there is a need for the proposed generating capacity, describe in detail any and all bases for each such allegation and quantify the amount, if any, by which Calpine believes FPL has overstated or misstated its need. (§ 22c., Calpine's Petition to Intervene).

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20. To the extent not otherwise answered in another interrogatory response, for every alleged deficiency, problem, rule violation, or other issue with FPL's 2003 RFP and/or RFP evaluation process, identified in Calpine's Petition to Intervene, (¶¶ 18, 19, 22, Calpine's Petition to Intervene):

- a. explain in detail any and all bases for each such assertion;
- b. quantify and describe in detail the nature and extent of the alleged harm, prejudice, or adverse impact to Calpine;
- c. quantify and describe in detail the nature and extent of the alleged harm, prejudice, or adverse impact on the price and/or particular terms or characteristics of Calpine's proposal; and
- d. quantify and describe in detail the nature and extent of the alleged harm, prejudice, or adverse impact on the RFP and/or RFP evaluation process.

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21. Identify any and all points of clarification or questions Calpine raised with FPL in the pre-bid process relative to any aspect of the RFP or the RFP or evaluation process.

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22. Identify and describe any and all opportunities available to Calpine regarding the 252 MW it offered to FPL in response to FPL's 2003 RFP if FPL's Petition to Determine Need for Turkey Point Unit 5 is granted.

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23. Provide a detailed summary of the history of the development of the Blue Heron Energy Center up to and including a description of its current status. As part of such summary:

- a. identify what portion, if any, of the Blue Heron Energy Center's output is committed to a Florida electric utility;
- b. identify each Florida electric utility committed to purchase the electric output of the Blue Heron Energy Center; and identify the Florida electric utility committed, the MW committed, the date delivery to the Florida electric utility is scheduled to commence and the term of the commitment;
- c. describe in detail the schedule for operations (forecasted dispatch schedule) for the Florida electric utilities identified in your answer to subsection (b) above;
- d. describe in detail the status of any negotiations to secure commitments by Florida electric utilities to purchase the output of the Blue Heron Energy Center, including identifying when you expect to have such commitments secured; and
- e. describe in detail how Calpine plans to secure commitments from Florida electric utilities in time to meet a June, 2007, delivery date.

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24. Provide a detailed project schedule for the Blue Heron Energy Center combined cycle facility including identifying its expected in-service date, providing the schedule for obtaining an affirmative determination of need from the Florida Public Service Commission, and identifying the applicant(s) or co-applicant(s) to any such need petition.



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25. Identify by year the projected capital expenditure requirements for the Blue Heron Energy Center combined cycle facility assuming its expected in-service date.

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26. For each year 2004 through 2007, please set forth the forecasted uses and sources of funding for the capital expenditure requirements for the Blue Heron Energy Center combined cycle facility, assuming its expected in-service date.

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27. With respect to each of the power plant projects Calpine indicates it is “involved in” (¶ 4, Calpine’s Petition to Intervene), including the Blue Heron Energy Center, identify the specific nature of the involvement and the legal entity “involved,” and describe the relationship of such entity to Calpine Energy Services, L.P.

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28. Identify any power plant projects in which Calpine Energy Services, L.P., has an ownership interest and describe the nature and extent of Calpine's ownership interest.

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29. Identify whether Calpine Energy Services, L.P., would be the counter-party to a purchase power agreement for the output of the Blue Heron Energy Center. If not, identify and describe in detail the role of Calpine Energy Services, L.P., as it relates to the Blue Heron Energy Center, and identify and describe in detail the entity that would be the counter-party to a purchase power agreement for the facility's output and its relationship to Calpine Energy Services, L.P, and Calpine Corporation.

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30. Describe how Blue Heron Energy Center, LLC, is or will be financed.

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31. Describe whether and to what extent the obligations of Blue Heron Energy Center, LLC, are guaranteed or otherwise secured by Calpine Corporation or any of its affiliates.

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32. Describe the restructuring of Calpine referenced in its most recently filed SEC Form 10-K, including providing a detailed explanation of the effect of the restructuring on Blue Heron Energy Center, LLC, and the implications of the designation of Blue Heron Energy Center as a “first tier entity” under the “new holding company” named Calpine Power Company.



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33. Explain in detail whether and, if so, how Calpine believes its 252 MW could meet FPL's 2007 need in a more cost-effective fashion than Turkey Point Unit 5.

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34. State the projected return on equity Calpine forecasted it would earn on the Blue Heron Energy Center under the proposal submitted in response to FPL's 2003 RFP.

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35. Identify any power project Calpine is currently constructing, the Calpine manager or coordinator of any such project, the project's projected date of completion (original and current), whether such project is on schedule, and if not on schedule, the total number of days such project is delayed.

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36. Identify each of Calpine's "Suspended Development Projects" as that term is used in Calpine's most recently filed SEC Form 10-K, and for each project identified, explain why the project was suspended, the current status of the project and the reasons for the suspension.

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37. Identify each project proposed or undertaken that has been canceled during the last six years and, for each project identified, indicate whether, in connection with such cancellation, Calpine was alleged to have breached or found to have breached any contractual commitments.

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38. Explain the status of the Blue Heron Energy Center in light of Calpine's revised capital expenditure program announced in January 2002 and included in its most recently filed Form 10-K. Specifically, identify whether the Blue Heron Energy Center is one of the 14 power projects (representing 6,742 MW of base load capacity) currently in "Active Construction" and estimated to come on line from January 2004 to June 2007, one of the 12 projects in "Advanced Development" (representing 5,709 MW of base load capacity), one of the "Suspended Development Projects" (representing 2,569 MW of base load capacity), or one of the "Projects in Early Development" as those terms are used by Calpine in its most recently filed Form 10-K, or whether it has some other status.

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39. Explain how Calpine has financed its existing power generation facilities, specifically indicating whether Calpine has financed its facilities using a variety of leveraged financing structures, including: senior unsecured indebtedness, construction financing, project financing, revolving credit facilities, term loans, and/or lease obligations. For purposes of this request, Calpine means, Calpine Energy Services, L.P., Calpine Corporation, and/or any affiliated entities “involved in” (¶ 4, Calpine’s Petition to Intervene) power projects in Florida.

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40. Explain in detail how much of the total cost of the Blue Heron Energy Center would be debt financed and describe the financing structure contemplated for the project indicating whether a leveraged financial structure or structures will be employed for the project.



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41. Identify the legal entity or entities that own or control the site for the Blue Heron Energy Center.

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42. Identify any and all litigation, including the court and case number, arbitration, or other dispute resolution process, with an amount in controversy of more than \$100,000, in which Calpine is named as a defendant or has appeared as a third party defendant, that involves allegations of accounting, financial reporting, or energy marketing or trading improprieties, or breach of contractual commitment(s), including the failure to supply power, and state the present status or resolution of the litigation, arbitration, or dispute resolution process, and whether any judgment, decision, or settlement resulted. For purposes of this interrogatory, the failure to supply power does not include civil litigation related to routine short-term power outages.

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43. Identify all government investigations, civil or criminal, involving Calpine occurring during the last three years. Describe the nature of such proceedings or investigations, Calpine's involvement, any allegations or questions raised concerning Calpine, and describe the outcome as it relates to Calpine, including any liability, fines, penalties, or sanctions, resulting from any such government investigations.

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44. Identify any purchased power contract the project for which someone has claimed Calpine failed to complete, or has been unable to complete, in the last three years, or that Calpine has otherwise failed to perform, or which someone has claimed Calpine failed to perform. For purposes of this interrogatory, failure to perform does not include routine short-term outages.

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45. Identify every Invitation to Bid (ITB), RFP, or similar solicitation for electrical energy and/or capacity to which Calpine has responded in the past three years. For each such ITB, RFP, or similar solicitation, indicate (i) whether Calpine was the winning bidder or proposer and (ii) whether the ITB or RFP resulted in the execution of a purchased power contract.

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46. Identify any “wash trades” or “round trip” transactions in which Calpine has admitted to engaging during the last three years, and identify with whom the trade or transaction was made and the effect such trade or transaction had on Calpine’s financial position, including but not limited to any effect on Calpine’s trading volume or corporate revenue.

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47. Identify all of Calpine's outstanding debt, including the amount, to whom it is owed, the interest rate and the maturity date of such debt, whether on or off the balance sheet.

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48. Identify every correction or restatement made to Calpine's quarterly reports (SEC Form 10-Q) or annual reports (SEC Form 10-K) in the last three years and summarize the reasons for any correction or restatement.



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49. Identify any customers, the loss of any one or more of which would have a significant adverse effect on Calpine's operations, financial position, or ability to meet project demands or financial obligations.

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50. Identify and describe any foreign operation engaged in by Calpine during the last three years and for each such foreign operation describe any risks to Calpine's domestic operations or financial position associated with such operation.

Respectfully submitted this 23 day of April, 2004.

R. Wade Litchfield, Senior Attorney  
Natalie F. Smith, Esq.  
Florida Power & Light Company  
700 Universe Boulevard  
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Attorneys for Florida Power & Light  
Company

By: *Susan J. Clark*  
R. WADE LITCHFIELD

CERTIFICATE OF SERVICE  
Docket No. 040206-EJ

I HEREBY CERTIFY, that on this 23 day of April, 2004, a copy of Florida Power & Light Company's First Set of Interrogatories to Calpine Energy Services, L.P. was served via hand delivery (\*) and by U.S. Mail to the following:

Jennifer Brubaker, Esq.\*  
Senior Attorney  
Florida Public Service Commission  
Gerald L. Gunter Building  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Black & Veatch Corporation (KS)  
Myron Rollins  
11401 Lamar Avenue  
Overland Park, KS 66211

Department of Community Affairs  
Paul Darst  
Strategic Planning  
2555 Shumard Oak Blvd.  
Tallahassee, FL 32399-2100

Department of Environmental Protection  
(Siting)  
Buck Oven  
Siting Coordination Office  
2600 Blairstone Road, MS 48  
Tallahassee, FL 32301

Jon C. Moyle, Jr., Esq.\*  
Cathy M. Sellers, Esq.  
Moyle Flanigan Katz Raymond &  
Sheehan, P.A.  
The Perkins House  
118 North Gadsden Street  
Tallahassee, FL 32301

Holland & Knight Law Firm  
D. Bruce May, Esq.  
P.O. Drawer 810  
Tallahassee, FL 32302-0810

By:   
R. WADE LITCHFIELD

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to Determine Need  
for Turkey Point Unit 5 Electrical  
Power Plant by Florida Power and  
Light Company

)  
)  
)  
)  
)

DOCKET NO. 040206-EI

Dated: April 30, 2004

**NOTICE OF SERVICE OF  
FLORIDA POWER & LIGHT COMPANY'S FIRST REQUEST  
FOR ADMISSIONS (NOS. 1-26) TO CALPINE ENERGY SERVICES, L.P.**

Florida Power & Light Company gives notice of serving its First Request for Admissions to Calpine Energy Services, L.P. with a copy thereof to all parties listed on the attached Certificate of Service, this 30th day of April, 2004.

Respectfully submitted,

R. Wade Litchfield, Senior Attorney  
Natalie F. Smith, Esq.  
Florida Power & Light Company  
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Tel: (850) 222-2300

Attorneys for Florida Power & Light  
Company

Attorneys for Florida Power & Light  
Company

By:

  
R. Wade Litchfield

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of Florida Power & Light Company's First Request for Admissions to Calpine Energy Services, L.P. has been furnished by hand delivery (\*) and by United States Mail this 30<sup>th</sup> day of April, 2004, to the following:

Jennifer Brubaker, Esq.\*  
Senior Attorney  
Florida Public Service Commission  
Gerald L. Gunter Building  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

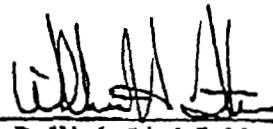
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Bruce May, Esquire  
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P. O. Drawer 810  
Tallahassee, FL 32302-0810

By:   
R. Wade Litchfield

2-4

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Florida Power & Light Company's	)	Docket No. 040206-EI
Petition to Determine Need for	)	
Turkey Point Unit 5 Electrical Power Plant.	)	Dated: April 30, 2004
_____	)	

**FLORIDA POWER & LIGHT COMPANY'S FIRST REQUEST  
FOR ADMISSIONS (NOS. 1-26) TO CALPINE ENERGY SERVICES, L.P.**

Pursuant Rule 1.370(a), Florida Rules of Civil Procedure, Rule 28-106.206, Florida Administrative Code, and Order No. PSC-04-0325-PCO-EI, the Order Establishing Procedure in the above-referenced docket, Florida Power & Light Company ("FPL") or the "Company") requests Calpine Energy Services, L.P. ("Calpine") to admit the truth of the following matters:

Each of the following statements is true:

1. All other things equal, the default risk is higher with an entity that is below investment grade compared to one that is at or above investment grade.
2. All other things equal, there are greater financing and completion risks associated with construction of a power plant by a below-investment grade entity compared to one that is at or above investment grade.
3. Lower investment ratings for entities reflect rating agencies' assessment of relatively higher risks to investors for such entities.
4. In the event of a purchased power project failing to come on line in accord with its contract with a utility, there is no certainty that replacement power will be available to the utility when needed.
5. In the event of an independent power project having entered into a purchase power agreement with FPL, and then failing to operate and deliver power as

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promised, FPL would be at risk of having to purchase replacement power on short notice at potentially higher prices, assuming such power is available for purchase.

6. Taking on the financing and construction of a power plant requires financial strength and flexibility.

7. In 2003, S&P downgraded Calpine's corporate credit rating three notches to "B" and Calpine's senior unsecured debt rating to "CCC+," citing various risks facing the company, including liquidity issues, debt burden, and access to capital markets.

8. Bonds rated below triple-B (*e.g.*, "B", "CCC+") fall below investment grade and are commonly referred to as "junk" bonds.

9. Bonds rated below triple-B (*e.g.*, "B", "CCC+") are considered to be speculative instruments by the major rating agencies (*e.g.*, Standard & Poor's and Moody's) and investors.

10. Debt rating agencies impute no off-balance-sheet debt obligation on FPL's capital structure associated with financing FPL's self-build options.

11. Debt rating agencies impute an off-balance sheet obligation on FPL's capital structure as debt equivalent, in connection with FPL's purchased power obligations.

12. Because there are no off-balance-sheet liabilities associated with FPL's self build options, the debt equivalent associated with purchased power represents a difference between these two power supply alternatives.

13. Under Standard & Poor's approach to quantify the financial impact of the off-balance-sheet liability associated with purchased power obligations, incremental purchased power commitments will result in an incremental increase in FPL's financial



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leverage.

14. When a credit rating agency downgrades a company's debt rating, the agency is indicating its belief that the company's default risk has increased.

15. If FPL were to enter into a purchased power agreement with Calpine that involved the construction of a new power plant, that new power plant would be competing against Calpine's existing projects for allocation of capital funds.

16. All other things equal, the higher a merchant power producer's debt to equity ratio is, the less access that merchant producer has to capital markets.

17. If Calpine fails to complete construction of its existing power plant projects, it risks triggering an event of default at the Calpine corporate parent level.

18. In Calpine's experience, determining whether and on what terms to finance a project, lenders consider the completion risk of the project, and creditworthiness and/or net worth of the equity investor, among other things.

19. A delay or denial of FPL's petition for a determination of need for Turkey Point Unit 5 would put upward pressure on the price of power in the Florida wholesale power market in the event demand increases.

20. Losses occur when power is transported from a generator to the load to be served via an electric transmission system.

21. All other things equal, when the amount of power to be transported on a transmission facility exceeds the capability of the transmission facility, the amount of power transported must be limited to the capability of the transmission facility.

22. The amount of power that must be carried on a transmission facility to serve load at the receiving end may be reduced by (a) curtailing the amount of power

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needed at the receiving end or (b) adding a power source near the receiving end of the transmission facility.

23. Depending on the capacity of existing transmission facilities relative to load and generation, the construction of new or the upgrade of existing transmission facilities may be necessary to transport power produced by a generator to the load to be served.

24. An economic evaluation of competing capacity options that considers all costs to FPL customers must include transmission integration costs, transmission losses, and transmission interconnection costs.

25. The Blue Heron Energy Center unit from which Calpine bid in response to FPL's 2003 RFP could not be in service in time to meet FPL's stated summer 2007 need for additional generating capacity consistent with Calpine's proposal, even had FPL declared the portfolio including Calpine's proposal to be the best, most cost-effective resource option instead of Turkey Point Unit 5.

26. The 252-MW bid Calpine submitted in response to FPL's 2003 RFP could not satisfy FPL's summer 2007 need for additional generating capacity as stated in FPL's 2003 RFP.

Respectfully submitted this 30th day of April, 2004.

R. Wade Litchfield, Senior Attorney  
Natalie F. Smith, Esq.  
Florida Power & Light Company  
Law Department  
700 Universe Boulevard  
Juno Beach, FL 33408  
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Attorneys for Florida Power & Light  
Company

By: 

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Tel: (850) 222-2300

Attorneys for Florida Power & Light  
Company

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of Florida Power & Light Company's First Request for Admissions to Calpine Energy Services, L.P. has been furnished by hand delivery (\*) and by United States Mail this 30<sup>th</sup> day of April, 2004, to the following:

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Florida Public Service Commission  
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