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May 17, 2004



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

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COMMISSION
CLERK

Re: Florida Power & Light Company's Objections to Calpine Energy Services, L.P.'s Second Request for Production of Documents (Nos. 72-85) and Second Set of Interrogatories (No. 20), and Florida Power & Light Company's Objections to Calpine Energy Services, L.P.'s Third Request for Production of Documents (Nos. 86-101)
Docket No. 040206-EI

Dear Ms. Bayó:

Enclosed for filing are the original and seven (7) copies of Florida Power & Light Company's Objections to Calpine Energy Services, L.P.'s Second Request for Production of Documents (Nos. 72-85) and Second Set of Interrogatories (No. 20), and Florida Power & Light Company's Objections to Calpine Energy Services, L.P.'s Third Request for Production of Documents (Nos. 86-101) together with a diskette containing the electronic version of same. The enclosed diskette is 2HD density; the operating system is Windows XP; and the word processing software in which the document appears is Word 2002 (10.4109.3501) SP-1.

- CMP _____
- COM _____ Very truly yours,
- CTR _____
- ECR _____ 
- GCL  Joaquin E. Leon, Esquire
- OPC _____ JEL:alc
- MMS _____ Enclosures
- RCA _____ cc: Parties of Record w/enclosures
- SCR _____
- SEC 1 + cover Hr.
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an FPL Group company **FPSC-BUREAU OF RECORDS**

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to Determine Need for Turkey Point Unit 5 Power Plant by Florida Power & Light Company. _____)))))	Docket No. 040206-EI Dated: May 17, 2004
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**FLORIDA POWER & LIGHT COMPANY’S OBJECTIONS TO
CALPINE ENERGY SERVICES, L.P.’S SECOND REQUEST FOR PRODUCTION OF
DOCUMENTS (NOS. 72 – 85) AND SECOND SET OF INTERROGATORIES (NO. 20)**

Florida Power & Light Company (“FPL”) submits the following Objections to Calpine Energy Services, L.P.’s (“Calpine’s”) Second Request for Production of Documents (Nos. 72-85) and Second Set of Interrogatories (No. 20), which were incorrectly numbered 52-65 and 19, respectively, in Calpine’s submittals:

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 Rule 1.190(e), 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.

II. General Objections.

FPL objects to each and every request for documents or interrogatory to the extent it 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

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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 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 any production location other than FPL's General Offices at 9250 West Flagler Street, Miami, Florida.

FPL also objects to these discovery requests to the extent they call for FPL to prepare information in a particular format or perform calculations or analyses not previously prepared or performed as purporting to expand FPL's obligations under applicable law. Further, FPL objects to these interrogatories to the extent they purport to require FPL to conduct an analysis or create information not prepared by FPL in the normal course of business. FPL will comply with its obligations under the applicable rules of procedure.

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.

Numerous of the discovery requests are not expressly limited to data or analyses performed in connection with the evaluation of the Turkey Point Unit 5 project that is the subject of this docket. FPL assumes that, unless expressly stated to the contrary, Calpine's discovery requests are intended to refer to data or analyses related to the Turkey Point Unit 5 project and objects to the extent that any such discovery requests are not so limited, on the grounds that they would be overly broad, irrelevant and unduly burdensome.

FPL objects to each discovery request and any definitions and instructions that purport to expand FPL's obligations under applicable law. FPL objects to the definitions set forth in the Calpine's Second Request For Production of Documents and Calpine's Second Set of Interrogatories to the extent that they purport to impose upon FPL obligations that FPL does not have under the law. FPL objects to these "definitions" to the extent they do not comply with the Florida Rules of Civil Procedure regarding discovery or the Commission's Order Establishing Procedure.

In addition, FPL reserves its right to count interrogatories and their sub-parts (as permitted under the applicable rules of procedure) in determining whether it is obligated to respond to additional interrogatories served by any party.

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

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.

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) 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. FPL filed a motion for protective order, dated May 6, 2004, to protect this type of information from disclosure.

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 notified the counterparties to major equipment and services contracts or negotiations that Calpine has obtained leave to intervene in

this proceeding and requested that each counterparty take a position as to whether Calpine can be provided with the vendor's confidential, proprietary business information. FPL's vendors have refused to allow Calpine access to such material, and each of these vendors has either moved for a protective order from the Commission or executed an affidavit that was filed in support of FPL's motion for protective order dated May 6, 2004. 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 have not 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.

Also, FPL objects to Calpine's requests to the extent they seek commercially sensitive security data. This is data so sensitive that even the undersigned counsel could not have access to the data without first undergoing a criminal history investigation, including Federal Bureau of Investigation review of fingerprints. In any case, the undersigned counsel does not have the authority to release such documents to Calpine. Such documents, which may include assessments of security at the Turkey Point Plant, include "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.

FPL further objects to producing any information or documents reflecting the confidential information received from non-party proposers that submitted responses to its RFP solicitation except pursuant to a suitable confidentiality agreement, or order of the Commission. FPL filed a motion for protective order asking the Commission to issue, on an expedited basis, a

protective order requiring production of non-party bid data subject to a confidentiality agreement FPL offered to Calpine. FPL also notes that certain proposers in this need determination proceeding have pending motions for protective order regarding their bid data.

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 filed a Motion for Protective Order Regarding Calpine's First Request for Production of Documents (Nos. 1-71), dated May 6, 2004. To the extent that Calpine's Second Request for Production of Documents (Nos. 72-85) and Second Set of Interrogatories (No. 20) include discovery requests for the types of documents described in FPL's Motion for Protective Order, FPL adopts and incorporates by reference its arguments in the Motion for Protective Order as objections to Calpine's Second Request For Production of Documents and Second Set of Interrogatories.

FPL incorporates by reference all of the foregoing general objections into each of its specific objections set forth below as though stated therein. Notwithstanding and without waiving these objections, documents will be produced and interrogatories will be answered.

III. Specific Objections to Calpine's Second Request for Production of Documents

Definitions. FPL made a general objection to the definitions set forth in Calpine's Second 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 Second 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 Second 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. 72, 76-77. FPL objects to Request Nos. 72, 76-77, as unduly burdensome to the extent they call for documents previously provided in response to Calpine's Request Nos. 3, 8, 18-24, 26, 28-31, 39 and 48, or are otherwise subject to FPL's Motion for Protective Order dated May, 6, 2004.

In addition, FPL objects to Request No. 77 as overly broad and unduly burdensome because, in the course of its analysis of the RFP proposals and FPL self-build options, FPL performed hundreds of EGEAS simulations. 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 of Turkey Point Unit 5. FPL is concerned that if it produced all the documents that are arguably responsive to this broad request it would be accused of attempting to bury Calpine in largely irrelevant documents.

FPL further objects to these requests to the extent they call for the disclosure of proprietary, confidential business information. Specifically, FPL objects to providing 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.

Please refer to FPL's more detailed objection above with respect to bid data. FPL has asked the Commission to order that bid information be disclosed subject to FPL's Confidentiality Agreement filed with its May 6, 2004, Motion for Protective Order.

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.

Request for Production No. 73. FPL objects to Request No. 73 as unduly burdensome to the extent it calls for documents previously requested in Calpine's Request No. 45, which are subject to FPL's Motion for Protective Order dated May, 6, 2004.

Further, FPL objects to this request as an improper attempt to obtain FPL's confidential, proprietary business information. Please see FPL's specific objections to providing commercially sensitive data in the general objections above. FPL's underlying cost information is confidential and highly sensitive as it relates to Calpine, a direct competitor. 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 consists of or constitutes 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.

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.

Request for Production Nos. 74-75. FPL objects to these Requests as unduly burdensome to the extent they call for documents previously provided in response to Request Nos. 21, 26 and 31. Further, FPL objects to this request to the extent it calls for information that is readily available to Calpine in the public domain. See <http://www.fpl.com/about/plant/contents/2003rfp.shtml> (for questions and answers 1-201). Questions and answers 202-233 were e-mailed directly to the participants.

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.

Request for Production Nos. 78-79. FPL objects to these Requests as unduly burdensome to the extent they call for documents previously provided in response to Request Nos. 3, 4, 19, 21, 22, and 70.

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.

Request for Production No. 82. FPL objects to Request No. 82 as unduly burdensome to the extent it is duplicative of Request No. 46, which is subject to FPL's Motion for Protective Order dated May 6, 2004.

This Request calls for the disclosure of proprietary, confidential business information. 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. Please see FPL's more detailed objection above in regard to disclosing security data to Calpine.

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.

Request for Production Nos. 83-84. FPL objects to these requests as unduly burdensome to the extent they seek documents previously provided in response to Request Nos. 3, 6, 8, 19-24, 26, 28, 33, 39, 46-48, 66, or 70. Further, FPL objects to these requests to the extent they seek documents that are subject to FPL's Motion for Protective Order dated May 6, 2004.

Further, FPL objects to these requests to the extent they call for information that is subject to the work product doctrine or the attorney-client privilege. Also, FPL objects to these requests to the extent they call for the disclosure of proprietary, confidential information within the meaning of Section 366.093, Florida Statutes.

To the extent these requests seek bid data, FPL incorporates by reference and restates its objections to Request Nos. 72 and 76-77 and its general objections above. To the extent they seek commercially sensitive FPL data, including trade secrets, FPL incorporates by reference and restates its objections to Request No. 73 and its general objections above. Finally, to the extent

these requests seek security data, FPL incorporates by reference and restates its objections to Request No. 82 and its general objections above.

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.

IV. Specific Objections to Calpine's Second Set of Interrogatories

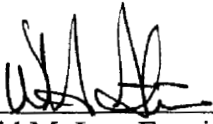
Definitions. FPL made a general objection to the definitions set forth in Calpine's Second Set of Interrogatories to the extent that they purport to impose upon FPL obligations that FPL does not have under the law. Specifically, FPL objects to the definitions of "Document" and "Report" contained in the DEFINITIONS section of Calpine's Second Set of Interrogatories. The definitions of "Document" and "Report" in the DEFINITIONS section are impermissibly overbroad to the extent it expands the definitions of "Document" and "Report" beyond the meaning of those terms in the Florida Rules of Civil Procedure.

Interrogatory No. 20(h). FPL objects to this interrogatory to the extent it is a request for production of documents.

Respectfully submitted,

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By: 
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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's Second Request for Production of Documents (Nos. 72-85) and Second Set of Interrogatories (No. 20) has been furnished by hand delivery (*) and by United States Mail this 17th day of May, 2004, to the following:

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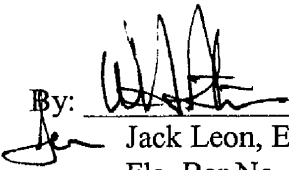
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