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### **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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In re: Fuel and purchased power cost recovery clause with generating performance incentive factor. Docket No. 040001-EI Filed: September 9, 2004

# FLORIDA POWER AND LIGHT COMPANY'S REQUEST FOR CONFIDENTIAL CLASSIFICATION OF POWER PURCHASE CONTRACT INFORMATION

Florida Power & Light Company ("FPL"), pursuant to Rule 25-22.006, F.A.C., and Section 366.093, Florida Statutes, requests confidential classification of certain information on pricing and other contractual terms contained in the contracts for the purchase of capacity and energy between Southern Company Services, Inc. and FPL from Scherer Unit 3, Harris Unit 1 and Franklin Unit 1 that are Documents TLH-1, TLH-2 and TLH-3, respectively, to the prepared testimony of Thomas Hartman (the "Power Purchase Contract Information"). In support of its Request, FPL states as follows:

 FPL is filing Mr. Hartman's prepared testimony, including Documents TLH-1, TLH-2 and TLH-3 in this docket on September 9, 2004, contemporaneously with this Request. The Request is intended to request confidential classification of the Power Purchase Contract Information consistent with Rule 25-22.006.

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2. The following exhibits are included with this Request:

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- SEC
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DOCUMENT NUMBER-DATE 09880 SEP -9 중 FPSC-COMMISSION CLERK b. Composite Exhibit B consists of two copies of Documents TLH-1, TLH-2 and TLH-3 in which all of the Power Purchase Contract Information has been redacted.

c. Exhibit C is a table containing an identification of the Power Purchase Contract Information, together with references to the specific statutory basis for the claim of confidentiality and to the affidavit in support of the requested classification.

d. Exhibit D consists of the affidavit of Mr. Hartman, who is FPL's Director of Business Management for Resource Assessment and Planning. The affidavit attests to the asserted bases for confidential classification.

3. FPL seeks confidential protection for the Power Purchase Contract Information because it relates to bids and other contractual data, the disclosure of which would impair FPL's ability to contract for fuel and electric power on favorable terms, *see* § 366.093(3)(d), Fla. Stat (2003); and because it relates to competitive interests of FPL and the Southern Company, the disclosure of which would impair both of their competitive businesses, *see* § 366.093(3)(e), Fla. Stat. (2003).

4. FPL submits that the highlighted Power Purchase Contract Information is proprietary confidential business information within the meaning of Section 366.093(3). Pursuant to Section 366.093, such information is entitled to confidential treatment and is exempt from the disclosure provisions of the public records law.

5. The Power Purchase Contract Information in Exhibit A is intended to be and is treated by FPL as private, and its confidentiality has been maintained.

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6. Upon a finding by the Commission that the Power Purchase Contract Information in Exhibit A is proprietary confidential business information within the meaning of Section 366.093(3), pursuant to Section 366.093(4) such materials should not be declassified for at least eighteen (18) months and should be returned to FPL as soon as the information is no longer necessary for the Commission to conduct its business.

WHEREFORE, FPL respectfully requests confidential classification of the Power Purchase Contract Information.

Respectfully submitted,

R. Wade Litchfield, Esq. Senior Attorney Florida Power & Light Company 700 Universe Boulevard Juno Beach, Florida 33408-0420 Telephone: 561-691-7101 Steel Hector & Davis LLP Attorneys for Florida Power & Light Company 200 South Biscayne Boulevard Suite 4000 Miami, Florida 33131-2398 Telephone: 305-577-2939

By: Kerel M. Dhi for AB

John T. Butler Fla. Bar No. 283479

### CERTIFICATE OF SERVICE Docket No. 040001-EI

I certify that a copy of the foregoing Request for Confidential Classification of Power Purchase Contract Information (\*) was served by hand delivery (\*\*) or United States mail on this <u>9</u><sup>44</sup> day of September, 2004, to the following persons:

Adrienne E. Vining, Esq.(\*\*) Division of Legal Services Florida Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, Florida 32399-0850

Lee L. Willis, Esq. James D. Beasley, Esq. Ausley & McMullen Attorneys for Tampa Electric P.O. Box 391 Tallahassee, Florida 32302

Joseph A. McGlothlin, Esq. Vicki Gordon Kaufman, Esq. McWhirter, Reeves, McGlothlin, Davidson, et al. Attorneys for FIPUG 117 South Gadsden Street Tallahassee, Florida 32301

John W. McWhirter, Jr., Esq. McWhirter, Reeves, McGlothlin, Davidson, et al. Attorneys for FIPUG P.O. Box 3350 Tampa, Florida 33602 Robert Vandiver, Esq. Office of Public Counsel c/o The Florida Legislature 111 West Madison Street, Room 812 Tallahassee, Florida 32399

James A. McGee, Esq. Progress Energy Florida, Inc. P.O. Box 14042 St. Petersburg, Florida 33733

Norman H. Horton, Esq. Floyd R. Self, Esq. Messer, Caparello & Self Attorneys for FPUC 215 South Monroe Street, Suite 701 Tallahassee, Florida 32302-0551

Jeffrey A. Stone, Esq. Russell A. Badders, Esq. Beggs & Lane Attorneys for Gulf Power P.O. Box 12950 Pensacola, Florida 32576-2950

By: Koul M. Dhi pon MB

\* Due to their volume, the exhibits to the Request are not included with the service copies, but Exhibits B, C and D are available upon request.

# EXHIBIT C

# COMPANY:Florida Power & Light CompanyTITLE:Confidential Power Purchase Contract Information (T.<br/>Hartman Documents TLH-1, TLH-2, TLH-3)Docket No:040001-EI

Document No.	Description	No. of Pages	Conf Y/N	Line No./Col No.	Florida Statute 366.093(3) Subsection	Affiant
LH-1	Cover	1	N			
LH-1	Page i	1	Ŷ	ines 4.2, 5.5, 5.6, 5.13 & 5.14	(d), (e)	T. Hartman
TLH-1	Dontract	$\begin{array}{c} 1-8\\ 9\\ 10\\ 11-13\\ 14\\ 15-16\\ 17\\ 18\\ 19\\ 20\\ 21\\ 22\\ 23\\ 24\\ 25\\ 26\\ 27\\ 28\\ 29\\ 30\\ 31\\ 32\\ 33\\ 34\\ 35\\ 36\\ 37\\ 38\\ 39\\ 40\\ 41-49\\ 50\\ \end{array}$	NYYNYYYYYYYY YYYNYY NYNYYYNY	Lines 1-23 Lines 1-16 Lines 10-11 Lines 6-14 Lines 20-23 All Lines 13-23 All All All All Lines 1-18 Lines 1-18 Lines 16-22 Lines 7-8, 10-11, 20-23 All All Lines 1-11 Lines 4, 12 Lines 1-3, 6-7, 11, 17-18 Lines 4-18 Lines 6-7, 20-23 Lines 1-5, 18 Lines 4, 9 Lines 21-22	(d), (e)	T. Hartman

Page 1 of 7

Document No.	Description	No. of Pages	Conf Y/N	Line No./Col No.	Florida Statute 366.093(3) Subsection	Affiant
		51	Y	Lines 1-5	<u></u>	· · · · · · · · · · · · · · · · · · ·
		52	Ν			
		53	Y	Lines 3-4, 7-8		
	1	54	Ŷ	Line 12		
		55	Ý	Line 9, 14-20		
		56	Ý	Line 9, 14-20		
		57-60	Ň			
		61	Y	Lines 16-22		
		62	Ý	All		
		63	Ý	Lines 1-4		
		64	Ý	All		
		65	Ý	All		
		66	Ý	All		
		67	Ý	All		
		68	Ý	All		
		69	Ý	All		
	-	80	Ý	All		
		71	Ý	All		
		72	Υ Υ	All		
	-	73-80	N	,		
		81	Ý	Line 10		
		82	Ý	Line 19-20		
		83-88	N			
TLH-1	Appendix A – Monthly	2	Y		(d), (e)	T. Hartman
	Capacity Payment Calculation					
TLH-1	Appendix B - Energy Payment Calculation and Emissions Adjustment	5	Y	All	(d), (e)	T. Hartman
TLH-1	Appendix C – Calculation of Start Payment	1	Y	All	(d), (e)	T. Hartman
TLH-1	Appendix D – Scheduling Parameters	1	Y	All	(d), (e)	T. Hartman
TLH-1	Appendix E – Letter of Credit	3	Y	All	(d), (e)	T. Hartman
TLH-1	Appendix F – Guaranty Agreement	6	Y	All	(d), (e)	T. Hartman

Document No.	Description	No. of Pages	Conf Y/N	Line No./Col No.	Florida Statute 366.093(3) Subsection	Affiant
LH-1	Appendix G - Example Calculations	5	Y	All	(d), (e)	T. Hartman
`LH-2	Cover Page	1	N			
-LH-2	Table of Contents	i	Y	Lines 4.2, 5.6, 5.7, 5.14, 5.15	(d), (e)	T. Hartman
TLH-2	Table of Contents	ii	Y	.ine 8.3	(d), (e)	T. Hartman
TLH-2	Table of Contents		Ý	_ine 15.4	(d), (e)	T. Hartman
۲LH-2	Table of Contents	iv	N			
ΓLH-2	Contract	1 2 3-7 8 9 10-16 17 18 19 20 21 22 23 24-27 28 29 30 31-32 33 34 35 36 37 38 39 40-41	ΝΥΝΥΥΝΥΥΥΥΥΥΥΥΝΥΥΥ	Lines 8 & 11 Lines 18-24 Lines 1-22 Lines 1-22 Lines 15-23 Lines 1-9 Lines 15-23 All Lines 7, 8 Lines 4-23 All Lines 1-8 Lines 6-12, 19, 20, 22, 23 Lines 9-23 All Line 20 Line 5 Lines 11-19 and 22-23 Lines 4, 10, & 11 Lines 20-23 Lines 1-11	(d), (e)	T. Hartman

Document No.	Description	No. of Pages	Conf Y/N	Line No./Col No.	Florida Statute 366.093(3) Subsection	Affiant
		42-44 45 46 47-49 50 51 52 53-61 62 63 64 65 66 67 68 69-72 73 74 75 76-82 83 84-90 91 92 93 94-99	ΥΥΥΝΥΥΝΥΥΝΥΥΥΥΝΥΝΥΝ	All Lines 1-5, 13 Lines 2-11 Lines 10,11, 23 Lines 1-8 & 21 Lines 6, 11 Lines 21-22 Lines 1-5 Lines 3-4, 7-8 Line 12 Lines 8-9, 13-20 Lines 8-9, 13-20 Lines 14-21 All Lines 1-2, 22-23 All Lines 1-13 Lines 21-22 Lines 9-10		
TLH-2	Appendix A - Monthly Capacity Payment Calculations	3	Y	All	(d), (e)	T. Hartman
TLH-2	Appendix B - Energy Payment Calculation	5	Y	All	(d), (e)	T. Hartman
TLH-2	Appendix C – Calculation of Start Payment	2	Y	All	(d), (e)	T. Hartman
TLH-2	Appendix D - Scheduling Parameters	1	Y	All	(d), (e)	T. Hartman
TLH-2	Appendix E - Demonstration of Facility Generating Capability anc Testing	1	Y	All	(d), (e)	T. Hartman
TLH-2	Appendix F – Letter of Credit	3	Y	All	(d), (e)	T. Hartman

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Document No.	Description	No. of Pages	Conf Y/N	Line No./Col No.	Florida Statute 366.093(3) Subsection	Affiant
TLH-2	Appendix G – Parent Guaranty	5	Y	۶II	(d), (e)	T. Hartman
TLH-2	Appendix H - Example Calculations	8	Y	411	(d), (e)	T. Hartman
TLH-3	Cover	1	N			
TLH-3	Table of Contents	i	Y	_ines 4.2, 5.5, 5.6, 5.13, 5.14	(d), (e)	T. Hartman
TLH-3	Table of Contents	iì	Y	_ine 8.3	(d), (e)	T. Hartman
TLH-3	Table of Contents	iii	Y	Line 15.4	(d), (e)	T. Hartman
TLH-3	Table of Contents	iv	N			
TLH-3	Contract	1,2 3 4 5-8 9 10 11-16 17 18 19 20 21 22 23 24 25-28 29 30 31 32-33 34 35	$\begin{array}{ c c c c c c c c c c c c c c c c c c c$	Lines 16-17, 20-21 Lines 2-3, 7, 9 Lines 18-23 All Lines 15-18 Line 23 Line 5 Lines 6-8, 22-23 Lines 1-7 Lines 13-23 All Lines 13-23 All Lines 1-18 Lines 1-18 Lines 16-22 Lines 7-8, 10-11, 20-23 All Lines 1-11	(d), (e)	T. Hartman

Document No.	Description	No. of Pages	Conf Y/N	Line No./Col No.	Florida Statute 366.093(3) Subsection	Affiant
		36 37 38 39 40 41 42 43 44-46 47 48 49 50-51 52 53 54 55-64 65 66 67 68 69 70 71 72-74 75 76 77 78 79-85 86-93 94 95 96-101	Y NY YYYNYYYYNYYYNYYYYNYYYYNYYYYNYYYNYY	ines 8, 16 ines 1-9, 12-13, 7, 23 ine 1 ines 10-22 ines 1-2 ines 1-2 ines 13-22 All ine 8, 19-23 ines 17-23 ines 17-23 ines 1-6 ine 23 ines 11, 18, 23 ines 11, 18, 23 ines 11, 18, 23 ines 11-17 ines 15-16, 19-20 Lines 1-8 Lines 1-8 Lines 1-8 Lines 20-23 All Lines 1-7 Lines 5-22 All Line 10 Lines 19-20		
TLH-3	Appendix A - Monthly Capacity payment Calculation	3	Y Y	All	(d), (e)	T. Hartman
TLH-3	Appendix B - Energy Payment Calculation	3	Ŷ	All	(d), (e)	T. Hartman
TLH-3	Appendix C - Calculation of Start Payment	3	Y	All	(d), (e)	T, Hartman

Document No.	Description	No. of Pages	Conf Y/N	Line No./Col No.	Florida Statute 366.093(3) Subsection	Affiant
TLH-3	Appendix D - Scheduling Parameters	1	Y	All	(d), (e)	T. Hartman
TLH-3	Appendix E - Demonstration of Facility Generating Capability and Testing	1	Y	All	(d), (e)	T. Hartman
TLH-3	Appendix F – Letter of Credit	3	Y	All	(d), (e)	T. Hartman
TLH-3	Appendix G – Parent Guaranty	5	Y	All	(d), (e)	T. Hartman
TLH-3	Appendix H - Example Calculations	8	Y	All	(d), (e)	T. Hartman

# EXHIBIT D

### **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Fuel and Purchased Power	)	DOCKET NO. 040001-EI
Cost Recovery Clause with Generating	)	
Performance Incentive Factor	)	DATED: September 8, 2004

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STATE OF FLORIDA	)	
	)	AFFIDAVIT OF THOMAS HARTMAN
PALM BEACH COUNTY	)	

**BEFORE ME**, the undersigned authority, personally appeared Thomas Hartman who, being first duly sworn, deposes and says:

1. My name is Thomas Hartman. I am currently employed by Florida Power & Light Company ("FPL") as Director of Business Management for Resource Assessment and Planning. I have personal knowledge of the matters stated in this affidavit.

2. I have reviewed the documents and information for which I am listed as Affiant in Exhibit C and which are included in Exhibit A to FPL's Request for Confidential Classification of Power Purchase Contract Information. The documents and materials that I have reviewed and that FPL asserts in Exhibit C to be proprietary confidential business information, contain or constitute pricing and other contractual terms in contracts for the purchase of capacity and energy between Southern Company Services, Inc. and FPL from Scherer Unit 3, Harris Unit 1 and Franklin Unit 1. Disclosure of those contractual terms would impair FPL's ability to contract on favorable terms. Disclosure of this information also would impair the competitive interests of FPL and the Southern Company. To the best of my knowledge, FPL has maintained the confidentiality of these documents and materials.

3. Consistent with the provisions of the Florida Administrative Code, such materials should remain confidential for a period of at least eighteen (18) months. In addition, they should be returned to FPL as soon as the information is no longer necessary for the Commission to conduct its business so that FPL can continue to maintain the confidentiality of these documents.

Affidavit of Thomas Hartman Request for Confidential Classification of Power Purchase Contract Information Docket No. 040001-EI Page 2 of 2

4. Affiant says nothing further.

Thomas Hartman

SWORN TO AND SUBSCRIBED before me this <u>Sik</u> day of September, 2004, by Thomas Hartman, who is personally known to me or who has produced <u>OTUVO</u> (CLASC (type of identification) as identification and who did take an oath.

Notary Public, State of Florida

My Commission Expires:

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