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April 15, 2005

VIA HAND DELIVERY

Ms. Blanca S. Bayó, Director
Division of the Commission Clerk and
Administrative Services
Florida Public Service Commission
Betty Easley Conference Center
2540 Shumard Oak Boulevard, Room 110
Tallahassee, FL 32399-0850

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COMMISSION
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Re: Docket No. 050145-EI

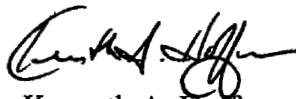
Dear Ms. Bayó:

Enclosed for filing on behalf of Florida Power & Light Company ("FPL") are the original and fifteen copies of FPL's Request for Confidential Classification.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the copy to me. Please contact me if you have questions regarding this filing.

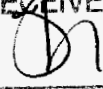
Thank you for your assistance with this filing.

Sincerely,


Kenneth A. Hoffman

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The list of types of information protected under Section 366.093(3) is illustrative and not exhaustive. FPL further avers that the material for which confidential classification is being sought is intended to be and is treated by FPL as private and has not been disclosed.²

4. In support of its position that the redacted portions of FPL's Petition constitute proprietary confidential business information under Section 366.093(3), FPL relies on the Policy Statement and Rule issued by the Federal Energy Regulatory Commission ("FERC") in proceedings that have resulted in FERC protection from public disclosure of documents and information that constitute critical energy infrastructure information (at times referred to hereinafter as "CEII").

5. FERC embarked on this policy by issuing a Policy Statement shortly after the September 11, 2001 terrorist attacks on the United States of America. In that Policy Statement issued October 11, 2001, FERC stated that:

“[t]he September 11... attacks on America have prompted the Commission to reconsider its treatment of certain documents that have previously been made available to the public through the Commission's Internet site, the Records and Information Management System (RIMS), and the Public Reference Room.”³

6. FERC's Policy Statement led to the initiation by FERC of a Notice of Proposed Rulemaking ("NOPR") in Docket Nos. RM02-4-000 and PL02-1-000. The NOPR was issued on September 5, 2002. In the NOPR, FERC proposed changes to its regulations to address the appropriate treatment of CEII. FERC emphasized:

leased to the state or any of its political subdivisions, and information relating to the security systems for any privately owned or leased property which is in the possession of any agency as defined in § 119.011(2) including all records information, photographs audio and visual presentations, schematic diagrams, surveys recommendations or consultations or portions thereof relating directly to or revealing such systems or information, and all meetings relating directly to or that would reveal such systems or information are confidential and exempt from §§ 119.07(1) and 286.011 and other laws and rules requiring public access or disclosure" (Emphasis supplied).

² Rule 25-22.006(4)(d), Florida Administrative Code.

³ See 66 FR 52917, 97 FERC ¶61,030.

“The rule proposed here would reconcile the Commission's regulatory responsibilities under its enabling statutes and federal environmental laws with the need to protect the safety and well-being of American citizens from attacks on our nation's energy infrastructure.”⁴

On February 21, 2003, FERC issued Order No. 630⁵ in Docket Nos. RM02-4-000 and PL02-1-000 reflecting its Final Rule addressing the appropriate treatment of CEII in the aftermath of the September 11 terrorist attacks. Following its consideration of comments submitted in response to the NOPR, FERC adopted Section 388.113, Code of Federal Regulations,⁶ regarding access to critical energy infrastructure information. Subsection 388.113(c) defines CEII as follows:

- (c) Definitions. For purposes of this section:
 - (1) Critical energy infrastructure information means information about proposed or existing critical infrastructure that:
 - (i) Relates to the production, generation, transportation, transmission, or distribution of energy;
 - (ii) Could be useful to a person in planning an attack on critical infrastructure;
 - (iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552;⁷ and
 - (iv) Does not simply give the location of the critical infrastructure.

⁴ See 67 Fed. Reg. 57,994, IV FERC Stats. & Regs. ¶32,564.

⁵ On August 3, 2004, FERC issued a final rule in Order No. 649, supplementing Order No. 630 and amending its regulations for gaining access to CEII. See 69 Fed. Reg. 48,386 (Aug. 10, 2004). In its effort to remain committed to examining the effectiveness of its CEII rules, FERC on March 3, 2005 issued a Notice Soliciting Public Comment.

⁶ See 18 C.F.R. §388.113.

⁷ In Order No. 630, Appendix B, FERC stated that its "actions in the NOPR and the final rule are based on its position that CEII includes only information that is exempt from disclosure under FOIA," noting that the exemptions most likely to apply are found at 5 U.S.C. 552(b)(2), (4) and (7).

- (2) Critical infrastructure means existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.

7. FPL submits that Section 366.093(3) should be construed and applied in a manner consistent with Section 388.113, Code of Federal Regulations and FERC Order Nos. 630 and 649. The following is FPL's justification for its position that specific redacted portions of its Petition, referenced by Appendix and page numbers below, constitute proprietary confidential business information. The specific references to the redacted portions of the Petition for which confidential classification is sought are as follows:

Exhibit "A" to FPL's Petition to Determine Need for the St. Johns-Pellicer-Pringle 230 kV Transmission Line Project:

- a. Appendix A (pages A.2 through A.19); and
- b. Appendix B (pages B.1 through B.18).

8. Exhibit "A" summarizes the results of the load flow diagrams included in Appendices A and B. Appendix A contains the load flow maps under different scenarios and contingencies with and without the Project. Appendix B contains the load flow maps under Alternatives I and II to the Project as described in FPL's Petition. FPL maintains that the information reflected in these documents should be exempt from public inspection and disclosure under the rationale of FERC Order No. 630. Specifically, these documents contain information that has been designated by FERC as critical energy infrastructure information.⁸ With particular regard to Section 388.113, Code of Federal Regulations, FPL notes that the load flow maps contained in Appendices A and B do not merely give the location of critical infrastructure elements, but show the interrelationship between same. In consequence, such information should be determined to be proprietary confidential business information under

⁶Load flow maps essentially represent the same information as provided in transmission system maps and diagrams filed in part 3 of FERC Form 715. FERC found Part 3 to be critical energy information infrastructure. Order No. 630, at ¶34.

Section 366.093(3), Florida Statutes as "security measures, systems, or procedures," information that relates to such measures, systems, or procedures, or information that otherwise is confidential within the meaning of 366.093 for reasons consistent with the purpose and intent of Section 388.113, Code of Federal Regulations and FERC Order Nos. 630 and 649.

WHEREFORE, based on the foregoing, and pursuant to Section 366.093(3) and (4), Florida Statutes, FPL respectfully requests that the Prehearing Officer enter an Order declaring the information and documents described above to be proprietary confidential business information that is not subject to public disclosure.

Respectfully submitted,



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--and--

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Attorneys for Florida Power & Light Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by Hand Delivery to the following this 15th day of April, 2005:

Martha Carter-Brown, Esq.
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850



KENNETH A. HOFFMAN, ESQ.