

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for Approval of )  
Arrangement to Mitigate Impact of ) DOCKET NO. 150075-EI  
Unfavorable Cedar Bay Power Purchase )  
Obligation, by Florida Power & ) SERVED: April 27, 2015  
Light Company. )  
\_\_\_\_\_)

**CEDAR BAY GENERATING COMPANY'S  
OBJECTIONS TO FLORIDA INDUSTRIAL POWER USERS GROUP'S  
REQUEST FOR PRODUCTION OF DOCUMENTS (NOS. 1-12)**

Pursuant to Rule 28-106.206, Florida Administrative Code, Rule 1.340, Florida Rules of Civil Procedure ("F.R.C.P."), and the Order Establishing Procedure in this docket, Cedar Bay Generating Company, Limited Partnership ("Cedar Bay") hereby files its objections to Florida Industrial Power Users Group's ("FIPUG") Request for Production of Documents (Nos. 1-12) (collectively, the "Requests to Produce" and individually a "Request"), which were propounded on Cedar Bay on April 10, 2015.

**GENERAL OBJECTIONS**

Cedar Bay generally objects to FIPUG's Requests to Produce on the grounds set forth in paragraphs A-K below. Each of Cedar Bay's responses will be subject to and qualified by these general objections.

A. Cedar Bay objects to the Requests to Produce because they are not authorized by the Florida Rules of Civil Procedure. Rule 1.350, F.R.C.P. provides that "[a]ny party may request any other party" to produce documents. Neither Cedar Bay nor any of

its affiliated companies is a party to this docket. Accordingly, the Requests to Produce do not comply with the Florida Rules of Civil Procedure. However, without waiving this objection, Cedar Bay will produce responsive, non-privileged documents in its possession, custody, or control, to the extent they exist, subject to all of its other general and specific objections.

B. Cedar Bay objects to the Requests to Produce to the extent they impose unreasonable costs on a non-party. Pursuant to Rule 1.410(c), F.R.C.P., Cedar Bay reserves its right to seek payment from FIPUG of its estimated costs required to respond to the Requests to Produce.

C. Cedar Bay objects to the definition of "Company" to the extent that it includes Carlyle Power Partners I and II, Carlyle Investment Management, LLC, and The Carlyle Group, LP (collectively the "Carlyle Entities"). The Carlyle Entities are not parties to this proceeding, are not organized under the laws of or maintain offices in Florida, and do not participate in or direct the operations of the Cedar Bay facility at issue in this proceeding. Without waiving the objection, Cedar Bay will produce responsive, non-privileged documents in its possession, custody, or control, to the extent they exist, subject to all of its other general and specific objections.

D. Cedar Bay objects to any Request that asks for information protected by the attorney-client privilege, the work

product doctrine, the accountant-client privilege, the trade secret privilege, the joint defense/common interest privilege, or any other applicable privilege or protection afforded by law, whether such privilege or protection appears at the time this response is first made to these Requests to Produce or is later determined to be applicable for any reason. Cedar Bay in no way intends to waive any such privilege or protection, and reserves the right to claw back any documents it might inadvertently produce that are protected by any such privilege or protection. Cedar Bay will provide a privilege log consistent with Florida law within a reasonable time or as may be agreed to by the parties to the extent that a Request calls for the production of privileged or protected documents or information.

E. Cedar Bay objects to any Request that asks Cedar Bay to divulge confidential, proprietary business information or trade secrets and/or the compilation of information that is considered confidential, proprietary business information or trade secrets. Cedar Bay in no way intends to waive any applicable claim of confidentiality and will produce responsive, non-privileged documents in its possession, custody, or control, to the extent they exist, that contain such information only under the terms of an appropriate confidentiality or non-disclosure agreement.

F. Cedar Bay objects to any definitions or instructions accompanying the Requests to Produce to the extent that they are

inconsistent with and expand the scope of discovery specified in the Florida Rules of Civil Procedure that are incorporated into the Uniform Rules of Procedure or the Commission's rules on discovery. Cedar Bay will comply with the applicable rules and not with any of the definitions or instructions accompanying the Requests to Produce that are inconsistent with or exceed the requirements of those rules. Furthermore, Cedar Bay objects to any Request that calls for Cedar Bay to create or obtain data or information that it otherwise does not have in its possession, custody, or control, or to prepare any analysis that does not exist, because Cedar Bay has no such affirmative obligation under Florida law.

G. Cedar Bay objects to the Requests to Produce to the extent that they can be interpreted to request Cedar Bay to produce "all" documents or information of any nature that might be responsive to a Request. Cedar Bay will provide documents in its possession, custody, or control, to the extent they exist, that Cedar Bay collects and identifies as responsive and not privileged, duplicative or redundant after a good faith, reasonable and diligent search conducted in connection with these Requests to Produce. To the extent that the Requests to Produce propose to require more, Cedar Bay objects to the Requests individually and collectively on the grounds that compliance

would impose an undue burden or expense on Cedar Bay or would require Cedar Bay to waive any applicable privileges.

H. Cedar Bay objects to each Request to the extent that it seeks documents that are not relevant to the subject matter of this docket and is not reasonably calculated to lead to the discovery of admissible evidence.

I. Cedar Bay objects to each Request to the extent it is vague, ambiguous, overly broad, burdensome, imprecise, or utilizes terms that are subject to multiple interpretations but are not properly defined or explained for purposes of these Requests to Produce.

J. Cedar Bay expressly reserves and does not waive any objections it may have to the admissibility, authenticity or relevancy of the documents provided in its responses to these Requests to Produce.

K. Cedar Bay objects to providing documents that are already in the public record, as easily accessible to FIPUG, or already in FIPUG's possession, or that may be obtained from Florida Power & Light Company, which is a party to this docket.

**SPECIFIC OBJECTIONS TO SPECIFIC REQUESTS TO PRODUCE**

1. Documents the Company has regarding present and future environmental regulation compliance matters affecting the Cedar Bay facility, including, but not limited to s. 111(d) of the federal Clean Air Act.

### **SPECIFIC OBJECTIONS**

Cedar Bay objects to this request as vague, overbroad, and not reasonably calculated to lead to the discovery of admissible evidence in this docket. For example, the term "future environmental regulation compliance matters" is patently vague and unclear. In addition, the Request does not include a specified time period. Without waiving its general objections, or these specific objections, Cedar Bay will produce responsive, non-privileged documents from the period January 1, 2013 to the present in its possession, custody, or control to the extent they (i) exist, (ii) are not duplicative or redundant to other documentation produced, and (iii) are (x) relevant and material to the continued economic viability of the Cedar Bay facility and/or the continued performance of the Cedar Bay facility under its PPA in light of present and future environmental regulation compliance obligations, or (y) are relevant and material to other issues in this proceeding.

2. Documents the Company has regarding business plans, consultants' reports, or cash flow projections for the Cedar Bay facility prepared within the past 5 years.

### **SPECIFIC OBJECTIONS**

Cedar Bay objects to this request as vague, overbroad, and not reasonably calculated to lead to the discovery of admissible

evidence in this docket. In addition, Cedar Bay objects to the time period of 5 years because complying with this arbitrary and excessive time period will impose an undue burden on Cedar Bay. Without waiving its general objections, or these specific objections, Cedar Bay will produce responsive, non-privileged documents from the period January 1, 2013 to the present in its possession, custody, or control to the extent they (i) exist, (ii) are not duplicative or redundant to other documentation produced, and (iii) are (x) relevant and material to the continued economic viability of the Cedar Bay facility and/or the continued performance of the Cedar Bay facility under its PPA in light of present and future environmental regulation compliance obligations, or (y) are relevant and material to other issues in this proceeding.

3. Documents the Company has regarding capital expenditures that would be needed in the foreseeable future, if any, to enable the Cedar Bay facility to be in compliance with existing environmental regulations.

#### **SPECIFIC OBJECTIONS**

Cedar Bay objects to this request as vague, overbroad, and not reasonably calculated to lead to the discovery of admissible evidence in this docket. For example, the Request does not include a specified time period. Without waiving its general

objections, or these specific objections, Cedar Bay will produce responsive, non-privileged documents from the period January 1, 2013 to the present in its possession, custody, or control to the extent they (i) exist, (ii) are not duplicative or redundant to other documentation produced, and (iii) are (x) relevant and material to the continued economic viability of the Cedar Bay facility and/or the continued performance of the Cedar Bay facility under its PPA in light of present and future environmental regulation compliance obligations, or (y) are relevant and material to other issues in this proceeding.

4. Documents the Company has regarding capital expenditures that would be needed in the foreseeable future, if any, to enable the Cedar Bay facility to be in compliance with proposed environmental regulations.

**SPECIFIC OBJECTIONS**

Cedar Bay objects to this request as vague, overbroad, and not reasonably calculated to lead to the discovery of admissible evidence in this docket. For example, the Request does not include a specified time period. Without waiving its general objections, or these specific objections, Cedar Bay will produce responsive, non-privileged documents from the period January 1, 2013 to the present in its possession, custody, or control to the extent they (i) exist, (ii) are not duplicative or redundant to



other documentation produced, and (iii) are (x) relevant and material to the continued economic viability of the Cedar Bay facility and/or the continued performance of the Cedar Bay facility under its PPA in light of present and future environmental regulation compliance obligations, or (y) are relevant and material to other issues in this proceeding.

5. Documents the Company has regarding the future of the Cedar Bay facility as a going concern.

**SPECIFIC OBJECTIONS**

Cedar Bay objects to this request as vague, overbroad, and not reasonably calculated to lead to the discovery of admissible evidence in this docket. For example, the Request does not include a specified time period. Without waiving its general objections, or these specific objections, Cedar Bay will produce responsive, non-privileged documents from the period January 1, 2013 to the present in its possession, custody, or control to the extent they (i) exist, (ii) are not duplicative or redundant to other documentation produced, and (iii) are (x) relevant and material to the continued economic viability of the Cedar Bay facility and/or the continued performance of the Cedar Bay facility under its PPA in light of present and future environmental regulation compliance obligations, or (y) are relevant and material to other issues in this proceeding.

6. Documents the Company has regarding the corporate organization and structure of the direct and indirect ownership of the Cedar Bay facility.

**SPECIFIC OBJECTIONS**

Cedar Bay objects to this request as vague, overbroad, and not reasonably calculated to lead to the discovery of admissible evidence in this docket. Without waiving its general objections, or these specific objections, Cedar Bay will produce a current organization chart showing the direct and indirect ownership of the Cedar Bay facility.

7. Documents the Company has reflecting communications between management (plant manager and others) of the Cedar Bay facility with management of Cogentrix entities or the Carlyle entities.

**SPECIFIC OBJECTIONS**

Cedar Bay objects to this request as vague, overbroad, and not reasonably calculated to lead to the discovery of admissible evidence in this docket. For example, the Request does not include a specified time period. Without waiving its general objections, or these specific objections, Cedar Bay will produce responsive, non-privileged documents from the period January 1, 2013 to the present in its possession, custody, or control to the extent they (i) exist, (ii) are not duplicative or redundant to

other documentation produced, and (iii) are (x) relevant and material to the continued economic viability of the Cedar Bay facility and/or the continued performance of the Cedar Bay facility under its PPA in light of present and future environmental regulation compliance obligations, or (y) are relevant and material to other issues in this proceeding.

8. Documents the Company has reflecting communications related to the Cedar Bay facility exchanged with governmental officials within the past 5 years regarding the Cedar Bay facility.

#### **SPECIFIC OBJECTIONS**

Cedar Bay objects to this request as vague, overbroad, and not reasonably calculated to lead to the discovery of admissible evidence in this docket. Cedar Bay objects to the request for "communications" with all "governmental officials" because it includes many documents wholly irrelevant to the issues in this proceeding. In addition, Cedar Bay objects to the time period of 5 years because complying with this arbitrary and excessive time period will impose an undue burden on Cedar Bay. Without waiving its general objections, or these specific objections, Cedar Bay will produce responsive, non-privileged documents from the period January 1, 2013 to the present in its possession, custody, or control to the extent they (i) exist, (ii) are not duplicative or

redundant to other documentation produced, and (iii) are (x) relevant and material to the continued economic viability of the Cedar Bay facility and/or the continued performance of the Cedar Bay facility under its PPA in light of present and future environmental regulation compliance obligations, or (y) are relevant and material to other issues in this proceeding.

9. Documents the Company has reflecting communications with FPL regarding the Cedar Bay facility during the past 5 years exchanged between FPL and Cedar Bay management, Cogentrix entities or the Carlyle entities.

#### **SPECIFIC OBJECTIONS**

Cedar Bay objects to this request as vague, overbroad, and not reasonably calculated to lead to the discovery of admissible evidence in this docket. In addition, Cedar Bay objects to the time period of 5 years because complying with this arbitrary and excessive time period will impose an undue burden on Cedar Bay. Without waiving its general objections, or these specific objections, Cedar Bay will produce responsive, non-privileged documents from the period January 1, 2013 to the present in its possession, custody, or control to the extent they (i) exist, (ii) are not duplicative or redundant to other documentation produced, and (iii) are (x) relevant and material to the continued economic viability of the Cedar Bay facility and/or the

continued performance of the Cedar Bay facility under its PPA in light of present and future environmental regulation compliance obligations, or (y) are relevant and material to other issues in this proceeding.

10. Documents the Company has regarding past and projected financial analysis and performance of the Cedar Bay facility.

**SPECIFIC OBJECTIONS**

Cedar Bay objects to this request as vague, overbroad, and not reasonably calculated to lead to the discovery of admissible evidence in this docket. For example, the Request does not include a specified time period. Without waiving its general objections, or these specific objections, Cedar Bay will produce responsive, non-privileged documents from the period January 1, 2013 to the present in its possession, custody, or control to the extent they (i) exist, (ii) are not duplicative or redundant to other documentation produced, and (iii) are (x) relevant and material to the continued economic viability of the Cedar Bay facility and/or the continued performance of the Cedar Bay facility under its PPA in light of present and future environmental regulation compliance obligations, or (y) are relevant and material to other issues in this proceeding.

11. Documents the Company has regarding allegations, communications or contentions of breach of the operative purchased power agreement between the Cedar Bay facility and FPL created during the last 5 years.

**SPECIFIC OBJECTIONS**

Cedar Bay objects to this request as vague, overbroad, and not reasonably calculated to lead to the discovery of admissible evidence in this docket. In addition, Cedar Bay objects to the time period of 5 years because complying with this arbitrary and excessive time period will impose an undue burden on Cedar Bay. Without waiving its general objections, or these specific objections, Cedar Bay will produce responsive, non-privileged documents from the period January 1, 2013 to the present in its possession, custody, or control to the extent they (i) exist, (ii) are not duplicative or redundant to other documentation produced, and (iii) are (x) relevant and material to the continued economic viability of the Cedar Bay facility and/or the continued performance of the Cedar Bay facility under its PPA in light of present and future environmental regulation compliance obligations, or (y) are relevant and material to other issues in this proceeding.

12. Documents the Company has reflecting existing contractual relationships with FPL, including but not limited to,

the purchased power agreement and the Cedar Bay facility purchase and sale agreement.

**SPECIFIC OBJECTIONS**

Cedar Bay objects to this request as vague, overbroad, and not reasonably calculated to lead to the discovery of admissible evidence in this docket. For example, the Request does not include a specific time period. Without waiving its general objections, or these specific objections, Cedar Bay will produce responsive, non-privileged documents from the period January 1, 2013 to the present in its possession, custody, or control to the extent they (i) exist, (ii) are not duplicative or redundant to other documentation produced, and (iii) are (x) relevant and material to the continued economic viability of the Cedar Bay facility and/or the continued performance of the Cedar Bay facility under its PPA in light of present and future environmental regulation compliance obligations, or (y) are relevant and material to other issues in this proceeding.

Respectfully submitted this 27th day of April, 2015.



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the following, by electronic delivery, on this 27th day of April, 2015.

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