



Maria J. Moncada  
Principal Attorney  
Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, FL 33408-0420  
(561) 304-5795  
(561) 691-7135 (Facsimile)  
E-mail: maria.moncada@fpl.com

July 8, 2015

VIA HAND DELIVERY

Ms. Carlotta S. Stauffer  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

**REDACTED**

15 JUL - 8 PM 4:12  
COMMISSION CLERK  
RECEIVED FPSC

**Re: In re: Florida Power & Light Company's Petition for Approval of Arrangement To Mitigate Impact of Unfavorable Cedar Bay Power Purchase Obligation**

Dear Ms. Stauffer:

Enclosed for filing on behalf of Florida Power & Light Company ("FPL") are an original and seven (7) copies of FPL's Request for Confidential Classification. The original includes Exhibits A through D. The seven copies do not include copies of the exhibits.

Exhibit A contains the confidential information that is the subject of FPL's Request for Confidential Classification. Exhibit A consists of the confidential documents and all the information that FPL asserts is entitled to confidential treatment has been highlighted. Exhibit B is an edited version of Exhibit A, in which the information FPL asserts is confidential has been redacted. Exhibit C is a justification table in support of FPL's Request for Confidential Classification. Exhibit D contains three affidavits in support of FPL's Request for Confidential Classification. Also included in this filing is a compact disc containing FPL's Request for Confidential Classification and Exhibit C, in Microsoft Word format.

Please contact me should you or your Staff have any questions regarding this filing.

Sincerely,

*Maria J. Moncada*  
for Maria J. Moncada

- COM \_\_\_\_\_
- AFD 2
- APA \_\_\_\_\_
- ECO 2
- ENG 2+cc+Redacted
- GCL 1 Enclosures
- IDM \_\_\_\_\_
- TEL \_\_\_\_\_
- CLK \_\_\_\_\_ 2613586

cc: parties of record, (Request for Confidential Classification w/o exhibits)

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for approval of arrangement to mitigate impact of unfavorable Cedar Bay power purchase obligation, by Florida Power & Light Company

Docket No: 150075-EI

Date: July 8, 2015

**FLORIDA POWER & LIGHT COMPANY'S REQUEST FOR CONFIDENTIAL CLASSIFICATION OF CERTAIN REBUTTAL TESTIMONY**

Pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, Florida Power & Light Company ("FPL") requests confidential classification of certain information contained in the testimony of FPL witnesses Thomas L. Hartman and David Herr, and Exhibit TLP-3 to the testimony of FPL witness Tracy L. Patterson. Specifically, FPL In support of its request, FPL states:

1. On June 17, 2015, FPL filed a Notice of Intent to Request Confidential Classification of testimony and exhibits filed by OPC. Pursuant to Rule 25-22.006(3)(a), FPL is required to file a Request for Confidential Classification for the confidential information within 21 days. Accordingly, FPL is filing this Request for Confidential Classification to maintain continued confidential handling of the information contained in testimony and exhibits filed by OPC.

2. The following exhibits are included with and made a part of this request:

a. Exhibit A consists of a copy the confidential documents, on which all information that is entitled to confidential treatment under Florida law has been highlighted.

b. Exhibit B consists of a copy of the confidential documents, on which all the information that is entitled to confidential treatment under Florida law has been redacted. For pages that are confidential in their entirety, FPL includes identifying cover pages in Exhibit B since no purpose would be served by reproducing fully redacted pages.

c. Exhibit C is a table containing an identification of the information highlighted in Exhibit A, together with a brief description of the documents designated confidential. Exhibit C also sets forth references to the specific statutory bases for the claim of confidentiality and to the affiant who supports the requested classification.

d. Exhibit D consists of the affidavits of Jacob Pollack, Thomas L. Hartman and David Herr.

3. FPL submits that the highlighted information in Exhibit A is proprietary confidential business information within the meaning of Section 366.093(3), Florida Statutes. This information is intended to be and is treated by FPL as private, and its confidentiality has been maintained. Pursuant to Section 366.093, such information is entitled to confidential treatment and is exempt from the disclosure provisions of the public records law. Thus, once the Commission determined that the information in question is proprietary confidential business information, the Commission is not required to engage in any further analysis or review such as weighing the hard of disclosure against the public interest in access to the information.

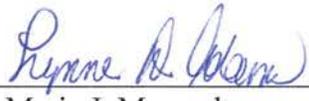
4. As more fully described in the affidavits included as Exhibit D indicates, the designated portions of the testimonies of FPL witnesses Hartman and Herr, as well as Exhibit TLP-3 to the deposition of FPL witness Patterson contain information relating to competitive interest, the disclosure of which would impair the competitive business of the provider of the information. This information is protected by Sections 366.093(3)(e), Fla. Stat.

5. Upon a finding by the Commission that the Confidential Information remains proprietary and confidential business information, the information should not be declassified for at least an additional eighteen (18) month period and should be returned to FPL as soon as it is no longer necessary for the Commission to conduct its business. *See* § 366.093(4), Fla. Stat.

WHEREFORE, for the above and foregoing reasons, as more fully set forth in the supporting materials and affidavit included herewith, Florida Power & Light Company respectfully requests that its Request for Confidential Classification be granted.

Respectfully submitted,

John T. Butler  
Assistant General Counsel - Regulatory  
Maria J. Moncada  
Principal Attorney  
Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, FL 33408  
Telephone: (561) 304-5795  
Facsimile: (561) 691-7135  
Email: maria.moncada@fpl.com

By:   
\_\_\_\_\_  
for Maria J. Moncada  
Florida Bar No. 0773301

**CERTIFICATE OF SERVICE**  
**Docket No. 150075-EI**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Request for Confidential Classification\* has been furnished by electronic mail on this 8th day of July, 2015 to the following:

Martha F. Barrera, Esq.  
Jonathan Villafrate  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850  
mbarrera@psc.state.fl.us  
jvillafr@psc.state.fl.us  
*Office of the General Counsel*

J.R. Kelly, Public Counsel  
John J. Truitt, Associate Public Counsel  
Office of Public Counsel  
The Florida Legislature  
111 West Madison Street, Room 812 Tallahassee,  
Florida 32399  
kelly.jr@leg.state.fl.us  
truitt.john@leg.state.fl.us  
*Attorney for the Citizens of the State of Florida*

Jon C. Moyle, Jr., Esq.  
Karen A. Putnal, Esq.  
Moyle Law Firm, P.A.  
118 North Gadsden Street  
Tallahassee, Florida 32301  
jmoyle@moylelaw.com  
kputnal@moylelaw.com  
*Attorney for Florida Industrial Power Users  
Group*

By:   
for \_\_\_\_\_  
Maria J. Moncada  
Florida Bar No. 0773301

\*The exhibits to this Request are not included with the service copies, but copies of Exhibits B, C and D are available upon request.

**REDACTED**

# Exhibit B

1 believes that the Cedar Bay Facility has demonstrated that operating at this  
2 Capacity Factor is profitable and technically achievable. We see no reason why the  
3 Cedar Bay Facility would not continue to operate at this high level.

4 **Q. Why is the intervener's projection of SJRPP fuel costs unreasonable?**

5 A. Witness Dawson notes that SJRPP obtains coal from the Ace In The Hole mine in  
6 Indiana under a contract that expires at the end of 2015 and Colombian coal under a  
7 contract that expires at the end of 2016 [page 8 line 2]. Witness Dawson posits that  
8 using lower current spot prices for coal instead of the expiring contract will result in  
9 a lower overall price of coal at SJRPP [page 8 line 22]. Additionally, witness  
10 Dawson eliminates FPL's expected cost increase for 2016 in estimating his savings.

11  
12 SJRPP is subject to the Mercury and Air Toxics Standards ("MATS") rule,  
13 effective April of this year. <sup>A</sup> [REDACTED]

14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]

1 interest of FPL's customers to do so. FPL intends to operate the Cedar Bay Facility  
2 through the end of 2016 for reliability reasons. Extending the operations until the  
3 end of 2024, as suggested by witness Pollock, would cost our customers \$70  
4 million (CPVRR) more than shutting it down as currently anticipated, as shown in  
5 Exhibit TLH-7. Operation past 2016 would be justified only for reliability  
6 requirements, which is not expected.

7 **Q. Witness Dawson believes that FPL is subject to potentially much higher costs**  
8 **for additional capacity in 2018 and has the opportunity to sell capacity in 2022**  
9 **if the Cedar Bay Transaction does not occur. Do you agree?**

10 A. No. FPL's forecast, as witness Dawson notes, uses a 2015 purchase proxy price of  
11 \$<sup>A</sup> /kW-month in 2015, which FPL believes is conservative. Presently FPL can  
12 purchase capacity in the market with high heat rates for pricing between \$<sup>B</sup> and  
13 \$<sup>C</sup> /kW-month. Witness Dawson indicates that FPL's cost for peaking capacity  
14 could go much higher, based upon an EIA forecast cost of a new peaking unit [page  
15 12 line 2]. Witness Dawson, however, fails to recognize market realities. There is  
16 excess short term peaking capacity available in Florida. In this environment,  
17 market participants only sell above their variable cost, without regard to their fixed  
18 costs, in order to generate a contribution margin. As a result, market prices are  
19 much lower than witness Dawson has indicated.

20

21 Witness Dawson also suggests that the capacity from the Cedar Bay Facility would  
22 result in FPL being above the 20% capacity reserve margin in 2022, leading to the  
23 capability of selling this capacity into the market. FPL occasionally does sell

1           Witness Dawson's estimate of \$129 million savings for a speculative and  
2           hypothetical                      PPA buyout shown in Exhibit CCD-5 incorporates a  
3           number of additional assumptions which have already been addressed here or in  
4           FPL witness Barrett's rebuttal testimony as being unreasonable – reduction of the  
5           bonus capacity payment to 2.59%, sale of capacity in 2022, adjustment in the  
6           SJRPP fuel cost, and no equity return on the investment. Once these unreasonable  
7           assumptions are eliminated it is likely that the benefits of this speculative and  
8           hypothetical transaction would be comparable to the projected benefits for the  
9           existing transaction before the Commission. Witness Dawson's projections as  
10          stated in his testimony and illustrated in his Exhibits CCD-5 and CCD-6 are simply  
11          not likely to be achievable and are not before this Commission in this docket in any  
12          case.

13   **Q. Do you have any final comments?**

14   A. Yes. In rebuttal I have shown that the intervener's concerns are not valid.  
15   However, please note that, in the most pessimistic case, as presented by witness  
16   Dawson, containing a host of unrealistic or unfounded assumptions, the proposed  
17   transaction still results in customer savings of \$32 million. The Commission should  
18   approve the transaction.

19   **Q. Does this conclude your rebuttal testimony?**

20   A. Yes, it does.

1                   **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2                               **FLORIDA POWER & LIGHT COMPANY**

3                                   **REBUTTAL TESTIMONY OF DAVID W. HERR**

4   **DOCKET NO. 150075-EI**

5   **JUNE 17, 2015**

6

7   **Q.    Please state your name and business address.**

8   A.    My name is David W. Herr. My business address is Duff & Phelps LLC ("D&P"),  
9           2000 Market Street, Suite 2700, Philadelphia, PA 19103.

10 **Q.    Did you previously submit direct testimony in this proceeding?**

11 A.    Yes. My direct testimony was submitted on March 6, 2015.

12 **Q.    Have your position, duties, or responsibilities with D&P changed since you last**  
13 **filed testimony in this docket?**

14 A.    No.

15 **Q.    Are you sponsoring any exhibits to your rebuttal testimony?**

16 A.    Yes. I am sponsoring Exhibit DH-4 (Confidential), which provides a graphical  
17 presentation of the factors impacting the increase in the Fair Value ("FV") of the  
18 Cedar Bay power purchase agreement with FPL ("Cedar Bay PPA" or "PPA") from  
19                      <sup>A</sup> in December 2012 to \$520 million as of August 30, 2015 as discussed  
20 on pages 9-12 of this rebuttal testimony.

21 **Q.    What is the purpose of your testimony?**

22 A.    The purpose of my rebuttal testimony is to respond to many of the positions and  
23 recommendations contained in the testimony of witness Gary D. Brunault on behalf

1 of the Office of Public Counsel (“OPC”) and witness Michael G. Lane on behalf of  
2 the Florida Industrial Power Users Group (“FIPUG”). Collectively, I refer to these  
3 witnesses as “the intervenor witnesses.” Specifically, I will:

- 4 • Explain certain factors supporting the appropriateness of both the selected [REDACTED]<sup>A</sup>  
5 discount rate used to estimate the Fair Value (“FV”) of the Cedar Bay PPA as of  
6 December 10, 2012 (as presented in the April 5, 2013 D&P document entitled  
7 “Valuation of Certain Tangible and Intangible Assets & Liabilities of Cogentrix  
8 Power Holdings LLC”, hereafter referred to as the “Cogentrix Valuation”) as  
9 well as the 7% discount rate used to estimate the FV of the PPA as of August  
10 30, 2015 (as presented in the March 4, 2015 D&P report entitled “Valuation of  
11 Certain Tangible and Intangible Assets of CBAS Power, Inc.” submitted as  
12 confidential exhibit DH-3, hereafter referred to as the “CBAS Valuation”) in the  
13 context of relevant US Generally Accepted Accounting Principles (“GAAP”)  
14 guidance.
- 15 • Clarify the reasonableness of the inputs reflected in the CBAS Valuation for  
16 purposes of estimating FV pursuant to relevant US GAAP guidance, including  
17 Accounting Standards Codification (“ASC”) 805, *Business Combinations* and  
18 ASC 820, *Fair Value Measurements and Disclosures*.
- 19 • Confirm the reasonableness of the \$520 million FV for the CBAS PPA as of  
20 August 30, 2015.

1 Q. OPC witness Brunault indicates that the 7% cost of capital used in the CBAS  
2 Valuation is too low. Do you agree with his assessment?

3 A. No. OPC witness Brunault accepts the appropriateness of the majority of the  
4 assumptions reflected on Exhibit D.1 within the CBAS Valuation, but elects to  
5 revert to the leverage assumption in the Cogentrix Valuation. This judgment  
6 disregards both the debt to capital ratio of the Independent Power Producers  
7 (“IPPs”) which represent a pool of potential Market Participants (as defined in  
8 Exhibit DH-3 and ASC 820) as well as the fact that CBAS’s long term debt  
9 (including current portion) is [REDACTED] A

10 [REDACTED].

11 B  
12 The [REDACTED] leverage which OPC witness Brunault incorrectly deemed appropriate as  
13 of August 30, 2015 reflected the specific risks relating to Cedar Bay as of  
14 December 10, 2012 rather than IPP observed leverage. Specifically, when Carlyle  
15 acquired Cogentrix, it assumed [REDACTED] C of debt related to Cedar Bay, of which  
16 [REDACTED] D As of the date of the Cogentrix Valuation,  
17 Cedar Bay also lacked a firm contract with RockTenn, its steam offtaker, that it  
18 needed to maintain its status as a Qualifying Facility (“QF”). Absent certainty as of  
19 December 10, 2012 that Cedar Bay would retain QF status beyond January 2016<sup>2</sup>, it  
20 would have been extremely difficult for the Cedar Bay debt to be economically

---

<sup>1</sup> From Cedar Bay Generating Company, Limited Partnership Financial Statements as of December 31, 2012, note 5.

<sup>2</sup> Twenty-two year contract effective January 25, 1994 per note 8 from Cedar Bay Generating Company, Limited Partnership Financial Statements as of December 31, 2012

1           refinanced.

2

3           It is worth noting that OPC witness Brunault indicated in his own testimony that  
4           “Contractual risks include the possibility of losing QF status...” (page 28, line 10)  
5           were risks to be considered in establishing an appropriate discount rate to estimate  
6           the FV of the PPA, but then he disregarded the fact that risk in his assessment of the  
7           reasonableness of the 7% discount rate used in the CBAS Valuation.

8

9           Similarly, OPC witness Brunault indicated that “FPL may very likely dispatch  
10          Cedar Bay significantly more than at the assumed <sup>A</sup> [REDACTED] capacity factor” (page 28,  
11          line 5-6) if natural gas prices increase, but disregards the fact that continued  
12          domestic growth in natural gas supply could be as likely to put continued  
13          downward pressure on forecasted natural gas prices and result in a lower capacity  
14          factor. The 7% discount rate in the CBAS Valuation reflects both the possibility  
15          that Cedar Bay’s capacity factor could increase in a rising gas price environment,  
16          and the possibility that the capacity factor could decline to the <sup>B</sup> [REDACTED]  
17          [REDACTED] <sup>C</sup> or lower if future gas (and power) prices  
18          are lower than expected.

19

20          The extension of the RockTenn Steam contract to run coterminous with the Cedar  
21          Bay PPA eliminated the contractual risk that was a primary factor justifying the  
22          13% discount rate (which is a key factor impacting the <sup>D</sup> [REDACTED] FV estimate in  
23          the Cogentrix Valuation). In fact, once the risk of early loss of QF status was

1 eliminated, a \$250 million refinancing of most of the Cedar Bay debt was  
2 completed resulting in an increase in total CBAS debt to approximately [REDACTED]<sup>A</sup>  
3 [REDACTED]<sup>B</sup> the majority of which is due in April 2020.<sup>3</sup> This ability to raise substantial  
4 debt financing (in excess of the FV assigned to the PPA in the Cogentrix Valuation)  
5 provides strong evidence of the appropriateness of using the [REDACTED]<sup>C</sup>  
6 to estimate the FV of the PPA, the only adjustment to the discount rate suggested in  
7 OPC witness Brunault's testimony.

8 **Q. FIPUG witness Lane also indicated that the 7% cost of capital used in the**  
9 **CBAS Valuation is too low and suggested on page 5, line 11 of his testimony**  
10 **that the 11% discount rate presented on Exhibit D.2 in the CBAS Valuation is**  
11 **more appropriate to estimate the FV of the Cedar Bay PPA. Do you agree**  
12 **with his comments?**

13 **A. No. As clearly noted on the referenced Exhibit D.2, the debt to capital assumption**  
14 **of [REDACTED]<sup>D</sup> is reflective of a risk profile that would presume [REDACTED]<sup>E</sup> operations**  
15 **without the benefit of the Cedar Bay PPA. As noted in the prior response, Cedar**  
16 **Bay's own capital structure (assuming the \$520 million FV and approximately [REDACTED]<sup>F</sup>**  
17 **[REDACTED]<sup>G</sup> of debt outstanding) reasonably supports the rounded debt to capital of [REDACTED]<sup>H</sup>**  
18 **that is estimated on Exhibit D.1 of the CBAS Valuation, which is based on the**  
19 **observed leverage of the IPPs who represent possible Market Participants as**  
20 **defined in ASC 820.**

---

<sup>3</sup> From Cedar Bay Generating Company, Limited Partnership Financial Statements as of December 31, 2013, note 5.

1 FIPUG witness Lane is also incorrect in the statement on page 5, lines 4-5 of his  
2 testimony that “The 2015 report relied on a discount rate of 7%, based on the cost  
3 of capital of Florida Power & Light.” The discount rate is based on observable data  
4 for IPP Market Participant peers, and reflects the risk profile of Cedar Bay being a  
5 coal plant under a long-term contract with FPL, a fact that is accurate for all Market  
6 Participants.

7 **Q. FIPUG witness Lane asserts on page 5 of his testimony that the CBAS**  
8 **Valuation included a tax amortization benefit that was not included in the**  
9 **Cogentrix Valuation. Is that assertion correct?**

10 A. No. FIPUG witness Lane indicates that “the inclusion of a tax amortization benefit  
11 in the 2015 valuation that was not included in the 2014 valuation difference...”  
12 (page 5, lines 14-15), combined with discount rate, “...account for approximately  
13 <sup>A</sup> [REDACTED] of the increase in value from 2013 to 2015” (page 5, lines 16-17). In fact, the  
14 Cogentrix Valuation did include a tax amortization benefit (“TAB”, which was  
15 labeled <sup>B</sup> [REDACTED] on Exhibit D.2 in the Cogentrix Valuation) of  
16 approximately <sup>C</sup> [REDACTED]. I should note that the magnitude of the TAB is a  
17 function of the correct discount rate and the pre-TAB cash flows, so the TABs that  
18 are reflected in the two valuations appropriately differ.

19 **Q. OPC witness Brunault’s direct testimony indicated that the 5% Bonus**  
20 **Capacity Revenue is overly optimistic. What is the basis of the 5%**  
21 **assumption?**

22 A. In fact, the exact data that set forth on Exhibit GB-1 to OPC witness Brunault’s  
23 direct testimony is supportive of the 5% bonus capacity revenue assumption. OPC

1 witness Hartman, would reduce FV by \$21 million. Do you agree with his  
2 assessment?

3 A. No. Each Market Participant would have its own outlook on coal price and would  
4 not have knowledge of FPL's internally developed view of the future coal price at  
5 St. Johns River Power Park ("SJRPP"), so any impact related to shifting the SJRPP  
6 reference price would likely be well less than the \$21 million noted on page 19, line  
7 17 of OPC witness Brunault's direct testimony. Given SJRPP has sourced the  
8 majority of its coal from Illinois Basin ("IB") mines from 2011 through 2014, the  
9 comment that an IB coal price would be a better alternative to compute the Energy  
10 Revenue is reasonable with respect to a Market Participant with FPL's knowledge.  
11 However, the FPL internally generated forward price information (developed as a  
12 co-owner of SJRPP) provided by FPL witness Tom Hartman would not be public  
13 information available to Market Participants (other than FPL) as defined in ASC  
14 820, so independent data sources and CBAS data are more appropriate for  
15 estimating the FV pursuant to ASC 820 guidelines.

16  
17 In assessing the relevant SJRPP pricing for use in estimating Energy Revenue, the  
18   
19 price. However, the July 2014 Cedar Bay Monthly Operations Summary Report  
20 included reference to a SJRPP delivered coal price of \$3.472/MMBtu, well above  
21 the 2015 and most of 2016 forecast, and  <sup>A</sup> includes an  
22 average delivered coal price (from IB to SJRPP) for 2013 and 2014 of \$79/ton (or  
23 \$3.43/MMBtu based on the 11,515 heat content). As noted previously, it is likely

1 that Market Participants each would have its own outlook on coal price (both on  
2 absolute terms and on the spread between basins), and the impact to the highest bid  
3 of shifting to an IB price outlook is likely well less than the \$21 million noted on  
4 page 19, line 17 of OPC witness Brunault's direct testimony.

5 **Q. Both OPC witness Brunault and FIPUG witness Lane broadly focused on the**  
6 **magnitude of the increase of the FV of the Cedar Bay PPA from [REDACTED]**<sup>A</sup>  
7 **December 2012 to \$520 million as of August 30, 2015. Please explain the major**  
8 **factor impacting the increase.**

9 **A.** My Confidential Exhibit DH-4 provides a graphical presentation of the factors  
10 impacting the increased FV. I will discuss those factors below.

11

12 *Discount Rates*

13 First it is worth noting that the period of time between the valuation dates of the  
14 Cogentrix Valuation and the CBAS Valuation was more than 2 ½ years (rather than  
15 the 2 years referenced). The biggest single change impacting the increase in the FV

16 of the Cedar Bay PPA is the use of a [REDACTED]<sup>B</sup> discount rate for the CBAS Valuation.

17 In fact, [REDACTED]<sup>C</sup> of the [REDACTED]<sup>D</sup> of the increase can be linked

18 directly to the [REDACTED]<sup>E</sup> in discount rate from [REDACTED]<sup>F</sup> to 7%. In addition to the factors

19 addressed previously in this rebuttal testimony, there are several other  
20 considerations which support the reasonableness of the discount rate decline:

- 21 • In 2003, Goldman Sachs ("GS"), acquired Cogentrix, a privately-owned  
22 company owning approximately 30 power plants and 5 GW of generation  
23 capacity. GS opportunistically sold off the majority of Cogentrix's assets by

1 2007, ending with the Calypso transaction with Energy Investors Funds (“EIF”).  
2 After the sale of the residual ownership interest in Calypso in 2011 to EIF,  
3 Cogentrix consisted of Cedar Bay, two small coal-fired QFs in Virginia, a new  
4 Solar Facility in Colorado and a small Solar Steam plant at the end of its  
5 operational life. GS made the determination that it would realize greatest value  
6 from its residual ownership in Cogentrix only in a sale of the entire remaining  
7 business (rather than continued asset sales that would leave GS the expense of  
8 winding down the Cogentrix management platform and liquidating its position  
9 in certain of the remaining facilities).

10  
11 In this context, it is necessary to consider the relevant guidance of *Unit of*  
12 *Valuation* versus *Unit of Account*. Based on GS’s determination, the asset  
13 grouping which yielded the highest overall net value to GS was a sale of the  
14 entire portfolio (including the management team in North Carolina). An  
15 extensive sale auction process was performed, and Carlyle’s offer was selected  
16 by GS (who had no reason to accept less than the best available price). At the  
17 Cogentrix level, the FV (exit price to a Market Participant) was established for  
18 the entire portfolio as <sup>A</sup> [REDACTED] including assumed debt, and therefore the  
19 sum of the individual plants and PPAs (the *Unit of Account* at which the  
20 transaction would be recorded) needed to not exceed the <sup>B</sup> [REDACTED] purchase  
21 price for the overall Unit of Valuation.

22  
23 It is possible that Cedar Bay could have been sold for greater than <sup>C</sup> [REDACTED]

1 if sold separately in 2012, but GS made the determination that incremental  
2 value from such a sale would be more than offset by the adverse impact on  
3 proceeds or ability to sell the balance of Cogentrix. The component assets  
4 (*Units of Account*) in the Cogentrix Valuation had to total to no more than the  
5 purchase price for the overall *Unit of Valuation* and hence the FV of the five  
6 plants and related intangible assets had to align with the overall [REDACTED]<sup>A</sup>  
7 FV. The [REDACTED]<sup>B</sup> assigned to the Cedar Bay PPA in the Cogentrix  
8 Valuation reflected an appropriate proportion of the purchase price in the  
9 context of its risk and forecasted profitability relative to that of the other four  
10 plants.

- 11 • In the past twelve to eighteen months, there has been a significant increase in  
12 the overall appetite among buyers for contracted power assets. Substantial  
13 private equity capital focused on or allocated to the energy sector has been  
14 raised, and “YieldCos” (public entities committed to providing consistently  
15 growing distributions) have proliferated. While YieldCos may not be the most  
16 likely buyers of CBAS in particular, prices (relative to earnings) for contracted  
17 power plant transactions have increased as a result of the increased competition.  
18 This fact has been amplified by the availability of higher leverage at financially  
19 attractive rates and terms for plants with long-term PPAs (as evidenced by the  
20 [REDACTED]<sup>C</sup> refinancing by Cedar Bay in mid-2013).  
21 Altogether, the implied rates of return in transactions involving plants with  
22 contracted cash flows have declined from December 2012 to now as  
23 competition for acquisitions of contracted power generation assets has

1 substantially increased.

2

3 *Capacity Factor*

4 The second major factor relates to the decline in forecasted capacity factor, which is  
5 directly a function of the lower natural gas and market power price expectations in  
6 the CBAS Valuation. The intermediate and long-term expectation for natural gas  
7 prices has declined significantly since 2012, and this “flattening” of the natural gas  
8 price curve makes it much more likely that Cedar Bay will maintain a capacity  
9 factor of approximately [REDACTED]<sup>A</sup> rather than increase to the  
10 [REDACTED]<sup>B</sup> range as had been assumed in the Cogentrix Valuation. Because the  
11 contractual energy price is less than the variable cost (including fuel) of generating  
12 the power, the lower expected capacity factor increases the FV of the Cedar Bay  
13 PPA by approximately [REDACTED]<sup>C</sup>.

14

15 *Steam Revenues*

16 Increased expectations regarding steam revenue also impacted the FV of the Cedar  
17 Bay PPA. As previously discussed, a major uncertainty related to Cedar Bay in  
18 2012 centered on the lack of a steam agreement beyond 2015. Carlyle and  
19 Cogentrix had concerns regarding the pricing it might have to accept in a contract  
20 extension with RockTenn, as a steam agreement is needed to retain Cedar Bay’s QF  
21 status. The approximately [REDACTED]<sup>D</sup> annual increase in expected steam revenue  
22 equates to approximately [REDACTED]<sup>E</sup>.

23

1 *Bonus Payment / Other*

2 The remaining <sup>A</sup> [REDACTED] of the increase in the Fair Value of the  
3 Cedar Bay PPA relates to a combination of other items such as the increased Bonus  
4 Payment to 5%, which had a <sup>B</sup> [REDACTED] rounded value, and other items like minor  
5 fixed cost differences, increased near-term cash flow which more than offsets the  
6 fewer remaining years in the Discounted Cash Flow ("DCF") and rounding (as all  
7 of the FV estimates have been rounded to \$10 million).

8 **Q. Are there any other facts that support the reasonableness of the \$520 Million**  
9 **FV for the Cedar Bay PPA?**

10 A. Yes. As previously noted, in the period between the Cogentrix Valuation and the  
11 CBAS Valuation, Cogentrix extended the term of the RockTenn steam offtake  
12 agreement to run coterminous with the Cedar Bay PPA which allowed them to  
13 refinance the assumed Cedar Bay debt and increase its project level borrowing to  
14 approximately <sup>C</sup> [REDACTED]. As it is unlikely that lenders would provide 70% or  
15 80% loan-to-value ("LTV") on a QF with approximately 11 years of remaining  
16 contract life (in fact both OPC witness Brunault and FIPUG witness Lane indicate  
17 leverage of <sup>D</sup> [REDACTED] would be more appropriate), the refinancing alone, assuming 50%  
18 to 60% LTV, indicates a FV for CBAS and the Cedar Bay PPA of \$450 million to  
19 \$550 million. The leverage recommended by OPC witness Brunault and FIPUG  
20 witness Lane would imply a grossed up value exceeding \$1 billion, but they likely  
21 did not consider the relevance of the refinancing to either the discount rate used in  
22 the CBAS Valuation or the FV of the Cedar Bay PPA, a not uncommon mistake.

23 **Q. Are there any other concerns with the direct testimony of OPC witness**

**Docket No. 150075-EI**  
**Major Factors Impact FV of Cedar Bay PPA**  
**Exhibit DH-4, Page 1 of 1**

**Confidential in its entirety.**

**GROUND LEASE**

GROUND LEASE dated as of April 29, 1991 between SEMINOLE KRAFT CORPORATION, a Delaware corporation ("Ground Lessor"), and AES CB LIMITED PARTNERSHIP, a Delaware limited partnership ("Ground Lessee").

**M I T H E S E E T H :**

WHEREAS, Ground Lessee desires to construct and operate a cogeneration facility on a site owned by Ground Lessor adjacent to Ground Lessor's unbleached linerboard and kraft paper mill in the City of Jacksonville, Florida; and

WHEREAS, Ground Lessor desires to lease to Ground Lessee the site upon which such facility shall be developed and operated, to grant to Ground Lessee certain easements and to provide certain services to Ground Lessee needed for such development and operation upon the terms and conditions contained herein; and

WHEREAS, Ground Lessee desires to lease such site and to receive such easements and services upon the terms and conditions contained herein;

NOW, THEREFORE, in consideration of the agreements and covenants hereinafter set forth, and intending to be legally bound hereby, the Parties hereby covenant and agree as follows:

**ARTICLE I**

**DEFINITIONS**

Section 1.1 Definitions. Except as otherwise defined herein, capitalized terms have the meanings assigned to them as follows:

1  
2

[REDACTED]

"Affiliate" means, with respect to any Person, a Person that, directly or indirectly, controls or is controlled by or under common control with such Person. For the purposes of this definition, the concept of "control," when used with respect to any specified Person, shall signify the possession of the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities or partnership or other ownership interests, by contract or otherwise; provided that, in any event, any Person (including the family members of such Person) which owns directly or indirectly 5% or more of the securities having ordinary voting power for the election of directors or other governing body of a corporation or 5% or more of the partnership or other ownership interests of any other Person is deemed to control such corporation or other Person.

3  
4  
5  
6  
7

[REDACTED]

"Applicable Laws" means any statute, law, regulation, ordinance, rule, judgment, rule of common law, order, decree, Permit, approval, concession, grant, franchise, license, agreement, requirement, or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Authority, whether now or hereinafter in effect and in each case as amended (including, without limitation, any thereof pertaining to land use or zoning restrictions and any Environmental Law).

8  
9  
10  
11  
12  
13  
14  
15  
16  
17

[REDACTED]

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 9 of 199**

**Confidential in its entirety.**

[REDACTED]

1 "Easements" has the meaning specified in  
2 Section 3.1(a) hereof.

[REDACTED]

[REDACTED]

**"Environmental Claims"** means any and all obligations, liabilities, losses, administrative, regulatory or judicial actions, suits, demands, decrees, demand letters, claims, liens, judgments, warning notices, notices of noncompliance or violation, investigations, proceedings, removal or remedial actions or orders, or damages, penalties, fees, out-of-pocket costs, expenses, disbursements, attorneys' or consultants' fees, relating in any way to any Environmental Law or any Permit issued under any such Environmental Law (the "Claims"), including without limitation (a) any and all Claims by governmental or regulatory authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law, and (b) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Materials or arising from alleged injury or threat of injury to health, safety or the environment.

**"Environmental Law"** means any and all Applicable Laws relating to the protection of the environment, human health, safety, or natural resources (including without limitation, wetlands, wildlife, aquatic and terrestrial species and vegetation), or to emissions, discharges, Releases or threatened Releases of Hazardous Materials into the environment including, without limitation, ambient air, surface water, groundwater, or land, or otherwise relating to the handling or use, treatment, storage, disposal, transport, or handling of Hazardous Materials; including, without limitation, the Site Certification Approval, dated February 11, 1991, relating to the Facility, and all terms and conditions thereof.

1  
2

**"Facility"** means the boilers, steam turbine generator and all appurtenant structures, fixtures, improvements, equipment and other personal and real property interests (but not including the Facility Site and the Easements) now or hereafter constructed, owned or leased by Ground Lessee on the Facility Site and the Easements (excluding the Mill and any other improvements now or hereafter constructed, owned or leased by Ground Lessor on the Easements) for the purpose of generating and delivering steam or electricity.

**"Facility Site"** means all those parcels of land (excluding the Easements) situated in the City of Jacksonville, Florida that Ground Lessee leases from Ground Lessor from time to time under this Ground Lease, as further

described in Appendix 1.1-A attached hereto and made a part hereof.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36

[REDACTED]

"Fee Mortgage" means the Mortgage Deed dated as of March 27, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

"Financing Parties" means (i) the Collateral Agent and any and all parties on behalf of whom the Collateral Agent shall, from time to time, act pursuant to the Collateral Agency Agreement (as defined in the Leasehold Mortgage), and (ii) any and all lenders, their successors and assigns providing any refinancing (or refinancings) of the indebtedness secured by the Leasehold Mortgage.

1  
2  
3  
4  
5  
6  
7

[REDACTED]

[REDACTED]

[REDACTED]

**"Governmental Authority" means any governmental department, commission, board, bureau, agency, regulatory authority, instrumentality, judicial or administrative body, domestic or foreign, federal, state or local having jurisdiction over the matter or matters in question.**

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19

[REDACTED]

**"Ground Lessee" means AES CB and its successors and permitted assigns as lessee under this Ground Lease.**

**"Ground Lessor" means Seminole Kraft and its successors and permitted assigns as lessor under this Ground Lease.**

**"Hazardous Material" means (a) any petroleum or petroleum products, flammable explosives, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls and (b) any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "contaminants" or "pollutants," or words of similar import, under any applicable Environmental Law.**

20  
21

[REDACTED]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14

[REDACTED]

**"Improvements" means any and all structures, fixtures, equipment and other personal property interests appurtenant thereto (but not including the Facility) hereafter installed and owned or leased by Ground Lessee on the Facility Site or the Easements (excluding the Mill and any other improvements now or hereafter constructed, owned or leased by Ground Lessor on the Easements) for or related to the purpose of developing and operating a lawful steam-using facility or any other lawful use in accordance with Section 5.1 hereof.**

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36

[REDACTED]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**"Material Adverse Effect" means (i) with respect to representations, warranties or covenants by Ground Lessor, a material adverse effect on (a) the business, operations or financial conditions of the Ground Lessee, (b) the construction, operation, maintenance or use of the Facility, the Facility Site, Easements, or Improvements, or (c) the ability of the Ground Lessor to perform its obligations under the Ground Lease, the Services Agreement, or the Stone Undertaking, and (ii) with respect to any covenants by Ground Lessee, a material adverse effect on (a) the business, operations or financial conditions of Ground Lessor, (b) the modification, operation, maintenance, ownership, or use of the Mill or the Mill Site, or (c) the ability of the Ground Lessee to perform its obligations under the Ground Lease or the Services Agreement.**

"Mill" means the unbleached linerboard and kraft paper plant located in the City of Jacksonville, Florida with a street address of 9469 Eastport Road, and all appurtenant structures, fixtures, improvements, equipment and other appurtenant personal property interests now or hereafter owned or leased by Ground Lessor or any Affiliate of Ground Lessor on the Mill Site, including the water supply and steam delivery systems between the Mill and the applicable Interconnection Point, Condensate Delivery Point or Demineralized Water Delivery Point (as defined in the Services Agreement), as the case may be, the waste treatment facilities located on the Mill Site servicing the Mill and the Facility pursuant to Section 3.5 hereof, the Mill Effluent System and any and all other improvements (other than the Improvements) installed on the Mill Site from time to time.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15

[REDACTED]

[REDACTED]

[REDACTED]

"Mill Site" means all of the land now or hereafter owned or leased by Ground Lessor or any Affiliate of Ground Lessor and located in the City of Jacksonville, Duval County, Florida under, at or near the Mill, excluding the Facility Site leased to Ground Lessee under this Ground Lease, as more particularly described in Appendix 1.1-B hereto and made a part hereof.

16  
17  
18  
19  
20  
21  
22

[REDACTED]

[REDACTED]

1 "Party" or "Parties" means the Ground Lessor and  
2 the Ground Lessee.

[REDACTED]

[REDACTED]

3 "Person" means any individual, corporation,  
4 partnership, joint venture, association, joint-stock company,  
5 trust, unincorporated organization or governmental body.

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

1 "Release" means disposing, discharging, injecting,  
2 spilling, leaking, leaching, dumping, pumping, pouring,  
3 emitting, escaping, emptying, seeping, placing and the like,

1 into or upon any land or water or air, or otherwise entering  
2 into the environment.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

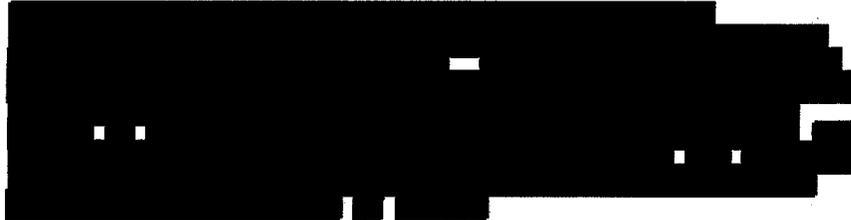
3 "SK Site" means the Mill, the Mill Site and the  
4 Facility Site.

[REDACTED]

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 20 of 199**

**Confidential in its entirety.**

1  
2  
3  
4  
5  
6  
7  
8  
9



**ARTICLE III**

**EASEMENTS, ADDITIONAL LAND AND SERVICES**

**Section 3.1 Easements.** (a) In addition to the demise of the Facility Site set forth in Article II hereof, subject to the terms and provisions of this Ground Lease, the Ground Lessor hereby grants to the Ground Lessee the following easements: (i) the easements described in Appendix 3.1(a)(i) attached hereto and made a part hereof (the "Presently Described Easements"), and (ii) the following additional easements (the "Additional Easements"; the Presently Described Easements and the Additional Easements being collectively referred to as the "Easements") with the understanding and intent that this grant is a present grant, vesting in Ground Lessee the present right of use and enjoyment of all of the Easements, subject only (in the case of the Additional Easements) to the conditions hereinafter set forth:

**(A) Additional Easements as Required by Permits:**  
Such additional easements upon, over and across the Mill Site as are necessary from time to time to comply with any Permits obtained by or required of Ground Lessee with respect to environmental, construction or operating aspects of the Facility and the Improvements; provided that any such Additional Easement shall be located over, under and/or across such portions of the Mill Site and shall be used and employed by Ground Lessee in such manner as shall not, in Ground Lessor's reasonable judgment, interfere with Ground Lessor's then current or planned future use, enjoyment and operation of the Mill or the Mill Site for normal business purposes and such easement areas shall be maintained by Ground Lessee in a condition comparable to similar areas maintained by Ground Lessor on the Mill Site;

repair, replacement and use of the transmission line to be constructed and maintained by the Jacksonville Electric Authority along Eastport Road; provided, that in Ground Lessor's reasonable judgment any such Additional Easements sought by Ground Lessee shall be located over, under and/or across such portions of the Mill Site and shall be used and employed by Ground Lessee or the Jacksonville Electric Authority in such manner as shall not unreasonably interfere with Ground Lessor's then current or planned future use, enjoyment and operation of the Mill or the Mill Site for normal business purposes; and provided, further, that Ground Lessee or the Jacksonville Electric Authority shall maintain such easement area in a condition comparable to similar areas maintained by Ground Lessor on the Mill Site.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32



**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 25 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 26 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 27 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 28 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 29 of 199**

**Confidential in its entirety.**

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]  
28 [REDACTED]  
29 [REDACTED]  
30 [REDACTED]  
31 [REDACTED]

See 15

(b) Ground Lessor will provide to Ground Lessee a disposal area on the Mill Site of approximately fourteen and seventy-five hundredths (14.75) acres as described in Appendix 3.1(a)(1) attached hereto and made a part hereof (the "Lime Mud Storage Parcel"), suitable (including, without limitation, licensed, or with all necessary approvals, if any, of governmental authorities having jurisdiction) under Applicable Laws for disposal of the lime mud specified in Section 3.4(a)(ii) hereof; provided that lime mud shall not be mounded on the Lime Mud Storage Parcel to a height in excess of forty (40) feet above the surrounding grade level and shall not be stored in an area within the Lime Mud Storage Parcel that shall exceed eleven (11) acres. In the event that relocation of the lime mud to the Lime Mud Storage Parcel provided pursuant to this Section 3.4(b) results in

any additional regulatory or remediation requirements being imposed on Ground Lessor, other than any requirements set forth in that certain License to Remove Fill dated October 31, 1986 between Seminole Kraft Corporation and Jacksonville Kraft Paper Co., Inc. contained in Warranty Deed recorded on November 4, 1986 in the Official Records of Duval County, Florida in Volume 6222, Page 504 (the "Fill License"), solely as a result of such relocation (including, without limitation, grading of the new disposal area), then the full cost of compliance with such requirements shall be borne by Ground Lessee. If, however, the Lime Mud Storage Parcel shall become unavailable for disposal of lime mud by Ground Lessee as herein contemplated as a result of the exercise of any rights or remedies available to Jacksonville Kraft Paper Co., Inc. (or its successors or assigns) under the Fill License, Ground Lessor shall use its reasonable efforts to make available to Ground Lessee, an additional parcel of land on the Mill Site, consisting of not less than eleven (11) acres, suitable (including, without limitation, licensed, or with all necessary approvals, if any, of governmental authorities having jurisdiction) under Applicable Laws for disposal of the lime mud specified in Section 3.4(a)(ii) hereof.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35

[REDACTED]

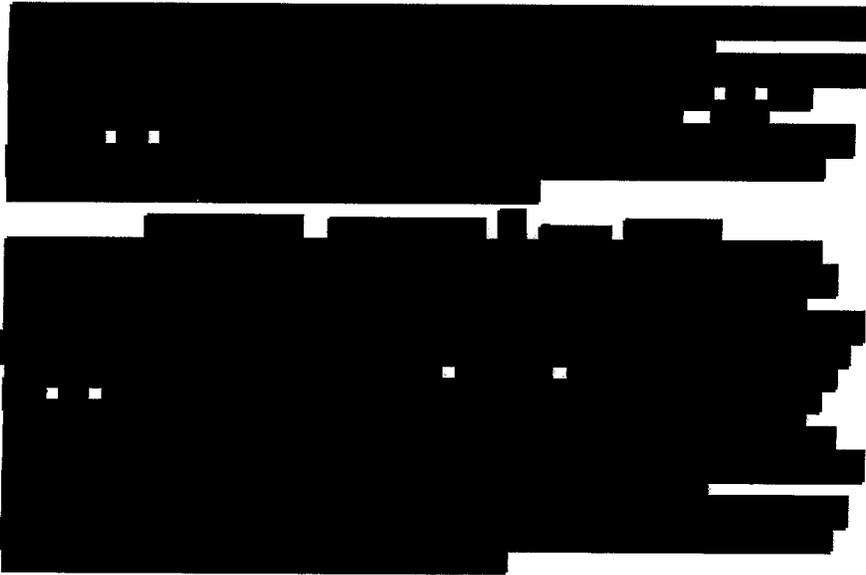
**Section 3.5 Disposal of Sanitary Waste, Facility Effluent and Cooling Tower Blowdown.** (a) Ground Lessor shall accept and dispose of, to the extent allowed by and in accordance with Applicable Laws, all of Ground Lessee's sanitary waste in an amount not to exceed an average of fifty (50) gallons per minute calculated over an Annual Period.

(b) Ground Lessor shall accept and dispose of through Ground Lessor's existing waste treatment system (consisting of Ground Lessor's clarifier and aeration ponds).

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 35 of 199**

**Confidential in its entirety.**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23



**ARTICLE V**

**USE**

**Section 5.1 Limited Use.** (a) The Facility Site and the Easements shall be used by Ground Lessee (i) only for the erection, construction, start-up, testing, repair, replacement, restoration, operation (including without limitation the receipt, handling, storage and shipment of coal, limestone and any substitute or supplemental fuel other than nuclear materials), and maintenance of the Facility and any additions or modifications thereto, and, for the erection, construction, start-up, testing, repair, replacement, restoration, operation and maintenance of a CO<sub>2</sub> Plant on the portion of the Facility Site described as Parcel B on Appendix 1.1-A attached hereto, and uses reasonably ancillary to the foregoing, and (ii) with the consent of Ground Lessor, which consent shall not be unreasonably withheld, for any other lawful use.

(b) Ground Lessee shall not (i) Release any Hazardous Materials in an amount and manner prohibited by Applicable Law or that would require reporting to a

governmental entity under any Applicable Law other than routine reporting required under Applicable Law, or (ii) store any Hazardous Materials on (or under the surface of) the Facility Site or the Mill Site, or in the Facility (except, with respect to the Facility, the Facility Site or the Easements, in the case of inventories of Hazardous Materials to be used or generated in the ordinary course of business of the Facility, which inventories are stored in accordance with Applicable Laws pending such use or disposal).

(c) Ground Lessee agrees to use its reasonable efforts to obtain, if it generates Hazardous Materials, its own generator identification number and to use such number for all off-site disposal of Hazardous Materials generated in connection with its use of the Facility Site.

(d) Ground Lessee agrees that if (i) the Services Agreement has been terminated for any reason other than an Event of Default thereunder caused by Seminole Kraft, (ii) the CO<sub>2</sub> Plant shall have been constructed and the Facility shall be then producing Steam, and (iii) Ground Lessor shall request delivery of Steam to the Mill, then Ground Lessee shall not supply steam to any other person or facility (including, without limitation, the CO<sub>2</sub> Plant) unless Ground Lessee shall be furnishing to the Mill, on a first priority basis, all Steam (other than Steam necessary to operate the Facility) produced at the Facility up to the maximum amount of two hundred fifty thousand (250,000) pounds of Steam per hour, at a price equal to the price for such quantity of Steam which would have been payable under the Services Agreement (were the Services Agreement then in full force and effect); provided, however, that Ground Lessee's obligations under this Section 5.1(d) shall be suspended for so long as the Steam Interconnection Facilities servicing only the Mill shall be unable to deliver such Steam to the Mill as a result of a Force Majeure event.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 38 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI**  
**Ground Lease Between Cedar Bay**  
**Generating Company and RockTenn**  
**Exhibit TLP-3, Page 39 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 40 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 41 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 42 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 43 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 44 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 45 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI**  
**Ground Lease Between Cedar Bay**  
**Generating Company and RockTenn**  
**Exhibit TLP-3, Page 46 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 47 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 48 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 49 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI**  
**Ground Lease Between Cedar Bay**  
**Generating Company and RockTenn**  
**Exhibit TLP-3, Page 50 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 51 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 52 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 53 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 54 of 199**

**Confidential in its entirety.**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26



**ARTICLE X**  
**INDEMNIFICATION**

**Section 10.1 Indemnification: General. Subject to the provisions of Section 10.2 hereof, each Party hereto shall indemnify and hold the other Party, its agents, Affiliates, employees, successors and assigns, harmless from and against all damages, losses or expenses suffered or paid as a result of any and all claims, demands, suits, causes of action, proceedings, judgments and liabilities (including reasonable counsel fees incurred in litigation or otherwise) assessed, incurred or sustained by or against the indemnified parties and its agents, employees, successors and assigns as a result of or arising out of a willful or negligent act or willful or negligent failure to act of, or a breach of this Ground Lease by, the indemnifying Party, its employees, subcontractors, agents, representatives or invitees with respect to the Facility, the Improvements, the Mill, the Mill Site, the Facility Site or the Easements, except to the**

Sections 10.1, 10.2 or 10.3 hereof, the amount owing to the indemnified Party will be the amount of such Party's damages, losses and expenses net of any insurance or other recovery actually received by the indemnified Party, it being expressly understood, however, that, except as expressly set forth herein neither Party shall be liable hereunder for any indirect, consequential, incidental, punitive or exemplary damages.

Section 10.7 Survival. The provisions of this Article X shall survive expiration of the term of this Ground Lease.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

[REDACTED]

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 60 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 61 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 62 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 63 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 64 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 65 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 66 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 67 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 68 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 69 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI**  
**Ground Lease Between Cedar Bay**  
**Generating Company and RockTenn**  
**Exhibit TLP-3, Page 70 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 71 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 72 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 73 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 74 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 75 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 76 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 77 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 78 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 79 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 80 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 81 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 82 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 83 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 84 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 85 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 86 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 87 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 88 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 89 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 90 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI**  
**Ground Lease Between Cedar Bay**  
**Generating Company and RockTenn**  
**Exhibit TLP-3, Page 91 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 92 of 199**

**Confidential in its entirety.**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15



**ARTICLE XX**

**ENVIRONMENTAL MATTERS**

**Section 20.1 ENVIRONMENTAL REPRESENTATIONS AND WARRANTIES.** Ground Lessor represents and warrants that

(i) to the best of its knowledge, except as would not have a Material Adverse Effect and except as indicated on Appendix 20.1 attached hereto:

(a) the SK Site is now in compliance, and Ground Lessor's operations thereon have been and are now in compliance, with all Environmental Laws;

(b) Hazardous Materials have not at any time been Released by Ground Lessor on, under or from any portion of the SK Site;

(c) there are no past, pending or threatened Environmental Claims against Ground Lessor or any of its officers, directors, employees, and agents or any of its lessees, Affiliates, partners, joint venturers, assignees or other Persons currently occupying, using, or conducting operations on or about the SK Site; and

(d) there are no facts, circumstances, conditions or occurrences regarding the SK Site that (i) form the basis of an Environmental Claim against the SK Site, Ground Lessor or any of its officers, directors, employees, and agents or, any of its lessees, partners,

which notice is required herein to Ground Lessor simultaneously with the giving or receiving of any such written communications. Ground Lessee shall also provide, and shall exercise its best efforts to cause all such other Persons hereinbefore mentioned to provide, such detailed reports of any Environmental Claim as may be reasonably requested by Ground Lessor. Ground Lessor, including its agents, shall keep the documents required to be provided hereunder confidential and shall not disclose them to any other Person unless required by law and after reasonable consultation with Ground Lessor.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

[REDACTED]

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 99 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 100 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 101 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 102 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 103 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 121 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 122 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 123 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 124 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 125 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 126 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 127 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 177 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 181 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI**  
**Ground Lease Between Cedar Bay**  
**Generating Company and RockTenn**  
**Exhibit TLP-3, Page 185 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI**  
**Ground Lease Between Cedar Bay**  
**Generating Company and RockTenn**  
**Exhibit TLP-3, Page 189 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 197 of 199**

**Confidential in its entirety.**

**Docket No. 150075-EI  
Ground Lease Between Cedar Bay  
Generating Company and RockTenn  
Exhibit TLP-3, Page 198 of 199**

**Confidential in its entirety.**

**EXHIBIT C**

**COMPANY:** Florida Power & Light Company  
**TITLE:** Request for Confidential Classification of FPL's Rebuttal Testimony  
**DOCKET TITLE:** In re: Florida Power & Light Company's Petition for Approval of Arrangement To Mitigate Impact of Unfavorable Cedar Bay Power Purchase Obligation  
**DATE:** July 8, 2015

Description	Page No.	Conf. Y/N	Col. No./ Line No.	Florida Statute 366.093(3) Subsection	Affiant
Rebuttal Testimony of FPL witness Thomas L. Hartman	6	Y	Lns. 13A, 14-23	(d), (e)	T. Hartman
	8	Y	Lns. 11A, 12B, 13C	(d), (e)	T. Hartman
	10	Y	Lns. 2A	(e)	J. Pollack
Rebuttal Testimony of FPL witness David Herr	1	Y	Line 19A	(e)	J. Pollack
	2	Y	Line 4A	(e)	J. Pollack
	3	Y	Line 9A	(d), (e)	J. Pollack D. Herr
			Lns. 10	(e)	J. Pollack
			Line 12B	(d), (e)	D. Herr
			Lns. 15C, 16D	(e)	J. Pollack
	4	Y	Lns. 10A, 16B, 17C	(d), (e)	D. Herr
			Line 22D	(e)	J. Pollack
	5	Y	Lns. 2A, 3B	(e)	J. Pollack
			Lns. 5C, 14D, 14E	(d), (e)	D. Herr
			Lns., 16F, 17G	(e)	J. Pollack
			Line 17H	(d), (e)	J. Pollack D. Herr
	6	Y	Line 13A	(e)	J. Pollack
			Line 15B	(d), (e)	D. Herr
			Line 16C	(d), (e)	J. Pollack D. Herr
	8	Y	Lns. 18, 21A	(d), (e)	D. Herr
9	Y	Lns. 6A, 16B, 17C, 17D, 18E, 18F	(e)	J. Pollack	

Rebuttal Testimony of FPL witness David Herr	10	Y	Lns. 18A, 20B, 23C	(e)	J. Pollack
	11	Y	Lns. 6A, 7B, 20C	(e)	J. Pollack
	12	Y	Lns. 9A, 10B	(d), (e)	D. Herr
			Lns. 13C, 21D, 22E	(e)	J. Pollack
	13	Y	Lns. 2A, 4B, 14C	(e)	J. Pollack
Line 17D			(d), (e)	D. Herr	
Exhibit DH-4 to Rebuttal Testimony of FPL witness David Herr	1	Y	ALL	(e)	J. Pollack
			Note (3)	(d), (e)	D. Herr
Exhibit TLP-3 to Rebuttal Testimony of FPL witness Tracy Lee Patterson	7	Y	Line 1	(d), (e)	J. Pollack
	8	Y	Lns. 1-2, 3-7, 8-17		
	9	Y	ALL		
	10	Y	All, except lines 1-2		
	11	Y	Lns. 1-2		
	12	Y	Lns. 1-36		
	13	Y	Lns. 1-7, 8-19, 20-21		
	14	Y	Lns. 1-14, 15-36		
	15	Y	Lns. 1-31		
	16	Y	Lns. 1-15, 16-22		
	17	Y	All, except lines 1-5		
	18	Y	All, except lines 1-3		
	19	Y	All, except lines 1-4		
	20	Y	ALL		
	21	Y	Lns. 1-9		
	24	Y	Lns. 1-32		
	25 - 29	Y	ALL		
	30	Y	Lns. 1-31		
	31	Y	Lns. 1-24		
	32	Y	Lns. 1-35		
	35	Y	ALL		
	36	Y	Lns. 1-23		
	37	Y	Lns. 1-14		
	38 - 54	Y	ALL		
	55	Y	Lns. 1-26		
	59	Y	Lns. 1-31		
	60 - 92	Y	ALL		
	93	Y	Lns. 1-15		
	96	Y	Lns. 1-31		
	99 - 103	Y	ALL		
121 - 127	Y	ALL			
177	Y	ALL			
181	Y	ALL			
185	Y	ALL			
189	Y	ALL			
197 - 198	Y	ALL			

**EXHIBIT D**

**AFFIDAVITS**

EXHIBIT D

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In RE: Petition for approval of arrangement to mitigate impact of unfavorable Cedar Bay power purchase obligation, by Florida Power & Light Company.

Docket No: 150075-EI

STATE OF FLORIDA )
COUNTY OF PALM BEACH )

AFFIDAVIT OF THOMAS L. HARTMAN

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

1. My name is Thomas L. Hartman. I am currently employed by Florida Power & Light Company ("FPL") as Director, Business Development in Energy Marketing and Trading. I have personal knowledge of the matters stated in this affidavit.

2. I have reviewed the documents and information included in Exhibit A to FPL's Request for Confidential Classification. The documents or materials that I have reviewed and which are asserted by FPL to be proprietary confidential business information relate to competitive interests. Specifically, the document contains an analysis of competitive economic options and strategies, purchase proxy prices, and capacity charges. The disclosure of this information would disadvantage FPL customers and would place FPL at a competitive disadvantage when coupled with other information that is publicly available. 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 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.

4. Affiant says nothing further.

[Handwritten signature of Thomas L. Hartman]
Thomas L. Hartman

SWORN TO AND SUBSCRIBED before me this 8th day of July 2015, by Thomas L. Hartman, who is personally known to me or who has produced (type of identification) as identification and who did take an oath.

[Handwritten signature of Maritza Miranda-Wise]
Notary Public, State of Florida

My Commission Expires:



EXHIBIT D

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In RE: Petition for approval of arrangement to mitigate impact of unfavorable Cedar Bay power purchase obligation, by Florida Power & Light Company.

Docket No: 150075-EI

COMMONWEALTH OF PENNSYLVANIA )
COUNTY OF PHILADELPHIA )

AFFIDAVIT OF DAVID HERR

BEFORE ME, the undersigned authority, personally appeared David Herr who, being first duly sworn, deposes and says:

1. My name is David Herr. I am currently employed by Duff & Phelps LLC as Managing Director, the Philadelphia City Leader, and the Energy and Mining Industry leader. I have personal knowledge of the matters stated in this affidavit.

2. I have reviewed the documents and information included in Exhibit A to FPL's Request for Confidential Classification. The documents or materials that I have reviewed and which are asserted by FPL to be confidential constitute the proprietary business information of a third party related to the third party's competitive interests. The disclosure of this information would disadvantage FPL customers and would place FPL at a competitive disadvantage when coupled with other information that is publicly available. In addition, information designated as confidential consists of or relates to the valuation of the tangible and intangible assets of CBAS Power, Inc. which was performed by Duff & Phelps, Inc. The details of this highly detailed valuation report identify with specificity the proprietary methodology that Duff & Phelps employs in performing such valuations. Accordingly, public disclosure would impair the competitive businesses of Duff & Phelps and therefore should be treated confidentially. To the best of my knowledge, FPL has maintained the confidentiality of these documents and materials.

3. To the best of my knowledge, FPL has maintained the confidentiality of these documents and materials.

4. Consistent with the provisions of the Florida Administrative Code, such materials should remain confidential for a period of 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.

5. Affiant says nothing further.

David Herr
David Herr

SWORN TO AND SUBSCRIBED before me this 8th day of July 2015, by David Herr, who is personally known to me or who has produced Drivers License (type of identification) as identification and who did take an oath.

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
LINGY R REYNA
CITY OF PHILADELPHIA, PHILADELPHIA CNTY
My Commission Expires Aug 27, 2018

Notary Public, Commonwealth of Pennsylvania

**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 & ) FILED: July 8, 2015  
Light Company. )  
\_\_\_\_\_ )

**AFFIDAVIT OF JACOB A. POLLACK IN SUPPORT OF  
FLORIDA POWER & LIGHT COMPANY'S  
REQUEST FOR CONFIDENTIAL CLASSIFICATION**

STATE OF FLORIDA

COUNTY OF LEON

BEFORE ME, the undersigned authority duly authorized to administer oaths, personally appeared Jacob A. Pollack, who being first duly sworn, on oath deposes and says that:

1. My name is Jacob A. Pollack. I am over the age of 18 years old and I have been authorized by Cedar Bay Generating Company, Limited Partnership ("Cedar Bay") to give this affidavit in the above-styled proceeding on Cedar Bay's behalf and in support of Florida Power & Light Company's ("FPL") Request for Confidential Classification. I have personal knowledge of the matters stated in this affidavit.

2. I am Vice President and Secretary for Cedar Bay. I am also Senior Vice President and General Counsel for Cogentrix Energy Power Management, LLC ("CEPM"), which (1) is an affiliate of Cedar Bay, and (2) employs FPL's rebuttal witness T.L. Patterson. My business address is 9405 Arrowpoint Boulevard,

Charlotte, North Carolina 28273. I am responsible for all legal, corporate governance, and corporate records matters for Cedar Bay and CEPM.

3. Cedar Bay and FPL are seeking confidential classification for portions of Exhibit TLP-3 to the prefiled rebuttal testimony of T.L. Patterson, portions of the prefiled rebuttal testimony of T.L. Hartman, portions of the prefiled rebuttal testimony of D.W. Herr, and Exhibit DH-4 to the prefiled rebuttal testimony of D.W. Herr.

4. Cedar Bay and FPL are requesting confidential classification of this information because it is Cedar Bay's competitively sensitive confidential business information, in that it contains information concerning Cedar Bay's and/or its affiliates' asset valuations, capital structure, and revenues; financial terms of a confidential lease with a non-party; and other competitively sensitive commercial information. The disclosure of this information to third parties would adversely impact Cedar Bay's and/or its affiliates' competitive business interests and otherwise harm Cedar Bay and/or its affiliates.

5. The information identified in Attachment I is intended to be and is treated as confidential by Cedar Bay and has not been disclosed to the public. Consistent with the provisions of the Florida Administrative Code, such materials should remain confidential for a period of 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.

6. This concludes my affidavit.

Jacob A. Pollack

Jacob A. Pollack  
Vice President and Secretary  
Cedar Bay Generating Company, LP  
9405 Arrowpoint Boulevard  
Charlotte, North Carolina 28273

SWORN TO AND SUBSCRIBED before me this 7<sup>th</sup> day of July, 2015, by Jacob A. Pollack, who is personally known to me or who has produced \_\_\_\_\_ (type of identification) as identification and who did take an oath.



Rhonda J. Dalgard

Notary Public, State of Florida

My Commission Expires: 6/1/2015