

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: August 26, 2015
Light Company.)

REDACTED

**CEDAR BAY GENERATING COMPANY'S REQUEST FOR
CONFIDENTIAL CLASSIFICATION OF CERTAIN INFORMATION
IN THE FLORIDA INDUSTRIAL POWER USERS GROUP'S
POST-HEARING STATEMENT OF ISSUES AND POSITIONS
AND POST-HEARING BRIEF**

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Cedar Bay Generating Company, Limited Partnership ("Cedar Bay"), by and through undersigned counsel, and pursuant to Rule 25-22.006, Florida Administrative Code ("F.A.C."), and Section 366.093, Florida Statutes ("F.S."), hereby submits this Request for Confidential Classification ("Request" and generically, "RFCC") and respectfully requests confidential classification for certain information ("Confidential Information") in the Florida Industrial Power Users Group's ("FIPUG") Post-Hearing Statement of Issues and Positions and Post-Hearing Brief ("Brief") that was filed in this docket on August 13, 2015. The "public" version of the FIPUG Brief is PSC Document No. 05086-15 and the

"confidential" version of the FIPUG Brief is PSC Document No. 05090-15. Cedar Bay filed a Notice of Intent to Request Confidential Classification of information in the FIPUG Brief on August 14, 2015, and therefore, this Request is timely filed.

This Request has two aspects: First, Cedar Bay requests confidential classification for the information that FIPUG

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redacted in its Brief as filed. Second, Cedar Bay requests confidential classification for additional information in FIPUG's Brief that is, or reveals, Cedar Bay's Confidential Information but which was not redacted from FIPUG's Brief as filed; because this latter category of information is presently in the public record, i.e., in the public version of FIPUG's Brief, Cedar Bay requests that the Commission replace the Brief as filed with the redacted, public version attached as Exhibit B to this Request.

As described below, the Confidential Information for which protection is sought pursuant to this Request is entitled to protection because it satisfies all of the criteria in Section 366.093, Florida Statutes, including Section 366.093(3)(e), Florida Statutes.

In further support of this Request, Cedar Bay states as follows.

1. Cedar Bay is a non-party to this docket, which involves FPL's petition for approval of a transaction through which FPL will purchase the stock of the entities that own the Cedar Bay Generating Facility (the "Cedar Bay Transaction" or the "Transaction"), which Transaction will result in substantial cost savings for FPL's customers. While Cedar Bay is a non-party, Cedar Bay's counsel was permitted to appear at the hearing for the limited purpose of defending the confidentiality of Cedar Bay's proprietary confidential business information.

2. Even though it is a non-party, Cedar Bay has cooperatively furnished literally thousands of pages of documents in discovery in this docket. Many of these documents contain Cedar Bay's and its affiliates' proprietary confidential business information, and a number of these documents have been introduced into evidence in the proceeding. Cedar Bay has filed Requests for Confidential Classification of its and its affiliates' documents and of its and its affiliates' proprietary confidential business information that is used or cited in the testimony and exhibits of the parties' witnesses. Those Requests for Confidential Classification are pending.¹

3. The specific Confidential Information for which Cedar Bay seeks protection by this Request is already identified and addressed in Cedar Bay's Revised Tenth Request for Confidential Classification, and also by Cedar Bay's Request for Confidential Classification of Portions of Hearing Transcript and Official Video Recording, which was filed on July 30, 2015. The subject information for which confidential protection has previously been sought by Cedar Bay's Revised Tenth RFCC consists of a numeric estimate of the fair value of the Power Purchase Agreement between FPL and Cedar Bay (the "PPA") that was prepared for Cogentrix Power Holdings LLC, an affiliate of Cedar Bay, by Duff

¹ Several of the Requests for Confidential Classification are moot, in whole or in part, to the extent that they have been superseded by subsequently filed Requests.

& Phelps, LLC, and included in a report titled "Valuation of Certain Tangible and Intangible Assets & Liabilities of Cogentrix Power Holdings LLC," dated April 5, 2013 (the "Duff & Phelps 2013 Valuation Report"),² and a numeric value contained in an August 2013 internal Cogentrix memorandum regarding certain asset acquisitions. The Duff & Phelps 2013 Valuation Report is in the record of this docket as part of Hearing Exhibit 18, and the Confidential Information is specifically the subject of Cedar Bay's Revised Tenth Request for Confidential Classification. For convenience, the estimated fair value referred to above is hereinafter referred to as the "Confidential 2013 PPA Value."³ This information has been redacted from the public version of the FIPUG Brief. Additionally, Cedar Bay requests confidential classification of a numeric value contained in an August 2013 internal Cogentrix memo regarding certain asset acquisitions. (The numeric value is contained in Exhibit 17 to the deposition of Mark Rudolph, and is also contained in Hearing Exhibit 28 and is referred to herein for convenience as the "August 2013

² FPL has also requested that the Duff & Phelps 2013 Valuation Report be classified as confidential, because Duff & Phelps considers it to be Duff & Phelps' proprietary confidential business information.

³In addition, the Confidential 2013 PPA Value has been specifically discussed in the depositions and pre-filed testimony of multiple witnesses in this proceeding. See, e.g., Cedar Bay's Thirteenth Request for Confidential Classification (PSC Document No. 04500-15). In all such cases, Cedar Bay has requested confidential classification for the Confidential 2013 PPA Value.

Value.") The numeric value in the internal Cogentrix memo is the actual price paid for a partial equity ownership interest in an entity that indirectly owned Cedar Bay, along with other assets, and that also had significant debt associated with those assets. This information has been redacted from the public version of the FIPUG Brief.

4. Additional information, beyond that redacted by FIPUG from the public version of its Brief, for which Cedar Bay seeks confidential classification and protection is essentially the same as the information for which Cedar Bay sought confidential classification in filing its July 30 Request for Confidential Classification of Portions of Hearing Transcript and Official Video Recording. That information consists of statements - in writing in the FIPUG Brief, and verbally in the Transcript and Video Recording - that characterize other, publicly available information in such a way as to allow an informed reader to infer Cedar Bay's proprietary confidential business information with a much greater degree of accuracy than would be possible without access to the information.

5. The Confidential Information that was already redacted from the FIPUG Brief consists of Cedar Bay's proprietary confidential business information contained in certain Deposition Exhibits selected by FIPUG for inclusion with the deposition transcripts of Mark Rudolph and Cliff Evans. This information

includes information that would identify certain numeric values, the disclosure of which would damage Cedar Bay's and its affiliates' competitive business interests.

6. The additional information highlighted by Cedar Bay in the attached confidential version of the FIPUG Brief consists of characterizations of the Confidential 2013 PPA Value, which characterizations describe Cedar Bay's Confidential Information by stating the relationship of the Confidential 2013 PPA Value and the August 2013 Value, which are already in the confidential record of this proceeding, to the proposed purchase price to be paid by FPL in the Transaction. The description of the relationship between these numbers now stated in FIPUG's Brief (as previously stated by FIPUG's counsel in the hearing) was not stated by any witness and would reveal Cedar Bay's proprietary confidential business information because it allows an informed reader or viewer to infer, with much greater precision and accuracy than such reader or viewer would be able to if the Confidential Information were not made public, the Confidential 2013 PPA Value and the August 2013 Value or reasonable approximations thereof.

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

- a. Exhibit A consists of the FIPUG Brief, on which the Confidential Information already redacted by

FIPUG is highlighted in yellow, and the additional information for which Cedar Bay is requesting confidential treatment is highlighted in blue. Exhibit A is submitted separately in a sealed red envelope marked "CONFIDENTIAL."

- b. Exhibit B consists of two copies of the FIPUG Brief, on which the Confidential Information for which Cedar Bay is seeking confidential treatment has been redacted.
- c. Exhibit C is a table that identifies the specific statutory bases for Cedar Bay's claim of confidentiality.
- d. Exhibit D is the affidavit of Jacob A. Pollack, Vice President and Secretary of Cedar Bay.

8. Section 366.093(1), F.S., provides that "Upon request of the public utility or other person, any records received by the Commission which are shown to be proprietary confidential business information shall be kept confidential and shall be exempt from s. 119.07(1)." Section 366.093(3), F.S., defines proprietary confidential business information to mean information that is (i) intended to be and is treated as private confidential information by the company, (ii) because disclosure of the information would cause harm, (iii) to the company's business operation, and (iv) the information has not been voluntarily

disclosed to the public. Additionally, Section 366.093(3)(e) defines as proprietary confidential business information "information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information."

9. Cedar Bay is requesting confidential classification of the highlighted information because the information either (a) is Cedar Bay's actual proprietary confidential business information, or (b) would enable an informed reader or viewer to infer, with much greater precision and accuracy than such reader or viewer would be able to if the Confidential Information were not made public, the Confidential 2013 PPA Value and the August 2013 Value or reasonable approximations thereof. Disclosure of the highlighted information would harm or otherwise adversely impact Cedar Bay's and/or its affiliates' competitive business interests. Cedar Bay has treated the Confidential Information as confidential and Cedar Bay has not voluntarily disclosed the Confidential Information to the public. In regard to voluntary disclosure, Cedar Bay notes that although Cedar Bay had agreed with counsel for FIPUG at the outset of the subject hearing that he could make certain comparisons, using certain very specific agreed language, of the Confidential 2013 PPA Value to a certain estimated valuation of the PPA performed later in 2015 which is included in the non-confidential testimony of Mr. David Herr, a

witness for FPL, Cedar Bay had not agreed that FIPUG's counsel could use comparative language such as the language at issue here which would allow a reader to infer with significantly more precision reasonable approximations of the Confidential 2013 PPA Value and the August 2013 Value.

10. Detailed Discussion of Competitive Harm of Public Disclosure. The reason that Cedar Bay and/or its affiliates keep this particular Confidential Information confidential is that the disclosure of this information - these numeric values - would seriously impair the competitive interests of Cedar Bay and/or its affiliates that own the interests that FPL will acquire in the Cedar Bay Transaction. More specifically, the disclosure of this information would:

- a. Disclose certain proprietary financing details and financial and transactional information to competitors and actual and potential contract counter-parties;
- b. Significantly alter the bargaining position of Cedar Bay and/or its affiliates vis-à-vis potential counter-parties with whom Cedar Bay and/or its affiliates might be negotiating for the purchase or sale of generating assets, and in particular the Cedar Bay Facility and PPA. Such counter-parties could include private equity funds, infrastructure funds, IPPs, "yieldcos" and others with whom Cedar Bay and/or its affiliates might be negotiating for the purchase or sale of an asset, or who might be negotiating with Cedar Bay and/or its affiliates for the purchase of one of their assets, again, in particular the Cedar Bay Facility and PPA; and
- c. Violate confidentiality obligations of Cedar Bay and/or its affiliates to others.

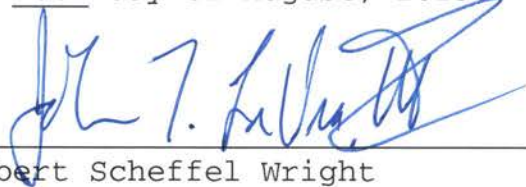
11. In real-world terms, if the Commission were to deny FPL's Petition (and reject the Stipulation reached by FPL and the Public Counsel), Cedar Bay and/or its affiliates that own Cedar Bay could well be put in the position of negotiating to sell the Cedar Bay Facility and PPA to another entity, and that entity would then have the competitive advantage over Cedar Bay of having access to the Confidential Information if the Commission denies this Request. Similarly, even if the Commission were to approve the Cedar Bay Transaction at issue in this proceeding and that Transaction is then consummated, public disclosure of the Confidential Information would still give a competitive business advantage to any party with whom Cedar Bay and/or its affiliates are transacting business by giving them insight into the business practices, assumptions, and market outlook of Cedar Bay and/or its affiliates.

12. Upon a finding by the Commission that the material in Exhibit A for which Cedar Bay seeks confidential treatment is proprietary confidential business information within the meaning of Section 366.093(3), F.S., such information should not be declassified for a period of at least eighteen (18) months.

WHEREFORE, for the above and foregoing reasons, as more fully set forth above and in the supporting materials and affidavit included herewith, Cedar Bay Generating Company, Limited Partnership respectfully requests that its Request for

Confidential Classification For Certain Information in the Florida Industrial Power Users Group's Post-Hearing Statement of Issues and Positions and Post-Hearing Brief be granted. In addition, in order to effectively protect Cedar Bay's proprietary confidential business information, Cedar Bay also requests that the current, "as-filed" public version of FIPUG's Brief be replaced with a copy of Exhibit C to this Request for Confidential Classification.

Respectfully submitted this 26th day of August, 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 26th day of August, 2015.


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EXHIBIT B

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO.: 150075-EI

FILED: August 13, 2015

**THE FLORIDA INDUSTRIAL POWER USERS GROUP'S
POST-HEARING STATEMENT OF ISSUES
AND POSITIONS AND POST-HEARING BRIEF**

The Florida Industrial Power Users Group (FIPUG), by and through its undersigned counsel, files this Post-Hearing Statement of Issues and Positions and Post-Hearing Brief as it relates to issues affecting Florida Power and Light Company (FPL).

BASIC POSITION AND SUMMARY

The \$520.5 million purchase price for Cedar Bay is inflated and does not represent fair value to the ratepayers. Put simply, it is a bad deal. Should the Commission approve FPL's Petition, the \$520.5 million sum should be significantly reduced and recovered in base rates. Making ratepayers pay \$520.5 million for a coal-fired power plant that FPL intends to retire does not advance the goal of diversifying FPL's fuel supply or the ratepayer's fuel risks.

ISSUES AND POSITION

ISSUE 1: What is the fair value of the existing purchase power agreement with Cedar Bay Genco that FPL is acquiring?

FIPUG: The value sought by FPL for the Cedar Bay Generating Facility and the related purchased power agreement, \$520.5 million dollars, is an inflated, overstated sum that does not represent the fair value of purchase power agreement that FPL seeks to acquire. Prior sales of the Cedar Bay Generating Facility and the attendant purchase power agreement occurred for significantly less money than \$520 million dollars, even though the purchased power agreement in question had a longer term, and thus greater capacity payments, when these prior transactions took place. The arms-length transaction involving Goldman Sachs is compelling evidence that the amount FPL seeks to charge ratepayers should be denied or significantly reduced.

ISSUE 2: Is FPL's purchase price for the equity ownership interest of CBAS Power, Inc. fair and reasonable?

FIPUG: No. The value sought by FPL for the Cedar Bay Generating Facility and the related purchased power agreement, \$520.5 million dollars, is an inflated, overstated sum that is not fair and reasonable. Prior sales of the Cedar Bay Generating Facility and the attendant purchase power agreement occurred for significantly less money than \$520 million dollars, even though the purchased power agreement in question had a longer term, and thus greater capacity payments, when these prior transactions took place. The arms-length transaction involving Goldman Sachs is compelling evidence that the amount FPL seeks to charge ratepayers should be denied or significantly reduced.

ISSUE 3: Is FPL's purchase and sale agreement between FPL and CBAS Power Holdings, LLC., and termination of the existing purchase power agreement with Cedar Bay Genco cost-effective?

FIPUG: No. The value sought by FPL for the Cedar Bay Generating Facility and the related purchased power agreement, \$520.5 million dollars, is an inflated, overstated sum that is not cost-effective. Prior sales of the Cedar Bay Generating Facility and the attendant purchase power agreement occurred for significantly less money than \$520 million dollars, even though the purchased power agreement in question had a longer term, and thus greater capacity payments, when these prior transactions took place. The arms-length transaction involving Goldman Sachs is compelling evidence that the amount FPL seeks to charge ratepayers should be denied or significantly reduced.

ISSUE 3A: In its economic evaluation of and selection of the proposed transaction, did FPL take into account all reasonable measures to mitigate future PPA impacts to ratepayers?

FIPUG: No. FPL failed to account for the impacts of future environmental regulations, specifically the EPA's proposed Clean Power Plan, and how that will affect future operations at Cedar Bay. Although no one can predict how the Clean Power Plan will be implemented in Florida, it is generally acknowledged that coal-fired generating units will be affected. FPL failed to address or account for the potential impacts of the Clean Power Plan on Cedar Bay's availability, which would directly affect future capacity payments under the existing PPA. FPL also failed to account for the fact that, under the terms of the current PPA, the more the Cedar Bay plant is dispatched by FPL, the less profitable the plant becomes. (Brunault, Dawson)

ISSUE 4: If the Commission approves FPL's proposed Cedar Bay transaction, how will existing contracts between third party providers and CBAS Power, Inc. or subsidiaries be handled, what are the projected costs of fulfilling or terminating such contracts, and how should these costs be recovered?

FIPUG: If the Commission approves FPL's proposed transaction as set forth in the Petition, FPL would assume all of CBAS' current contracts. FPL's proposed transaction also provides for an operating contract whereby FPL will pay Cogentrix personnel to operate the Cedar Bay facility through 2016. The contracts in existence speak for themselves; however, several existing contracts contain 2015 reopeners, which will cause the contracts to reset to market prices. If FPL's petition is approved, the contracts, which all support Cedar Bay generating facility operations, should be recovered in the same manner as all other contracts supporting the operation of a generating facility. (Brunault, Dawson)

ISSUE 5: What are the operational and regulatory risks associated with the FPL's proposed Cedar Bay transaction and has FPL appropriately accounted for these risks under the transaction?

FIPUG: There are many of operational and regulatory risks associated with FPL's proposed Cedar Bay transaction. These include, but are not limited to, equipment malfunctions or breakage at the Cedar Bay Generating Facility, market risks associated with the price of coal and natural gas, compliance with existing and proposed state and federal environmental laws and regulations, and other risks identified during the hearing.

ISSUE 6: Should the Commission approve as prudent FPL's request to approve the purchase and sale agreement between FPL and CBAS Power HOLDINGS, LLC. and terminate the existing purchase power agreement with Cedar Bay Genco?

FIPUG: No, the Commission should not approve as prudent the inflated sum of \$520.5 million dollars that FPL proposes to pay for the Cedar Bay Generating Facility and its attendant purchase power agreement. This sum is overstated and does not represent the value of the assets in question, particularly when one considers that prior sales of the Cedar Bay Generating Facility and the attendant purchase power agreement occurred for significantly less money than \$520 million dollars, even though the purchased power agreement in question had a longer term, and thus greater capacity payments, when these prior transactions took place. The arms-length transaction involving Goldman Sachs is compelling evidence that the amount FPL seeks to charge ratepayers should be denied or significantly reduced.

ISSUE 7: If the Commission approves FPL's proposed Cedar Bay transaction, what is the proper accounting treatment for the transaction?

FIPUG: Should the Commission allow FPL to purchase CBAS Power, Inc., as proposed in FPL's Petition, FPL should follow the FERC USOA Electric Plant Instruction 5, Electric Plant Purchased or Sold, in 18 C.F.R. Part 101 requiring entry of plant at equipment at net book value. The gross original cost for the Cedar Bay Facility and the accumulated depreciation balance should be recorded in FERC Account 102 with a negative acquisition adjustment recorded in FERC Account 114 to reflect Cedar Bay Facility's net value of \$0. And, based on prior cases, FPL

should obtain a private letter ruling from the IRS regarding the deductibility of the PPA Loss Regulatory Asset. (Myers)

Additionally, because the rail cars will not be used to deliver coal to the Cedar Bay facility for the vast majority of the remaining contract term, but will be leased to third parties, the rail car lease payments should be recovered through base rates.

ISSUE 8: If the Commission approves FPL's proposed Cedar Bay transaction, what is the proper rate of return?

FIPUG: Should the Commission allow FPL to purchase CBAS Power, Inc., as proposed in FPL's Petition, the proper rate of return on the asset should be either the debt component of the weighted average cost of capital or the actual interest cost of any debt that FPL may issue to consummate the transaction. (Myers, Dawson)

ISSUE 9: If FPL's petition is approved, how should the Cedar Bay Generating Facility acquisition costs be recovered?

FIPUG: Since the proposed transaction, if approved, results in FPL effectively acquiring the Cedar Bay Generating Facility, a base load coal generating facility, the costs should be recovered in base rates. The fuel and capacity clause is used to recover ongoing purchase power and capacity payments, not the acquisition of a generating facility.

DISCUSSION OF ISSUES 1, 2, 3, and 6

The purchase price of \$520.5 million dollars and other significant costs associated with FPL's proposed transaction with The Carlyle Group, including the payment of a rate of return to FPL on the purchase price and the payment of more than \$300 million in taxes, a sum of more than \$850 million dollars, will be borne by Florida ratepayers. A mountain of evidence of record in this proceeding reflects that FPL's proposed purchase price of \$520.5 million for Cedar Bay is overly inflated and, if approved, will result in excessive and unnecessary expense to ratepayers.

Specifically, documents obtained from The Carlyle Group/Cogentrix, entered into evidence at the July 28, 2015 hearing in this matter, contain information relating to the fair value of Cedar Bay, as determined on behalf of The Carlyle Group/Cogentrix in 2012 and 2013.

FIPUG Exhibits 66 and 67, entered into evidence at the July 28, 2015 hearing, include a 2013

valuation report for the Cedar Bay purchase power agreement prepared by the same firm and person that prepared a 2015 valuation of the Cedar Bay purchase power agreement for FPL, and additional documentation pertaining to The Carlyle Group's prior acquisition of Cedar Bay. At the time of the 2013 valuation, the purchase power agreement in question had a longer term with greater revenues streams than when compared to the 2015 valuation. The evidence of record makes clear that FPL is overpaying, by hundreds of millions of dollars, for Cedar Bay and its related purchase power agreement.

It should be noted that FPL shareholders will be able to earn FPL's Commission-approved 10.25% return on the equity portion of the \$520.5 purchase price, or whatever purchase price the Commission approves. FPL conceded during cross examination that, economically, it does better by paying more for the Cedar Bay asset as compared to paying less for it. Tr. 89. Thus, as FPL's economic interests were and are misaligned with the interests of its ratepayers, close Commission scrutiny of this proposed transaction is warranted. Tellingly, the data, analysis, and sworn testimony presented by the Office of Public counsel shows that in no event should the purchase price for Cedar Bay exceed \$370 million.

Key evidence presented by FIPUG at hearing lead to the inescapable conclusion that ratepayers are being asked to overpay greatly for the Cedar Bay facility and its purchase power agreement. A detailed review of this evidence underscores this point. The evidence of record reflects that FPL's proposed payment of \$520.5 million far exceeds the [REDACTED] million valuation the same person, witness Herr, placed on the same asset for the same purpose in 2013. (FIPUG Ex. 66). In addition to the 2013 valuation report, a 2012 transaction between The Carlyle Group and Goldman Sachs ("Goldman"), involved Goldman selling its remaining [REDACTED] interest in the Cedar Bay asset and its purchase power agreement. Goldman sold this [REDACTED] share for \$ [REDACTED]

million dollars. Truing up this sum points out that Goldman, a well-known investment banking company, placed the fair market value of the the Cedar Bay asset and its purchase power agreement at only [REDACTED] million dollars. Goldman's arms length transaction and sale of its [REDACTED] interest in the Cedar Bay facility and purchase power agreement for [REDACTED] million dollars indicates the total value of Cedar Bay, including the purchase power agreement, is markedly and materially lower than FPL's proposed purchase price of \$520.5 million.

At the July 28, 2015 hearing, FPL touted its currently proposed \$520.5 million purchase price as a benefit to ratepayers on grounds that \$520.5 million purchase price proposed by FPL is "substantially lower" than The Carlyle Group's "original asking price." FIPUG Exhibit 64, however, shows that the actual difference between FPL's proposed \$520.5 million and The Carlyle Group's "original asking price" is merely [REDACTED]. FPL's negotiation efforts did not result in a significant percentage reduction in Carlyle's asking price. In stark contrast, the difference between the currently proposed \$520.5 million and the earlier 2013 valuation of the purchase power agreement is more than [REDACTED] above the 2013 valuation. Further, the trued-up fair market value that Goldman Sachs received in 2012 for the Cedar Bay plant and the purchase power agreement, \$[REDACTED] million, is only [REDACTED] of the \$520.5 million sales price that FPL proposes be shouldered by ratepayers. Stated differently, FPL is asking the Commission to approve a sales price that has gone up more than [REDACTED] in three years since Goldman Sachs sold Cedar Bay and its purchase power agreement to the Carlyle Group. Using FPL's definition of "substantial," the currently proposed \$520 million purchase price is not just "substantially" greater but far exceeds, [REDACTED] the top-end sum of \$370 million that OPC expert witness Brunault testified is the absolute most that FPL should pay for the Cedar Bay asset and its purchase power agreement (Tr. at 382), the 2013 fair valuation of the same asset, [REDACTED]

million dollars, and the trued-up Goldman Sachs sales price of the same asset, \$ [REDACTED] million dollars. Copies of FIPUG Exhibits 64, 66 and 67 are attached hereto.

SETTLEMENT AGREEMENT

The Settlement Agreement makes no downward adjustment to the purchase price of \$520.5 million dollars. As detailed evidence from four independent sources (OPC expert witness Brunault; 2013 valuation report from Duff and Phelps; trued-up Goldman Sachs sales price of Cedar Bay and purchase power agreement; and FIPUG expert appraiser witness Mike Lane) makes clear, FPL's proposed \$520.5 million purchase price is inflated, unreasonable and should be reduced.

There is precedent for this Commission to make or suggest adjustments to Settlement Agreements (or strongly encourage that the parties make such adjustments). For example, this Commission expressed concern with a negotiated settlement agreement in FPL's last rate case and saved ratepayers \$28 million dollars by approving a Settlement Agreement of \$350 million rather than \$378 million as the parties originally proposed. See, Order 13-0023-S-E I, p. 5; Docket No. 120015-EI. This Commission should likewise save ratepayers from excessive charges and reduce the amount the ratepayers will be charged for the Cedar Bay facility and its purchase power agreement from \$520.5 to a lower sum as suggested by OPC expert witness Brunault, FIPUG expert witness Lane, the trued up Goldman purchase price, and the 2013 Duff and Phelps valuation of the same asset.

DISCUSSION OF ISSUE 9

Should the Commission approve FPL's Petition, the \$520.5 million sum should be significantly reduced. The reduced sum should be recovered in base rates, because the asset, Cedar Bay, is a base-load coal facility that FPL will own outright. The capacity clause was

established for the recovery of recurring, annual capacity payments made by a utility, not to recover a lump sum payment for a generating facility.

DATED THIS 13th day of August 2015.

/s/ Jon C. Moyle

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Florida Industrial Power Users Group's Statement of Issues and Positions and Post Hearing Brief was served this 13th day of August 2015 via electronic mail to the following:

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/s/ Jon C. Moyle
Jon C. Moyle

EXHIBIT NO. 64

DOCKET NO: 150075-EI

WITNESS: ROBERT BARRETT

PARTY: FLORIDA INDUSTRIAL POWER USERS GROUP

DESCRIPTION: CARLYLE MARCH 24, 2014 INDICATIVE PROPOSAL

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STRICTLY PRIVATE & CONFIDENTIAL

March 24, 2014

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Re: [REDACTED]

Dear Mr. Hartman,

[REDACTED]

1. FPA Background

Cedar Bay is a 280 MW circulating fluidized bed coal facility operating under the FPA with FPL, which by its terms, runs through January 2025. Pursuant to Appendix A of the FPA, FPL makes certain capacity payments to the Project including: (1) Base Capacity Credits, (2) Operations & Maintenance ("O&M") Credits, and (3) Power-based Capacity Credits.

[REDACTED]

> [REDACTED]

[REDACTED]

EXHIBIT 38
Witness ELIANO
Date 5-27-15
Reporter: Sarah B. Gray

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STRICTLY PRIVATE & CONFIDENTIAL

March 24, 2014

Page 2

> [REDACTED]

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STRICTLY PRIVATE & CONFIDENTIAL
March 24, 2014
Page 4

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

EXHIBIT NO. 66

DOCKET NO: 150075-EI

WITNESS: DAVID HERR

PARTY: FLORIDA INDUSTRIAL POWER USERS GROUP

DESCRIPTION: EXCERPT FROM OPC EXHIBIT #18 TO RUDOLPH
PRE-FILED TESTIMONY

CONFIDENTIAL

DUFF & PHELPS

CONFIDENTIAL

Valuation of Certain Tangible and
Intangible Assets & Liabilities of
Cogentrix Power Holdings LLC

April 5, 2013

Prepared for
Cogentrix Power Holdings LLC

EXHIBIT *18*
Witness *Audited*
Date *7-15-15*
Reporter: Sarah B. Gibroy

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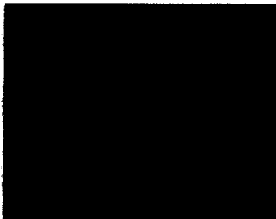
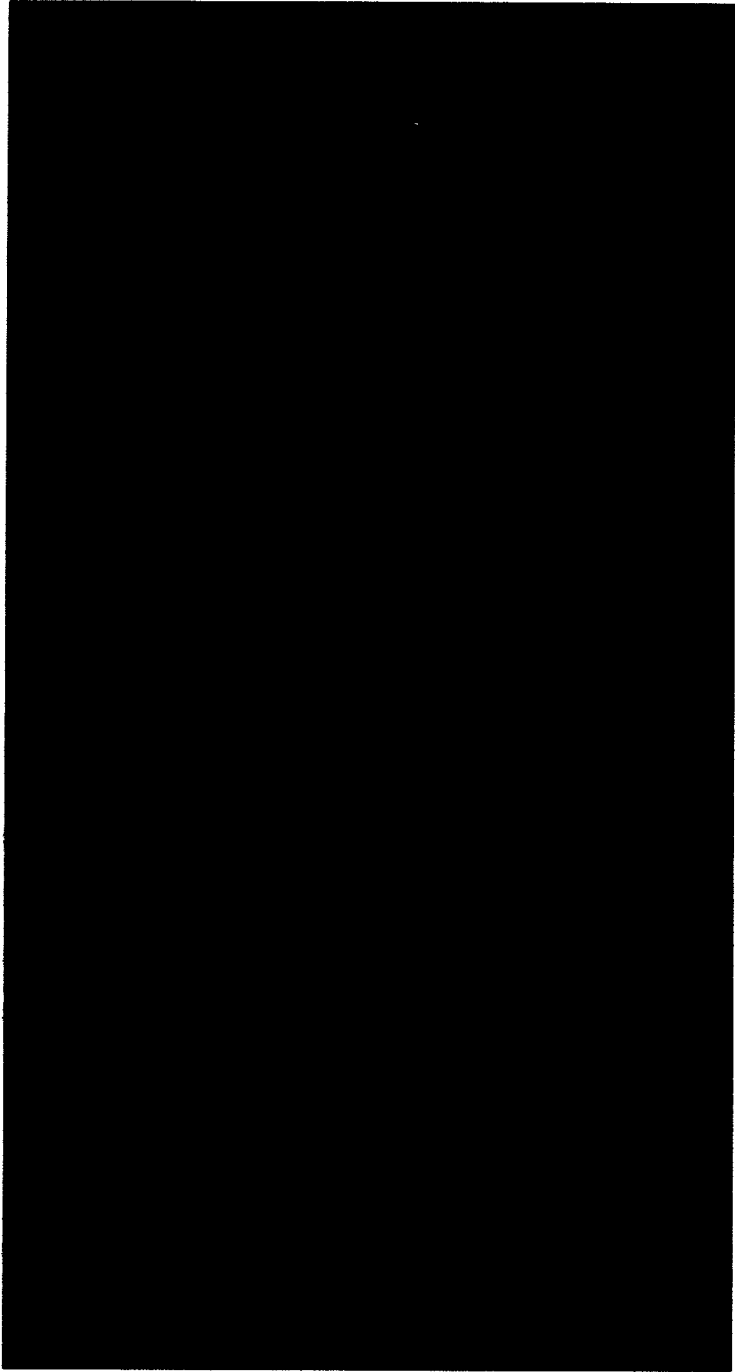


EXHIBIT NO. 67

DOCKET NO:

150075-EI

WITNESS:

DAVID HERR

PARTY:

FLORIDA INDUSTRIAL POWER USERS GROUP

DESCRIPTION:

EXCERPT FROM OPC EXHIBIT #17 TO RUDOLPH
PRE-FILED TESTIMONY

CONFIDENTIAL

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MEMORANDUM

TO: [REDACTED] II LLC 2013 accounting files

FROM: Phil Gregorich

DATE: 8/9/13

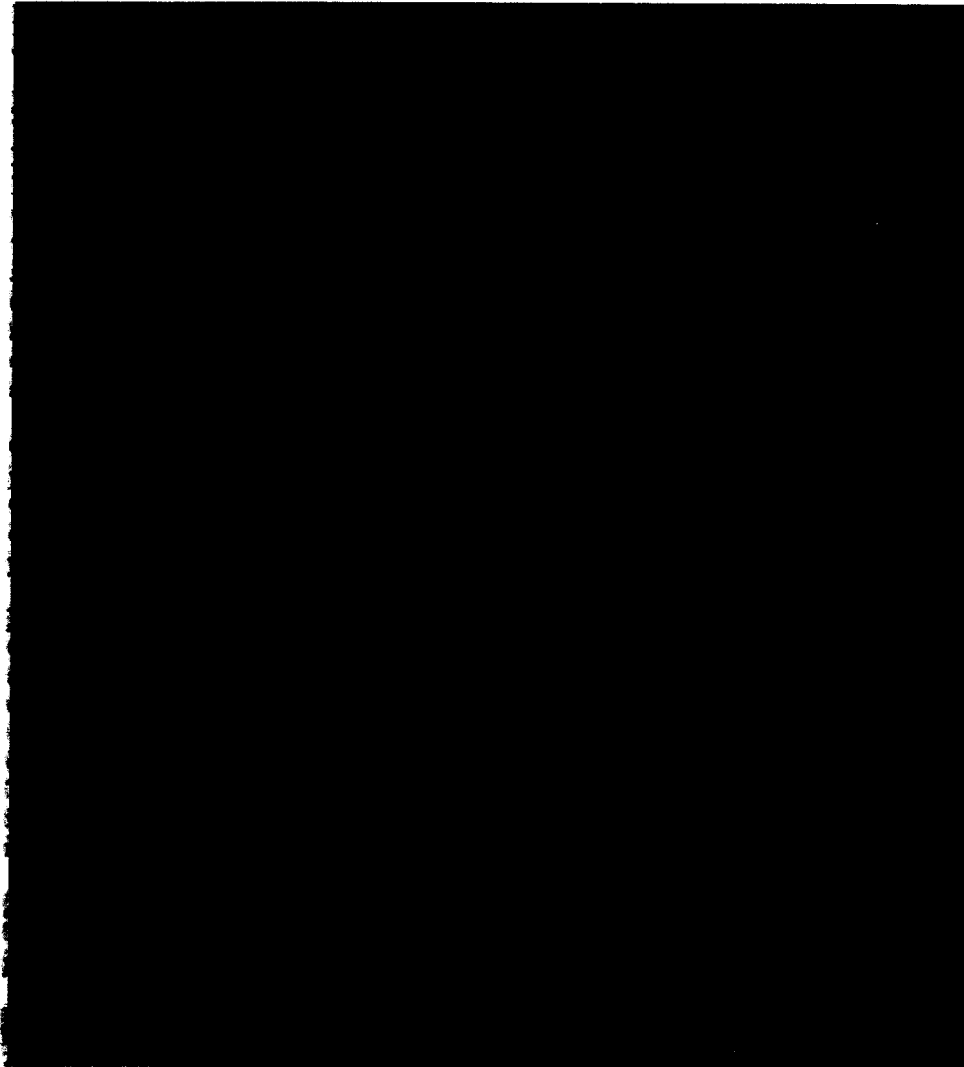


EXHIBIT 17
Witness *Ludlow*
Date *5-15-13*
Reporter: Sarah B. Gray

EXHIBIT C

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: August 26, 2015
Light Company.)
_____)

INFORMATION IDENTIFIED AS CONFIDENTIAL BY FIPUG AND CEDAR BAY:

<u>FIPUG Brief</u>	<u>Pages/Lines</u>	<u>Justification</u>
	<u>Page 5</u>	
	Part of Line 19	§ 366.093(3)(e), Fla. Stat.
	Part of Line 22	§ 366.093(3)(e), Fla. Stat.
	Parts of Line 23	§ 366.093(3)(e), Fla. Stat.
	<u>Page 6</u>	
	Parts of Line 3	§ 366.093(3)(e), Fla. Stat.
	Part of Line 4	§ 366.093(3)(e), Fla. Stat.
	Part of Line 11	§ 366.093(3)(e), Fla. Stat.
	Part of Line 14	§ 366.093(3)(e), Fla. Stat.
	Parts of Line 16	§ 366.093(3)(e), Fla. Stat.
	Part of Line 18	§ 366.093(3)(e), Fla. Stat.
	Part of Line 23	§ 366.093(3)(e), Fla. Stat.
	<u>Page 7</u>	
	Part of Line 1	§ 366.093(3)(e), Fla. Stat.
<u>Hearing Exhibit 64</u>		
	<u>Page CB0044938</u>	
	Part of Line 20 through 21	§ 366.093(3)(e), Fla. Stat.
	Lines 25 through 31	§ 366.093(3)(e), Fla. Stat.
	Part of Line 38 through 44	§ 366.093(3)(e), Fla. Stat.

Page CB0044939
Lines 5 through 47 § 366.093(3)(e), Fla. Stat.

Page CB0044940
Lines 7 through 47 § 366.093(3)(e), Fla. Stat.

Page CB0044941
Lines 7 through 20 § 366.093(3)(e), Fla. Stat.

Hearing Exhibit 66

Page CB0042911
Lines 4 through 58 § 366.093(3)(e), Fla. Stat.

Hearing Exhibit 67

Page CB0028935
Part of Line 10 § 366.093(3)(e), Fla. Stat.
Lines 16 through 49 § 366.093(3)(e), Fla. Stat.

ADDITIONAL INFORMATION DESIGNATED AS CONFIDENTIAL BY CEDAR BAY:

FIPUG Brief

Pages/Lines

Justification

Page 6
Part of Line 21 § 366.093(3)(e), Fla. Stat.

EXHIBIT D

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 &)
Light Company.)
_____)

AFFIDAVIT OF JACOB A. POLLACK IN SUPPORT OF
CEDAR BAY GENERATING COMPANY'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION FOR CERTAIN
INFORMATION IN THE FLORIDA INDUSTRIAL POWER USERS GROUP'S
POST-HEARING STATEMENT OF ISSUES AND POSITIONS
AND POST-HEARING BRIEF

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

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 Cedar Bay's Request for Confidential Classification for Certain Information in the Florida Industrial Power Users Group's ("FIPUG") Post-Hearing Statement of Issues and Positions and Post-Hearing Brief ("Brief") ("Cedar Bay's 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"). 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 is seeking confidential classification for certain information contained in the FIPUG Brief. The confidential information for which Cedar Bay is seeking protection is already identified and addressed in Cedar Bay's Revised Tenth Request for Confidential Classification and Cedar Bay's Request for Confidential Classification of Portions of Hearing Transcript and Official Video Recording.

4. Cedar Bay is requesting confidential classification of this information because it includes Cedar Bay's and/or its affiliates' proprietary confidential information as well as wording that would allow an informed reader to infer such proprietary confidential business information with a great degree of accuracy. 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 Exhibit A and Exhibit C is intended to be and is treated as confidential by Cedar Bay and has not been disclosed to the public.

6. This concludes my affidavit.



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 25th day of August, 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.





Notary Public, State of North Carolina

My Commission Expires: October 1, 2019