

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 30, 2015  
Light Company. )

**REDACTED**

**CEDAR BAY GENERATING COMPANY'S REQUEST FOR  
CONFIDENTIAL CLASSIFICATION OF PORTIONS OF  
HEARING TRANSCRIPT AND OFFICIAL VIDEO RECORDING**

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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 respectfully requests confidential classification for a portion of the official video recording ("Video Recording") and the transcript ("Transcript") of the administrative hearing held before the Florida Public Service Commission (the "Commission") in the above-styled docket on July 28, 2015.

Specifically, Cedar Bay requests confidential classification of a portion of the Transcript and Video Recording covering the cross-examination of the Office of Public Counsel's Witness Gary

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Brunault by counsel for the Florida Industrial Power Users Group ("FIPUG") (the "Confidential Information"). The Confidential

Information consists of information that, as the result of a verbal characterization of the information by FIPUG's counsel, in real time during the hearing, is included in the Transcript and

also in the Video Recording. The characterization describes the relationship of a certain numeric value, already in the record of this proceeding, to a specific confidential numeric value for the Power Purchase Agreement between Florida Power & Light Company ("FPL") and Cedar Bay that is already the subject of pending Requests for Confidential Classification filed by Cedar Bay. The description of the relationship between the numbers stated by FIPUG's counsel, which relationship was not stated by any witness, would reveal Cedar Bay's proprietary confidential business information because it allows an informed reader or viewer to infer, with much greater accuracy than such reader or viewer would be able to if the Confidential Information were not made public, the confidential value for which Cedar Bay is already seeking confidential protection pursuant to its Revised Tenth Request for Confidential Classification (PSC Document No. 04450-15), or a reasonable approximation thereof.

As described below, the Confidential Information for which protection is sought pursuant to this Request for Confidential Classification 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 for Confidential Classification, 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 Cedar Bay's 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.

3. The specific Confidential Information for which Cedar Bay seeks protection by this Request is already covered by Cedar Bay's Revised Tenth Request for Confidential Classification, and consists of a numeric estimate of the Fair Value of the Power

Purchase Agreement between FPL and Cedar Bay (the "PPA") that was prepared in 2012 for Cogentrix Power Holdings LLC, an affiliate of Cedar Bay, by Duff & 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").<sup>1</sup> 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."<sup>2</sup>

4. Cedar Bay is filing this Request in order to prevent information that came into the Transcript and the Video Recording in real time during the hearing in this docket on July 28, 2015 from becoming public, because public disclosure of the Confidential Information will damage Cedar Bay's and its affiliates' competitive business interests.

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<sup>1</sup> 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.

<sup>2</sup> In 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.

5. The Confidential Information consists of a verbal characterization of the Confidential 2013 PPA Value by FIPUG's counsel, in real time during the hearing, which characterization is included in the Transcript and also in the Video Recording of the hearing. The characterization describes Cedar Bay's Confidential Information by stating the relationship of the Confidential 2013 PPA Value, which is already in the confidential record of this proceeding, to a specific numeric value that is included in the non-confidential testimony of Mr. Gary Brunault, a witness for the Office of Public Counsel. The description of the relationship between these two numbers stated by FIPUG's counsel, which was not stated by any witness, 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 or a reasonable approximation thereof. Cedar Bay's counsel timely objected and moved to strike the Confidential Information from the hearing record, which motion to strike was denied. By this Request for Confidential Classification, however, Cedar Bay does not seek to have the subject Confidential Information stricken from the record, but only to have it protected from public disclosure. In fact, both the Confidential 2013 PPA Value and the other value, to which

FIPUG's counsel attempted to compare the Confidential 2013 PPA Value, are already in the record, and thus fully available to the Commissioners, Commission Staff, FIPUG, and the Public Counsel's Office.

6. Cedar Bay filed a Notice of Intent to Request Confidential Classification of the Confidential Information (PSC Document No. 04749-15, hereinafter the "Notice") at approximately 2:06 P.M. on July 29, 2015. Since the Transcript was not yet available, Cedar Bay was unable to attach copies of the Confidential Information, but both redacted and highlighted copies of the Transcript pages (page 377, part of line 23 through line 25 and page 378, lines 1 and 2) are included as exhibits to this Request. In good faith efforts to minimize the impacts on the Commission's timely posting of the Transcript while protecting Cedar Bay's Confidential Information, Cedar Bay obtained access from the Commission Clerk's Office to a draft copy of the Transcript, which contains the subject Confidential Information, at approximately 5:05 P.M. on July 29, and provided a redacted copy of the affected pages of the Transcript to the Commission Clerk's Office at approximately 5:20 P.M. on July 29.

7. In light of the fact that this Request for Confidential Classification is being filed the day after the Transcript became available, and the day after the Notice was filed, this Request

is timely filed. The following exhibits are included and made a part of this request:

- a. Exhibit A consists of pages 377 and 378 of the Transcript, on which the Confidential Information for which Cedar Bay is requesting confidential treatment is highlighted. Exhibit A is submitted separately in a sealed red envelope marked "CONFIDENTIAL." This Request also encompasses the Video Recording of the statement that Cedar Bay seeks to have protected as confidential; it is not practicable to include a tape or other electronic record of the Video Recording, but Cedar Bay's counsel have conferred with the Commission Clerk's Office and understand that it will be technically feasible for the subject statement to be protected from public disclosure in the Video Recording that is available on the Commission's website.
- b. Exhibit B consists of two copies of the subject pages 377 and 378 of the Transcript, 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 subject portion of the Transcript and Video Recording because these portions contain Cedar Bay's proprietary, confidential, and competitively sensitive business information, the disclosure of which would harm or otherwise adversely impact Cedar Bay's and/or its affiliates' competitive business interests. Cedar Bay has treated the Confidential Information contained in the Transcript

and Video Recording as confidential and Cedar Bay has not voluntarily disclosed the Confidential Information contained in the Transcript and Video Recording 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 compare the Confidential 2013 PPA Value to other numbers or values, including the value that he compared it to which is included in the non-confidential testimony of Mr. Brunault.

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 - this numeric value - 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. 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 of Portions of Hearing Transcript and Official Video Recording be granted.

Respectfully submitted this 30th day of July, 2015.



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(850) 385-5416 Facsimile

Attorneys for Cedar Bay  
Generating Company, Limited  
Partnership

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 30th day of July, 2015.

Martha Barrera  
Florida Public Service Commission  
Division of Legal Services  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399

Jon C. Moyle, Jr./Karen Putnal  
Moyle Law Firm, P.A.  
118 North Gadsden Street  
Tallahassee, Florida 32301

Mr. Ken Hoffman  
Florida Power & Light Company  
215 South Monroe Street, Suite 810  
Tallahassee, Florida 32301

J.R. Kelly / John J. Truitt  
Office of the Public Counsel  
c/o The Florida Legislature  
111 W. Madison Street  
Room 812  
Tallahassee, FL 32399-1400

John T. Butler / Maria J. Moncada  
Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, FL 33408

  
\_\_\_\_\_  
Attorney

PSC DOCKET NO. 150075-EI

CEDAR BAY GENERATING COMPANY'S  
REQUEST FOR CONFIDENTIAL  
CLASSIFICATION OF PORTIONS OF  
HEARING TRANSCRIPT AND OFFICIAL  
VIDEO RECORDING

EXHIBIT B

1           Are you saying that there could be less than  
2 370 in your testimony?

3           A     Potentially.

4           Q     So, 370 -- you say it shouldn't be any greater  
5 than 370 --

6           MR. BUTLER: I'm sorry. I'm going to object  
7 to this. This is clearly friendly cross.  
8 Mr. Moyle is trying to establish a point that is  
9 favorable to his position in the case with a  
10 witness who is also favorable to his position in  
11 the case. And I don't believe that it's  
12 appropriate cross examination.

13           COMMISSIONER EDGAR: Mr. Truitt -- your  
14 witness.

15           MR. TRUITT: Procedurally, we would agree with  
16 FPL's objection.

17           COMMISSIONER EDGAR: Mr. Moyle?

18           MR. MOYLE: I respectfully disagree. If you  
19 read the pre-hearing statements, FIPUG's position  
20 with respect to the cost is you ought to look at  
21 the Goldman Sachs number.

22           That's the exhibit that I had Mr. Herr read,  
23 the bottom where it says, [REDACTED]

24 [REDACTED]

25 [REDACTED]

1

2

3

So, our positions are not aligned. FIPUG --

4

MR. WRIGHT: I object and move to strike

5

Mr. Moyle's last comments. He has just tried to

6

triangulate the number that we're not supposed to

7

do -- it's our confidential information.

8

We've talked about this three times. We've

9

talked about the relationship between the 2013

10

number and the 2015 number in Mr. Herr's two

11

studies. That's what's on the table. We're not

12

talking about the other number that can be used to

13

triangulate value.

14

MR. MOYLE: And respectfully, I didn't --

15

COMMISSIONER EDGAR: I -- hold on.

16

Ms. Helton.

17

MS. HELTON: The pre-hearing order says that

18

cross examination shall be limited to witnesses

19

whose testimony is adverse to the party desiring to

20

cross examine. Any party conducting what appears

21

to be a friendly cross examination of the witness

22

should be prepared to indicate why that witness's

23

direct testimony is adverse to its interests.

24

And I hear Mr. Wright's concern. And I think

25

Mr. Moyle has been advised to stay away from any

**EXHIBIT C**

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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Obligation, by Florida Power & ) FILED: July 30, 2015  
Light Company. )  
\_\_\_\_\_ )

<u>Document</u>	<u>Pages/Lines</u>	<u>Justification</u>
<b>Hearing Transcript of July 28, 2015 for Docket No. 150075-EI</b>		

	<u>Page 377</u>	
	Part of line 23 - line 25	§ 366.093(3)(e), Fla. Stat.

	<u>Page 378</u>	
	Lines 1 - 2	§ 366.093(3)(e), Fla. Stat.

<b>Official Video Recording of July 28, 2015 for Docket No. 150075-EI</b>		
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Portions of the video recording consistent with the pages and lines of transcript identified above.		§ 366.093(3)(e), Fla. Stat.
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**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 OF PORTIONS  
OF HEARING TRANSCRIPT AND OFFICIAL VIDEO RECORDING**

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 of Portions of Hearing Transcript and Official Video Recording ("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"), which is an affiliate of Cedar Bay. 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 portions of the hearing transcript from the evidentiary hearing that was held in Florida PSC Docket No. 150075-EI on July 28, 2015, and the video recording of the proceedings that include the corresponding portion of the hearing transcript, as more specifically identified in Exhibits A and C of Cedar Bay's Request for Confidential Classification.

4. Cedar Bay is requesting confidential classification of this information because it is Cedar Bay's proprietary confidential business information, which is competitively sensitive in that it contains highly sensitive economic information. The Confidential Information for which Cedar Bay seeks protection by this Request is already covered by Cedar Bay's Revised Tenth Request for Confidential Classification, and consists of a numeric estimate of the Fair Value of the Power Purchase Agreement between FPL and Cedar Bay (the "PPA") that was prepared in 2012 for Cogentrix Power Holdings LLC, an affiliate of Cedar Bay, by Duff & 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"). 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." In 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.

5. 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. The reason that Cedar Bay and its affiliates keep this particular Confidential Information confidential is that the disclosure of this information - the Confidential 2013 PPA Value - 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 we 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.

6. 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. 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.

7. 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.

8. 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 30<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.



Karen J. Fincher

Notary Public, State of North Carolina

My Commission Expires:

October 1, 2019