

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition to Determine Need for ) Docket No. 040206-EI  
Turkey Point Unit 5 Power Plant )  
by Florida Power & Light Company. ) Dated: May 17, 2004  
\_\_\_\_\_ )

**FLORIDA POWER & LIGHT COMPANY’S OBJECTIONS TO  
CALPINE ENERGY SERVICES, L.P.’S THIRD REQUEST FOR PRODUCTION OF  
DOCUMENTS (NOS. 86-101)**

Florida Power & Light Company (“FPL”) submits the following Objections to Calpine Energy Services, L.P.’s (“Calpine’s”) Third Request for Production of Documents (Nos. 86-101):

**I. Introduction**

On May 4, 2004, Calpine filed and served the following notices on FPL: a) Notice of Taking Deposition Duces Tecum regarding Moray Dewhurst, b) Notice of Taking Deposition Duces Tecum regarding Steven Scroggs, c) Cross-Notice of Taking Deposition Duces Tecum regarding Rene Silva and d) Cross-Notice of Taking Deposition Duces Tecum regarding Steven R. Sim (collectively referred to as the “Deposition Notices”). On May 5, 2004, FPL filed objections to the Deposition Notices (the “Deposition Objections”) because the document requests were not in compliance with the Florida Rules of Civil Procedure.

Subsequent to filing the Deposition Objections, FPL and Calpine agreed to treat items 2 through 5 on Exhibit A to each of the Deposition Notices as requests for production of documents with a service date of May 5, 2004. Additionally, Calpine clarified that the word “you” in items 2 through 5 of Exhibit A to the Deposition Notices refers to the FPL witness to whom the notice of deposition was directed. Accordingly, the restated requests are set forth in

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Exhibit A hereto and, by agreement of the parties, are designated as Calpine's Third Request for Production of Documents (Nos. 86-101).

## **II. Preliminary Nature of These Objections**

FPL's objections stated herein are preliminary in nature. FPL is furnishing its objections consistent with the time frames set forth in the Commission's Order Establishing Procedure, Order No. PSC-04-0325-PCO-EI, dated March 30, 2004 (the "Order Establishing Procedure"), and Rule 1.190(e), Florida Rules of Civil Procedure. Should additional grounds for objection be discovered as FPL develops its response, FPL reserves the right to supplement or modify its objections up to the time it serves its responses. Should FPL determine that a protective order is necessary regarding any of the information requested of FPL, FPL reserves the right to file a motion with the Commission seeking such an order at the time its response is due.

## **III. General Objections**

FPL objects to each and every request for documents to the extent it calls for information protected by the attorney-client privilege, the work product doctrine, the accountant-client privilege, the trade secret privilege, or any other applicable privilege or protection afforded by law, whether such privilege or protection appears at the time response is first made or is later determined to be applicable for any reason. FPL in no way intends to waive such privilege or protection.

FPL is a large corporation with employees located in many different locations. In the course of its business, FPL creates numerous documents that are not subject to Florida Public Service Commission or other governmental record retention requirements. These documents are kept in numerous locations and frequently are moved from site to site as employees change jobs or as business is reorganized. Therefore, it is possible that not every relevant document may

have been consulted in developing FPL's response. Rather, these responses provide all the information that FPL obtained after a reasonable and diligent search conducted in connection with this discovery request. To the extent that the discovery requests propose to require more, FPL objects on the grounds that compliance would impose an undue burden or expense on FPL.

FPL objects to any production location other than FPL's General Offices at 9250 West Flagler Street, Miami, Florida.

FPL also objects to these discovery requests to the extent they call for FPL to prepare information in a particular format or perform calculations or analyses not previously prepared or performed as purporting to expand FPL's obligations under applicable law. FPL will comply with its obligations under the applicable rules of procedure.

FPL objects to providing information to the extent that such information is already in the public record before the Florida Public Service Commission and available to Calpine through normal procedures.

FPL notes that the cumulative effect of the discovery requests in these proceedings make Calpine's requests for irrelevant or marginally relevant information or documents overly burdensome. Even if an individual request on its own may not seem overly burdensome, the fact that FPL is responding to numerous requests with overlapping expedited deadlines creates a cumulative burden on FPL, which must be taken into account when looking at whether responding to a discovery request is overly burdensome.

Several of the discovery requests are not expressly limited to data or analyses performed in connection with the RFP and evaluation that lead to the Petition to Determine Need for Turkey Point Unit 5 that is the subject of this docket. FPL assumes that, unless expressly stated to the contrary, Calpine's discovery requests are intended to refer to data or analyses related to the

Turkey Point Unit 5 project and objects to the extent that any such discovery requests are not so limited, on the grounds that they would be overly broad, irrelevant and unduly burdensome.

FPL objects to each discovery request and any definitions and instructions that purport to expand FPL's obligations under applicable law. FPL objects to the definitions set forth in the Calpine's Third Request For Production of Documents to the extent that they purport to impose upon FPL obligations that FPL does not have under the law. FPL objects to these "definitions" to the extent they do not comply with the Florida Rules of Civil Procedure regarding discovery or the Commission's Order Establishing Procedure.

FPL objects to each discovery request to the extent that the information requested constitutes "trade secrets" which are privileged pursuant to Section 90.506, Florida Statutes.

FPL objects to providing information that is proprietary, confidential business information without adequate provisions in place to protect the confidentiality of the information. FPL in no way intends to waive claims of confidentiality. In particular, FPL objects to providing certain commercially sensitive information to a direct competitor.

Additionally, FPL notes that, in certain circumstances, FPL may determine upon investigation and analysis that information responsive to certain requests to which objections are not otherwise asserted is confidential and proprietary and should not be produced or should be produced only under an appropriate confidentiality agreement or protective order. Certain confidential, proprietary, highly commercially sensitive business information held by FPL (such as information and documents relating to specific contracts or negotiations for contracts relating to Turkey Point Unit 5) contain competitively sensitive information that FPL should not be required to produce to competitors such as Calpine who, on a regular basis, seek to contract with many of the same vendors for the same kinds of materials, equipment and services. This

information should be protected from disclosure entirely where indicated as the harm to FPL's present and future ability to obtain similar contracts or favorable terms far outweighs Calpine's purported need for this level of detailed information in this proceeding. FPL filed a motion for protective order, dated May 6, 2004, to protect this type of information from disclosure.

Moreover, numerous counterparties to contracts with FPL have required FPL to sign non-disclosure agreements related to the terms and conditions of the contracts, or have included non-disclosure provisions in the contractual agreements. FPL notified the counterparties to major equipment and services contracts or negotiations that Calpine has obtained leave to intervene in this proceeding and requested that each counterparty take a position as to whether Calpine can be provided with the vendor's confidential, proprietary business information. FPL's vendors have refused to allow Calpine access to such material, and each of these vendors has either moved for a protective order from the Commission or executed an affidavit that was filed in support of FPL's motion for protective order dated May 6, 2004. Disclosure of the terms and conditions, including pricing, that vendors have provided or offered to provide FPL would impair their own competitive positions in future negotiations with Calpine. Vendors' positions on this subject have not changed. Accordingly, FPL does not intend to produce such information in response to Calpine's competitive "fishing expedition" absent a direct order from the Commission or the express written consent of the counterparty.

Also, FPL objects to Calpine's requests to the extent they seek commercially sensitive security data. This is data so sensitive that even the undersigned counsel could not have access to the data without first undergoing a criminal history investigation, including Federal Bureau of Investigation review of fingerprints. In any case, the undersigned counsel does not have the authority to release such documents to Calpine. Such documents, which may include

assessments of security at the Turkey Point Plant, include "Safeguards Information" that cannot be disclosed to unauthorized third parties pursuant to Section 147 of the Atomic Energy Act of 1954, as amended, 42 USC 2167, and implementing regulations of the U.S. Nuclear Regulatory Commission set forth at 10 CFR 73.21.

FPL further objects to producing any information or documents reflecting the confidential information received from non-party proposers that submitted responses to its RFP solicitation except pursuant to a suitable confidentiality agreement, or order of the Commission. FPL filed a motion for protective order asking the Commission to issue, on an expedited basis, a protective order requiring production of non-party bid data subject to a confidentiality agreement FPL offered to Calpine. FPL also notes that certain proposers in this need determination proceeding have pending motions for protective order regarding their bid data.

As to any other confidential, proprietary business information, irrespective of whether FPL agrees to provide such information in response to such request for production of documents, FPL is not waiving its right to insist upon appropriate protection of confidentiality by means of a confidentiality agreement and/or protective order. FPL hereby asserts its right to require such protection of any and all documents and information it has agreed to or may be required to produce that may qualify for protection under the Florida Rules of Civil Procedure and other applicable statutes, rules and legal principles.

FPL filed a Motion for Protective Order Regarding Calpine's First Request for Production of Documents (Nos. 1-71), dated May 6, 2004. To the extent that Calpine's Third Request for Production of Documents (Nos. 86-101) include discovery requests for the types of documents described in FPL's Motion for Protective Order, FPL adopts and incorporates by

reference its arguments in the Motion for Protective Order as objections to Calpine's Third Request For Production of Documents.

FPL incorporates by reference all of the foregoing general objections into each of its specific objections set forth below as though stated therein. Notwithstanding and without waiving these objections, documents will be produced.

#### **IV. Specific Objections to Calpine's Third Request for Production of Documents**

FPL incorporates by reference and restates its Deposition Objections.

Request for Production No. 86, 90, 94. FPL objects to these requests as unduly burdensome to the extent they seek documents previously provided in response to Request Nos. 4, 19-24, 27-30, or 33, or which are otherwise subject to FPL's Motion for Protective Order dated May 6, 2004.

Further, FPL objects to these requests to the extent they seek information protected by the attorney-client privilege or the work product doctrine.

FPL also objects to these requests to the extent they seek proprietary, confidential business information within the meaning of Section 366.093, Florida Statutes. Please see FPL's more detailed objections above related to commercially sensitive FPL data or vendor-specific data.

As to documents requested that have also been requested in other Calpine discovery, FPL is not waiving, and indeed, is incorporating by reference, all previously stated objections.

Request for Production Nos. 87, 91, and 95. FPL objects to these requests as unduly burdensome to the extent they seek documents previously provided in response to Request Nos. 19 and 27. Also, FPL objects to these requests to the extent they seek documents that are subject to FPL's Motion for Protective Order dated May 6, 2004.

Also, FPL objects to Request Nos. 87, 91, and 95 to the extent these requests call for FPL to disclose information that is protected by the attorney-client privilege or the work product doctrine. These requests seek documents that would include privileged attorney-client communications. These requests also seek documents that would include materials prepared in anticipation of litigation and subject to the attorney work product privilege against disclosure.

FPL objects to these requests to the extent they seek proprietary, confidential business information of non-party bidders. Please see FPL's more detailed objection above related to bid data. In its May 6, 2004, Motion for Protective Order, FPL asked the Commission to order production of bid data subject to FPL's Confidentiality Agreement.

As to documents requested that have also been requested in other Calpine discovery, FPL is not waiving, and indeed, is incorporating by reference, all previously stated objections.

Request for Production Nos. 88, 92, and 96. FPL objects to Request Nos. 88, 92, and 96 as unduly burdensome to the extent these requests call for FPL to produce information previously provided in response to Request No. 40. Further, FPL objects to the extent these requests ask FPL to disclose information that is protected by the attorney-client privilege or the work product doctrine. These requests seek documents that would include privileged attorney-client communications. These requests also seek documents that would include materials prepared in anticipation of litigation and subject to the attorney work product privilege against disclosure.

As to documents requested that have also been requested in other Calpine discovery, FPL is not waiving, and indeed, is incorporating by reference, all previously stated objections.

Request for Production Nos. 89, 93 and 97. FPL objects to these requests as unduly burdensome to the extent they seek information previously provided in response to Request No.



47. Further, FPL objects to Request Nos. 89, 93 and 97 to the extent these requests call for FPL to disclose information that is protected by the attorney-client privilege or the work product doctrine. These requests seek documents that would include privileged attorney-client communications. These requests also seek documents that would include materials prepared in anticipation of litigation and subject to the attorney work product privilege against disclosure.

As to documents requested that have also been requested in other Calpine discovery, FPL is not waiving, and indeed, is incorporating by reference, all previously stated objections.

Request for Production Nos. 98-101. FPL objects to these requests as unduly burdensome to the extent they seek information previously made available to Calpine in response to Request No. 26, or which are otherwise subject to FPL's Motion for Protective Order dated May 6, 2004.

FPL also objects to these requests to the extent they seek materials that include materials prepared in anticipation of litigation or subject to the attorney work product privilege against disclosure.


Further, FPL objects to these requests to the extent they seek proprietary, confidential business information within the meaning of Section 366.093, Florida Statutes. Please see FPL's more detailed objection above regarding FPL commercially sensitive data or vendor-specific data. Also, please see FPL's objection above related to bid data. In its May 6, 2004, Motion for Protective Order, FPL asked the Commission to order production of bid data subject to FPL's Confidentiality Agreement.

As to documents requested that have also been requested in other Calpine discovery, FPL is not waiving, and indeed, is incorporating by reference, all previously stated objections.

Respectfully submitted,

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By:   
Robert E. Stone, Esquire  
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## CERTIFICATE OF SERVICE

**I HEREBY CERTIFY** that a true and correct copy of Florida Power & Light Company's Objections to Calpine's Third Request for Production of Documents (Nos. 86-101) has been furnished by hand delivery (\*) and by United States Mail this 17th day of May, 2004, to the following:

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By:   
\_\_\_\_\_  
Jack Leon, Esquire  
Fla. Bar No. 230197

## EXHIBIT A

86. All documents that you (Moray Dewhurst) sent or received which relate to Turkey Point Unit 5.
87. All documents that you (Moray Dewhurst) sent or received which relate to the RFP process you conducted.
88. All documents that you (Moray Dewhurst) sent or received which relate to the objections raised about the RFP.
89. All documents that you (Moray Dewhurst) sent or received which relate to this need determination process pending before the PSC or DEP for the Turkey Point Unit 5 project.
90. All documents that you (Rene Silva) sent or received which relate to Turkey Point Unit 5.
91. All documents that you (Rene Silva) sent or received which relate to the RFP process you conducted.
92. All documents that you (Rene Silva) sent or received which relate to the objections raised about the RFP.
93. All documents that you (Rene Silva) sent or received which relate to this need determination process pending before the PSC or DEP for the Turkey Point Unit 5 project.
94. All documents that you (Steven R. Sim) sent or received which relate to Turkey Point Unit 5.
95. All documents that you (Steven R. Sim) sent or received which relate to the RFP process you conducted.
96. All documents that you (Steven R. Sim) sent or received which relate to the objections raised about the RFP.
97. All documents that you (Steven R. Sim) sent or received which relate to this need determination process pending before the PSC or DEP for the Turkey Point Unit 5 project.
98. All documents that you (Steven Scroggs) sent or received which relate to Turkey Point Unit 5.
99. All documents that you (Steven Scroggs) sent or received which relate to the RFP process you conducted.
100. All documents that you (Steven Scroggs) sent or received which relate to the objections raised about the RFP.
101. All documents that you (Steven Scroggs) sent or received which relate to this need determination process pending before the PSC or DEP for the Turkey Point Unit 5 project.