

**Florida Power**  
CORPORATION

**JAMES A. MCGEE**  
SENIOR COUNSEL

June 3, 1999

Ms. Blanca S. Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

990723-EI JUN 4 1999

Re: Petition of Florida Power Corporation for approval of an agreement to restructure existing cogeneration contracts with Polk Power Partners, L.P. and Orange Cogeneration Limited Partnership; **Request for Confidential Treatment.**

Dear Ms. Bayo:

Enclosed for filing is the Joint Request of Florida Power Corporation and El Paso Power Services Company for Confidential Classification of portions of Exhibits 1 and 2 to the contemporaneously filed subject Petition. Attachment A to the Request is an unredacted copy of the documents which highlights in transparent ink the confidential information subject to this Request, and is contained in a separate envelope labeled "Confidential." **These documents should receive confidential treatment pending a decision on this Request.** Two redacted copies of the Exhibits are also enclosed. In addition, redacted copies have been attached to the Petition.

Please acknowledge your receipt and filing of the above on the enclosed copy of this letter and return same to me.

Very truly yours,

James A. McGee

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

JAM:ams  
Enclosures  
cc: D. Bruce May, Esquire

- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU \_\_\_\_\_
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
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- RRR \_\_\_\_\_
- SEC \_\_\_\_\_
- WAW \_\_\_\_\_
- OTH \_\_\_\_\_

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A Florida Progress Company

DOCUMENT NUMBER - DATE

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In re: Petition of Florida Power Corporation for approval of an agreement to restructure existing cogeneration contracts with Polk Power Partners, L.P. and Orange Cogeneration Limited Partnership.

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Docket No. \_\_\_\_\_

Submitted for filing:  
June 4, 1999

**JOINT REQUEST FOR CONFIDENTIAL CLASSIFICATION**

Florida Power Corporation (Florida Power or the Company) and El Paso Power Services Company (El Paso), pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., hereby request confidential classification of designated portions of (a) Exhibit 1 to the above captioned Petition of Florida Power filed contemporaneously with this Joint Request, which consists of that certain Master Agreement to Amend and Restate Contracts for the Purchase of Firm Capacity and Energy, dated May 19, 1999, between Florida Power and El Paso (the Agreement), and (b) Exhibit 2 to the Petition, which consists of a calculation of the savings to Florida Power's customers from discounted capacity payments pursuant to the Agreement.<sup>1</sup> In support of their request, Florida Power and El Paso state as follows:

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<sup>1</sup> Attachment A to this request contains Exhibits 1 and 2 to the Petition, with the confidential information subject to this request highlighted in transparent ink. These documents have been placed in a separate, attached envelope marked "Confidential" and should be given confidential treatment pending a decision on this request.

## **Background**

1. Florida Power is a party to existing negotiated cogeneration contracts with (a) Royster Phosphates, Inc. (later assigned to Polk LP), dated March 17, 1991, with a committed capacity of 30.8 megawatts (the Royster Contract), (b) Mulberry Energy Company (later assigned to Polk LP), dated March 12, 1991, with a committed capacity of 79.2 megawatts (the Mulberry Contract), and © CFR Bio-gen Corporation (later assigned to Orange LP), dated November 19, 1991, with a committed capacity of 74.0 megawatts (the Orange Contract), (collectively, the Existing Contracts). By their terms, the Royster, Mulberry and Orange Contracts terminate on August 8, 2009, August 31, 2024, and December 31, 2025, respectively. Each of the Existing Contracts have been approved for cost recovery by the Commission.

2. The Mulberry and Royster Contracts are both served from a single cogeneration facility located in Polk County (the Mulberry Facility). The Orange Contract is served from a facility located in Polk County (the Orange Facility) that also serves a 23 megawatt cogeneration contract with Tampa Electric Company. El Paso will acquire the three Existing Contracts by assignment upon consummation of the restructuring which is the subject of the Petition.

3. Because Florida Power's various cogeneration contracts, including the three Existing Contracts, have proven to be relatively high-cost sources of generation, the Company has adopted a mitigation strategy under which a number of initiatives have been undertaken intended to reduce the adverse impact of these contracts on Florida Power and its customers. These initiatives have included the establishment of curtailment provisions for minimum load conditions, strict

enforcement of contractual pricing provisions, early termination (buydown) agreements, and the outright purchase of a large cogeneration facility and termination of the associated purchase power agreements. The agreement to restructure the Existing Contracts that is the subject matter of the Petition is another, innovative example of this ongoing strategy to mitigate the cost of cogeneration purchases to Florida Power's customers.

4. After a series of extensive negotiations, Florida Power and El Paso entered into the May 19, 1999 Agreement. The Agreement, which is discussed more fully in the Petition, significantly restructures and amends the Existing Contracts. Among other things, the Agreement reduces Florida Power's capacity payments under the Existing Contracts.

5. As an integral part of the restructuring of the Existing Contracts, El Paso will acquire the three Existing Contracts by assignment. The effectiveness of the Agreement, however, is conditioned upon El Paso's ability to restructure the financing of the Orange and Mulberry Facilities. El Paso is currently in negotiations with third parties to this transaction.

**The Designated Proprietary Confidential Business Information  
Should Be Protected From Disclosure**

6. Subsection 366.093(1) provides that any records "found by the commission to be proprietary confidential business information shall be kept confidential and shall be exempt from s. 119.07(1) [requiring disclosure under the Public Records Act]." Proprietary confidential business information includes, but is not limited to, "[i]nformation concerning . . . contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for

which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms.” Section 366.093(3)(d). It also includes “[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.” Section 366.093(3)(e).

7. The designated commercial terms of the Agreement and the calculation of cost savings Florida Power’s customers will receive as a result of the Agreement’s capacity discounts, Exhibits 1 and 2 to the Petition, respectively, constitute proprietary confidential business information entitled to protection under Section 366.093 and Rule 25-22.006, and is intended to be and is treated by Florida Power and El Paso as private and has not been disclosed. First, disclosure of the Agreement’s key commercial terms would impair Florida Power’s efforts to consummate the Agreement itself, and to obtain the benefits it offers for Florida Power’s customers. Public disclosure of the details of the cost and revenue streams and other highly negotiated terms of the Agreement would substantially impair the ability of El Paso to complete the timely restructuring of all of the contracts and financings required to close the transaction. Knowledge of this confidential information would provide other contracting parties engaged in negotiations with El Paso with unfair leverage in those negotiations, thus impairing El Paso’s ability to obtain viable contracts. If El Paso is unable to negotiate commercially satisfactory contracts with these other parties, it will not proceed with the proposed, restated Agreement, and Florida Power will not be able to provide the benefits of the Agreement to its customers.

8. In addition, disclosure of the requested confidential information would jeopardize the ability of both El Paso and Florida Power to negotiate similar restructuring transactions with third parties at other cogeneration facilities. This would impair the competitive business of El Paso and would impair the efforts of Florida Power to contract for the restructuring of its cogeneration agreements on favorable terms, to the detriment of its customers. In the case of El Paso, other contract purchasers of QF power who are potential parties to restructuring transactions would begin negotiations using the terms of the Agreement most favorable to Florida Power as a floor from which to negotiate up, while El Paso's competitors would use the confidential information to undercut its offers to other QF contract purchasers.

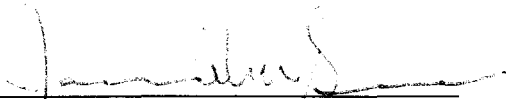
9. In the case of Florida Power, its QF suppliers who may be interested in contract restructuring would use the terms of the Agreement most favorable to El Paso as a beginning point in their negotiations, thus compromising the Company's bargaining position. Given the number of Florida Power's high cost QF contracts, the potential harm to the Company and its customers from disclosure of the Agreement's sensitive commercial terms is particularly serious.

10. To facilitate the timely filing hereof and the contemporaneously filed Petition, the undersigned counsel for Florida Power has been authorized by El Paso to sign this request on its behalf. Confirmation of this authorization will be provided by El Paso.

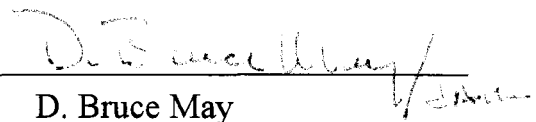
WHEREFORE, Florida Power respectfully requests that the highlighted information in Attachment A be classified as confidential for the reasons set forth above.

Respectfully submitted,

OFFICE OF THE GENERAL COUNSEL  
FLORIDA POWER CORPORATION

By 

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