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December 5, 2001

-VIA FEDERAL EXPRESS-

Blanca S. Bayó, Director
Records and Reporting
Florida Public Service Commission
4075 Esplanade Way, Room 110
Tallahassee, Florida 32399-0850

John T. Butler, P.A.
305.577.2939
jbutler@steelhector.com

**Re: Motion for Protective Order
CONFIDENTIAL INFORMATION
Docket No. 001148-EI**

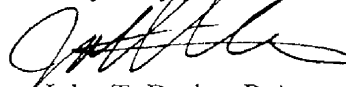
Dear Ms. Bayó:

Enclosed for filing on behalf of Florida Power & Light Company in Docket No. 001148-EI are the original and seven copies of Florida Power & Light Company's Motion For Protective Order Regarding the South Florida Hospital and Healthcare Association's First Set of Interrogatories and Request to Produce, together with a diskette containing the electronic version of same. The enclosed diskette is HD density, the operating system is Windows 98, and the word processing software in which the document appears is Word 97. Please note that the original copy of the motion has an Attachment A which contains **CONFIDENTIAL INFORMATION**. Therefore, FPL is filing the original motion in a separate envelope stamped **CONFIDENTIAL**. The remaining copies of the motion do not contain Attachment A or any other confidential information.

FPL seeks confidential classification of the confidential information in Attachment A, as well as a ruling that FPL need not disclose the confidential information to the South Florida Hospital and Healthcare Association or other parties in this docket and that the Commission will return the confidential information to FPL at the conclusion of this proceeding.

If there are any questions regarding this transmittal, please contact me at 305-577-2939.

Very truly yours,



John T. Butler, P.A.

enc.

cc: Counsel for Parties of Record

DOCUMENT NUMBER-DATE
15254 DEC-65
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**In re: Review of the retail rates of
Florida Power & Light
Company.**

) **Docket No. 001148-EI**
) **Dated: December 5, 2001**
)
)

**FLORIDA POWER & LIGHT COMPANY'S SECOND
MOTION FOR PROTECTIVE ORDER REGARDING
SOUTH FLORIDA HOSPITAL AND HEALTHCARE ASSOCIATION'S
FIRST SET OF INTERROGATORIES AND REQUEST FOR DOCUMENTS**

Pursuant to Florida Administrative Code Rule 25-22.006(6) and Section 366.093, Florida Statutes (2000), Florida Power & Light Company ("FPL") moves that the Commission issue a protective order finding that (1) the information requested in the South Florida Hospital and Healthcare Association's First Set of Interrogatories and Request to Produce (the "SFHHA Request") and identified in Appendix A hereto (the "Confidential Information") is proprietary confidential business information exempt from Section 119.07(1), Florida Statutes (2000), (2) the Confidential Information should not be disclosed to third parties, including the SFHHA and other parties in this docket, and (3) all copies of the Confidential Information should be returned by the Commission to FPL at the close of this docket. As grounds for this motion, FPL states:

1. On October 10, 2001, the SFHHA Request was submitted to FPL. FPL responded to the SFHHA Request on November 9, 2001. However, in its objections and request for clarification of the SFHHA Request that FPL served on October 22, 2001, FPL asked the SFHHA for clarification as to whether Request No. 3 seeks documents that relate to comparisons of various cost elements between FPL and other utilities or only comparisons at the total-company level. FPL's November 9 response made documents available that provided total-

company comparisons, but based on clarification that FPL received from the SFHHA, FPL is now also producing documents that make cost-element comparisons.

2. Among the cost-element comparisons in FPL's possession that would be responsive to the SFHHA's Request No. 3 are comparisons that are made available to FPL as a participant in a benchmarking survey conducted by the Edison Electric Institute ("EEI"), a trade association representing the investor-owned utility industry. FPL is a member of EEI. Participants in the EEI's benchmarking survey provide sensitive cost information to EEI for those comparisons based on EEI's commitment to all participants, and each participant's commitment to EEI, that the cost information will be kept confidential and disclosed only to other participants that have also shared their cost information. All participants agree to complete confidentiality and privacy, and to restricted access to the information, as a condition of participating in the survey. In order to enforce this commitment, EEI allows only participants in the survey to access the encrypted survey website where the cost-comparison information appears and requires all participants to comply with confidentiality, privacy and other terms limiting access to and use of the information. EEI's confidentiality policy is further explained and documented in the affidavit of EEI's William H. Mayer, Manager, Customer Operations, which is attached hereto as Exhibit 1 (the "EEI Affidavit").

3. FPL's confidentiality commitment to EEI -- and EEI's confidentiality commitment to all survey participants that have shared sensitive cost information -- can be fulfilled only by withholding the Confidential Information from the SFHHA and other parties to this docket. As explained in the EEI Affidavit, all survey participants that provided cost information for the cost comparisons did so on the express understanding that it would not be disclosed to *any* entity that is not a survey participant, because disclosure of such information to

others would cause competitive harm to the survey participants. This understanding can be honored only by directing FPL not to disclose the Confidential Information to either the SFHHA or other parties in this docket.

4. FPL has asked EEI to permit disclosure of the Confidential Information on the usual basis that it would be used by the SFHHA and other parties in this docket only for the purpose of this proceeding and would be further disclosed only to the parties' employees, consultants and counsel with a "need to know." Because of the commercially sensitive nature of the information, the potential for competitive harm, and EEI's commitment to the survey participants, however, EEI has declined FPL's request. Further, EEI advised FPL that it does not believe this Commission has jurisdiction to require disclosure of data as to survey participants that are not Florida utilities regulated by this Commission.

5. The Confidential Information comprises only a small portion of the total cost-comparison information that is responsive to the SFHHA Request. The remainder of the responsive information is being made available to the SFHHA on either a confidential or non-confidential basis.

6. FPL's request for confidential classification is warranted under Section 366.093(3)(a)), because the cost comparisons comprising the Confidential Information are trade secrets of EEI and its members. Moreover, disclosure of the cost comparisons in the Confidential Information could cause competitive harm to the businesses of the EEI survey participants (*see* Section 366.093(3)(e)). Finally, forcing FPL to violate the express terms of its confidentiality agreement with EEI could harm FPL's own business operations, as well as its customers, by depriving FPL of access to cost-comparison information in the future (*see* Section 366.093(3)).

7. This Motion satisfies the requirements of Rule 25-22.006(4) as follows. The entire substantive contents of the EEI cost comparisons comprising the Confidential Information are confidential. Highlighting the Confidential Information in Appendix A or enclosing copies of the EEI cost comparisons with all of the Confidential Information redacted in Appendix B would serve no purpose. Moreover, the Confidential Information is voluminous, so highlighting and redacting all of it would be burdensome. Accordingly, FPL has instead included a cover note to Appendix A stating that the entire contents are confidential and has included a list of the documents comprising the Confidential Information as Appendix B rather than redacted (and therefore blank) copies of the EEI cost comparisons themselves. FPL has not attached a separate, line-by-line justification of the confidential status for the Confidential Information because the justification set forth in Paragraph 5 above applies to all of the Confidential Information.

8. Classification of the Confidential Information as proprietary confidential business information for eighteen months as contemplated by Rule 25-22.006(9) will not adequately protect the interests of EEI and its members. As explained above, the EEI members provided cost information to EEI with the expectation that it would be disclosed only to other EEI members. That expectation is not time-limited. In view of the fact that the protection for the Confidential Information that FPL seeks in this Motion will mean that the Confidential Information will not be used in this docket, continued possession of the Confidential Information by the Commission past the close of this docket would serve no useful purpose. Therefore, FPL asks the Commission to find that the Confidential Information will remain classified as proprietary confidential business information and exempt from Section 119.07(1) until the close of this docket and then will be returned to FPL by the Commission.

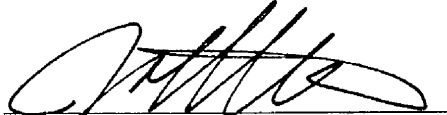
WHEREFORE, FPL respectfully moves the Commission to issue a protective order finding that (1) the Confidential Information is proprietary confidential business information exempt from Section 119.07(1), Florida Statutes (2000), (2) the Confidential Information should not be disclosed to third parties, including the SFHHA and other parties in this docket, and (3) all copies of the Confidential Information should be returned by the Commission to FPL at the close of this docket.

Respectfully submitted,

R. Wade Litchfield, Esq.
Attorney
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408-0420
Telephone: 561-691-7101

Steel Hector & Davis LLP
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Telephone: 305-577-2939

By:



John T. Butler, P.A.
Fla. Bar No. 283479

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Second Motion for Protective Order Regarding the South Florida Hospital and Healthcare Association's First Set of Interrogatories and Request to Produce has been furnished by overnight delivery (*) or United States Mail this 5th day of December, 2001, to the following:

Robert V. Elias, Esq.*
Legal Division
Florida Public Service Commission
2540 Shumard Oak Boulevard
Room 370
Tallahassee, FL 32399-0850

Florida Industrial Power Users Group
c/o John McWhirter, Jr., Esq.
McWhirter Reeves
400 North Tampa Street, Suite 2450
Tampa, FL 33601-3350

Thomas A. Cloud, Esq.
Gray, Harris & Robinson, P.A.
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Orlando, Florida 32801

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Joseph A. McGlothlin, Esq.
Vicki Gordon Kaufman, Esq.
McWhirter Reeves
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Tallahassee, Florida 32301

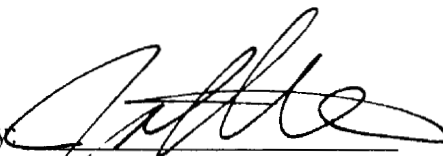
By 
John T. Butler, P.A.

EXHIBIT 1

AFFIDAVIT OF WILLIAM H. MAYER

STATE OF ARIZONA)
)
COUNTY OF MARICOPA)

BEFORE ME, the undersigned authority, this day personally appeared William H. Mayer, who, being first duly sworn, deposes and says:

My name is William H. Mayer. I am employed by the Edison Electric Institute ("EEI") in the position of Manager, Customer Operations. I am a resident of the State of Virginia, am over eighteen (18) years and make this affidavit based upon my personal knowledge. In my role as Manager, Customer Operations, I manage the confidential benchmarking survey discussed below.

EEI is the association of United States investor-owned electric utilities and industry affiliates and associates worldwide. Its domestic members generate approximately three-quarters of all the electricity generated by electric utilities in the U.S. and service about 70 percent of all ultimate customers in the nation. Florida Power & Light Company ("FPL") is a member of EEI.

FPL is also a participant in an EEI benchmarking survey involving submission of cost sensitive data by participating utilities subject to the express agreement between EEI and each participant and each participant to the other participants and EEI that the data submitted would be kept confidential and subject to the strictest privacy standards, and access to such data would be restricted to only participants in the survey. All parties, including FPL, understand that they cannot share any survey data with any non-participant; however, each party can share its own information which was submitted to the survey as it sees fit.. A copy of EEI's privacy statement for such participant information is attached as Exhibit 1.

I have been advised that FPL possesses certain documents containing comparative data that were printed out from EEI's encrypted survey website and which have been requested pursuant to a request for production of documents that has been made on FPL by one of the intervenors in Docket No. 001148-EI before the Florida Public Service Commission. FPL's counsel has asked whether EEI will permit it to disclose those documents to the intervenor. I have advised FPL's counsel that EEI cannot consent to disclosure of the documents for the following reasons:

- Disclosure of such confidential information outside of the participants in the survey will cause competitive harm to the other participants,
- Each participant in the survey provides commercially sensitive cost information for the cost comparisons with the express understanding it will not disclose such information to any third party that is not a participant in the survey,
- Each participant agrees to keep such information confidential, private and subject to restricted access limited only to participants in the survey, and
- The Information is only a small portion of the information requested and can be easily obtained through other means.

FURTHER AFFIANT SAYETH NAUGHT.

William H May

Before me the undersigned authority personally appeared, on this the 29 day of NOV, 2001, _____, who is personally known to me



Marian L Choate
Notary Public, State of

MARIAN L. CHOATE
Printed Name of Notary



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For assistance, email [✉ help@agaecidatasource.com](mailto:help@agaecidatasource.com) or call the Helpline at ☎ (317) 293-2426.

DataSource 2001 Privacy Policy

We will make every effort to provide a safe, secure user experience and ensure that the information you submit remains private. Data will only be used for the purposes set forth in Terms of Use.

When you enter your data online, your information is scrambled using SSL encryption technology before being sent over the Internet. Although we cannot guarantee encryption or privacy, SSL makes it very difficult for your information to be stolen or intercepted while being transferred.

Only participating companies with written authorization from Collet and Schafer, Incorporated, are authorized to view this site. Any authorization is limited to *employees* of the participating firm (and not to consultants and other parties).

Thank you for using the web-based DataSource 2001.

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American Gas Association



Enter text below
to search FAQs



Show All FAQs

Frequently Asked Questions (FAQs)

Who may use the DataSource?

The DataSource is for the exclusive use of participating AGA and EEI member companies. The questions, answers, and software are strictly limited to the **employees** of participating member companies.

Is it true that you browse privileges will be granted on a section-by-section basis in 2001?

Yes. You must always complete Section 1. Every section which you complete (valid, reasonable data in all the required questions) will be available to you after the scrub team approves the data.

Why are some of the terms in the questions *italicized*?

Information regarding italicized terms may be found in the Glossary.

What are the little red asterisks to the left of some of the questions?

These are required questions. No section is considered to be complete until you have submitted valid data for all of the required questions. The Status area (look at the Entry tab) will give you an excellent recap of your responses to required questions.

What are Data Checkpoints?

These are new in 2001. They are simply calculations which are based on several of your responses. You can use them as a good way to check your data for errors or misunderstandings. They are a tool to look for reasonable, accurate data.

What are the questions marked (calculated)?

These were implemented for browsing results last Fall. They are simply calculations which are based on several of your responses. You may not enter data directly for these questions, but they provide information which you often need when browsing results.

Does it matter when I work on the DataSource?

We try to perform any scheduled maintenance to the system on Sunday mornings. You will experience the best response times if you start your data entry early. Procrastinators will run into a lot of traffic on the server right before the March 31 due date.

Why are all the Not Applicable buttons included?

Not Applicable is supplied on every question. It is appropriate to use if and only if the premise of the question does not apply to you. The Status area will help you and the scrub teams review submissions for appropriate use of Not Applicable.

What's the difference between Not Applicable and Not Available.

Not Applicable means that the premise of the question does not apply to your company. Not Available means that you do not have the data and cannot estimate it, or your company policy prevents you from sharing the data (never valid on required questions!).

I clicked Not Available and then I found the numbers. How do I enter them?

Any response entered into the response area will supersede any Not Available or

Any responses entered into the response area will supersede any previous responses. Not Applicable that may have been ticked. Data always win!

Why not just enter 0 instead of Not Applicable?

You should only enter a zero when your answer is really zero. Zeroes will be included in averages when you browse the results. Not Applicable and Not Available responses will not.

How should I handle entering percentages?

The first rule is to omit the percent sign. The next rule is that an entry of 100 indicates 100 percent. An entry of 1 indicates 1 percent.

How should dollar amounts be entered?

Data should always be entered in U.S. Dollars. They should NOT be entered in thousands. Canadian dollars should be converted to U.S. Dollars before data are entered. Please use US\$.70/CDN\$ for consistency.

I changed the data on Screen 1-1. I went to another screen and came back to 1-1 and my changes weren't there. What gives?

You always have to use the Submit button at the bottom of each entry screen to register your changes in the database.

What are all the Refresh buttons?

Whenever the system calculates a value or presents you with a Data Checkpoint, a refresh button is supplied. Refresh will update the calculation with whatever changes you have made on the screen. Refresh is just a Submit that leaves you on the same page.

Can two people be working on our company's data at the same time?

Yes. The database is set up so that you can have several people from your company working on data entry simultaneously. Please be careful to share your password only with appropriate employees of your company.

How do I print my whole questionnaire?

Just use the Print tab. Its Entry option will let you print your questionnaire a section at a time. Please be patient as you request a section. If you start to print before the browser has loaded the entire section, you may not print all the questions.

Who may access my company's questionnaire?

Your password gives you access to your company's data only. When the DataSource results are published, you will have access to all participants' data.

What are all the red messages that I sometimes get when I click Submit?

When you click Submit, the DataSource decides if checks your responses against some very basic criteria. If anything doesn't pass muster, you will see a message in red, and you will not proceed to the next subsection.

May I enter decimal positions in my numbers?

Yes. As you enter data, decimal places will always be accepted; however, when browsing data, results may be rounded for viewing all companies consistently.

What should I do when I think we're finished with a section?

The last question in each section lets you indicate whether you're finished with the section. The Status area is also very important. It helps you evaluate the completeness of your data.

What if we find that we need to make changes after we've signalled completion at the end of a section?

So that wasn't really your final answer? Just go ahead and make the change in

your questionnaire. As long as it's before the deadline, we'll get your changes. After the deadline, check the Home Page for information regarding changes.

I bookmarked a page in the questionnaire and now I'm having trouble jumping to it. What should I do?

You should make a simple bookmark for <http://www.datasouce2001.com>. If you ask your browser to bookmark a specific screen within the DataSource, the software may think that you're avoiding the log in process and could get stubborn.

One of our company's consultants needs our password. What should I do?

Just say, "No." One of the terms of use of the DataSource is that you will not share your password with anyone who is not an employee of your company. This is a serious obligation of participants.

Is there a way to get out of the system gracefully if I'm having trouble?

There is a logoff option at the bottom of almost every screen in the system. The logoff is a handy escape route if you ever have difficulty navigating.

When will I receive my survey results?

After the March 31 deadline, the sections completed will be reviewed by scrub teams. Followup and corrections will then take place. We anticipate that you will be able to browse results for those sections you completed around June 1.

What kind of survey report will I receive?

You will receive a password -- a most valuable password. You will be able to browse data online and can generate electronic and hard copy reports yourself. The bar charts introduced at the Nashville conference last year will be back!

How much does the DataSource cost?

The EEI and AGA completely underwrite the expense of the DataSource for their member companies. Members who complete their data with valid, reasonable responses are able to browse results throughout the year without cost.

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For assistance with DataSource 2001,
email help@agaeidatasource.com or call the Helpline at ☎ (317) 293-2426.

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1. fulfill delivery of products and services specifically requested by a visitor, and
2. track access to and usage of our Web site.

EEI does not sell or share personal customer information gathered on our Web site with any other organization.

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1. ACCEPTANCE OF TERMS: The Edison Electric Institute ("EEI") currently: (a)

provides users with access to, and use of, information regarding various products and services on its web site located at www.eei.org ("EEI Web Site"), and (b) hosts various list server groups (collectively, "List Server"). The EEI Web Site and/or the List Server are herein referred to collectively as the "Service". The Terms and Conditions of Use ("Agreement") containing the terms, conditions, notices and agreements below (collectively, "Terms") govern your use of the Service. In the event of any conflict between any one or more provisions in the Terms and in any other document or agreement between EEI and you related to a specific product or service offered on or through the Service, the provision in the Terms shall govern.

The Service is offered to you conditioned solely upon your acceptance of the Terms without modification or reservation. Any and all rights not expressly granted in the Terms are expressly reserved by EEI. **PLEASE READ THE TERMS VERY CAREFULLY!** Your use of the Service means you agree to all of the Terms and agree to them without modification or reservation.

2. DEFINITIONS: There are several words that are used in this Agreement that have a specific meaning in the Agreement. The words defined in this section shall have the following meanings in this Agreement, unless to do so would be contrary to the clear intent of the Agreement:

A. "Advertisers": Means any person, corporation, or any other entity in whatever form that places an advertisement(s) on the EEI Web Site.

B. "Content" or "CONTENT": Means any message, information, data, text, software, images or other materials that you post or transmit on the EEI Web Site or the List Server.

C. "Information" or "INFORMATION": Means the editorial content and graphics on the EEI Web Site and/or the List Server, as well as the computer programs used to generate the pages on the EEI Web Site and/or the List Server.

D. "Terms": Means the terms, conditions, and notices in the Agreement.

E. "you", "your" and "user": Means all individuals and/or entities in whatever form accessing or using the Service for any reason.

3. TRADEMARK AND COPYRIGHT PROTECTIONS: EEI is the owner of all intellectual property rights (including copyrights, service marks, and trademarks) in, on, and to the EEI Web Site. Material published by EEI on the EEI Web Site or the List Server may contain other proprietary notices or describe products, services, processes or technologies owned by EEI or third parties. Nothing in the Terms or through the use of the Service shall be construed as granting you a license to use such material under any copyright, service mark, trademark, patent or other intellectual property right of EEI or any third party, except as expressly set forth and granted in the Terms.

It is strictly prohibited to delete or alter any copyright, service mark, trademark, or other proprietary notices on or from the EEI Web Site or the List Server. You must retain all copyright, service mark, trademark, and other proprietary notices contained on the EEI Web Site or the List Server on any copy you make of the Information.

The EEI name and logo are trademarks and/or service marks of EEI. All related product and service names, design marks and slogans are the trademarks or service marks of EEI, as are the "look" and "feel" of the EEI Web Site (including color

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5. USER RESPONSIBILITIES: The Service may be used only for lawful purposes. As one of the conditions of your use of the Service, you represent, warrant and agree that you shall not use (or plan, encourage or help others to use) the Service for any purpose or in any manner that is prohibited by the Terms, or by applicable laws, regulations, rules or ordinances, including any export controls. Any and all information posted on the EEI Web Site or the List Server by you, including all Advertisers, must comply with all applicable international, national, state, and local laws, regulations, rules, and ordinances. It is your responsibility to ensure that your use of the Service complies with the Terms and to request prior written permission from EEI for any uses not permitted or expressly specified in the Terms. Please contact permission@eei.org to request permission.

You understand that all Content whether publicly posted or privately transmitted, is the sole responsibility of the person from which such Content originated. You, not EEI, are entirely responsible for all Content that you upload, post, email, transmit or otherwise make available using the Service.

EEI accepts no responsibility for the opinions and information posted on the EEI Web Site or the List Server by others. You acknowledge that the security mechanisms of the Service have inherent limitations, and you are solely responsible for determining if the use of the Service sufficiently meets your needs.

6. SPECIFIC PROHIBITED USES: While using the Service, you shall not do any of the following:

- A. Respond to any commercial opportunity on the Service for any reason other than to utilize the products or services offered.
- B. Post or transmit any incomplete, false, or inaccurate information.
- C. Impersonate any person or entity or falsely state or otherwise misrepresent your affiliation with a person or entity in whatever form.
- D. Send unsolicited e-mail, telephone calls, mailings or other material to any Advertisers.
- E. Post or transmit any Content that you do not have a right to reproduce, display or transmit under any law, regulation, or rule, or under any contractual or fiduciary relationships.
- F. Use the Service's communications features in a manner that adversely affects the availability of its resources to other users (for example, continuous posting of repetitive or duplicative text).
- G. Transmit any Content that is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, hateful, racially, ethnically or otherwise objectionable, harmful to minors in any way, or that may invade the right of privacy or publicity of any other person or entity in whatever form.
- H. Upload or transmit any Content that infringes any patent, copyright, service mark, trade secret, trademark, or other proprietary rights.
- I. Delete any attributions, legal notices or proprietary designations or labels that you upload to any portion of the Service.
- J. Delete or revise any material posted by any other person or entity in whatever form.
- K. Post or transmit any unsolicited advertising, promotional materials, "junk mail", "spam", "chain letters", "pyramid schemes", or any other form of solicitation, such as opinions or notices, commercial or otherwise.
- L. Post or transmit any Content that contains a virus or corrupted data.
- M. Use any device, software, or routine to interfere with the proper operation of the Service or any activity being conducted on the Service.
- N. Attempt to decipher, decompile, disassemble, or reverse engineer any of the software comprising, creating, or in any way making up a part of the Service.
- O. Violate any applicable international, national, state, or local law, regulation, rule, ordinance, or treaty.

7. LINKS TO OTHER WEB SITES: The EEI Web Site and the List Server contain hyperlinks or other connections to web sites owned and/or operated by parties other

than EEI. You understand, acknowledge, and agree that EEI does not control these web sites and is not responsible, nor shall be liable (directly or indirectly) for them, including, but not limited to, their availability, their content or any viruses they may contain. The inclusion of any hyperlinks or connections to web sites operated by parties other than EEI does not in any way directly or indirectly imply any endorsement of the material on them or any association with their owners or operators.

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9. BUSINESS PRACTICES: You understand and agree that EEI is not responsible or liable in any way (directly or indirectly) for the Content posted by or on behalf of any Advertiser or any Advertiser's business practices (or any of the material posted or downloaded by any of them onto the EEI Web Site). Nothing on the EEI Web Site or the List Server shall be directly or indirectly deemed to be an endorsement, representation, or warranty regarding any Advertiser, or other third party, whether in connection to its web site or otherwise.

You understand and agree that you must evaluate and bear all risks associated with the use of any Content or in response to any advertisement, including any reliance on the accuracy, completeness or usefulness of the Content or any advertisement.

10. WEB SECURITY RULES: Users are prohibited from directly or indirectly violating or attempting to violate the security of the EEI Web Site or the List Server, including, without limitation,

A. accessing data not intended for the user or logging into a server or account which such user is not authorized to access,

B. attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without proper authorization,

C. attempting to interfere with service to any user, host or network, including, without limitation, using any means, including overloading, "flooding", "mailbombing" or "crashing",

D. sending unsolicited e-mail, including promotions or advertising of any products or services, or

E. forging any TCP/IP packet header or any part of the header information in any e-mail sent from within or to the Service.

Violations of the Service or network security may result in civil or criminal liability. EEI will investigate occurrences that may involve violations of the use of the Service and may contact and/or cooperate with law enforcement authorities in prosecuting users or any other person or persons who are involved in any violations of the use of the Service.

11. RIGHTS IN CONTENT GRANTED BY YOU: By submitting (or uploading) Content either onto the EEI Web Site or using the List Server,

you warrant and represent that (a) you own the copyright with respect to the Content or have received permission to submit the Content from the copyright owner(s), and (b) all of your so-called "moral rights" in the Content have been waived; and

you automatically grant to EEI, the List Server and the users of the List Server the royalty-free, perpetual, non-exclusive, irrevocable, transferable right and license to use, transmit, reproduce, modify, adapt, publish, print, distribute, translate, create derivative works from, distribute, perform and display in whole or in part the Content worldwide or to incorporate it in other works in any form, media, or technology now known or later developed, without restriction or compensation.

If the license is limited or restricted in any way or manner, you, the posting party, shall have the sole obligation and responsibility to clearly and completely disclose the limitations or restrictions on use.

12. INDEMNIFICATION: You agree to indemnify and hold EEI harmless from and against all claims, losses, damages, injuries, awards, and liability - together with the costs, expenses, and reasonable attorneys' fees in connection therewith - resulting from, arising out of, or in any way connected to your use of the EEI Web Site or the List Server, your violation of the Terms or your responsibilities, your breach or misrepresentation of any of your warranties or representations, or your violation of any rights of any person.

13. MONITORING: EEI is under no obligation to monitor the Content or any other material residing on or transmitted using the Service. However, you agree that EEI may at any time and from time to time monitor the Content to:

A. comply with any applicable law, regulation, rule, or other government requests in its sole determination,

B. operate the EEI Web Site or List Server or to protect EEI and any users and Advertisers, in EEI's sole determination and/or

C. for any other purposes as EEI may deem reasonably necessary or appropriate in its sole determination.

14. INFORMATION PRIVACY: EEI does not guarantee that any personal information posted or transmitted will be prevented from being viewed or used by any particular person.

15. DISCLAIMER OF WARRANTIES: YOUR USE OF THE SERVICE IS AT YOUR SOLE RISK. THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. EEI EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

EEI MAKES NO WARRANTY THAT (a) THE SERVICE WILL MEET YOUR REQUIREMENTS, (b) THE SERVICE, THE CONTENT, THE INFORMATION SPECIFICALLY AND/OR THE INTERNET GENERALLY WILL BE UNINTERRUPTED, TIMELY, SECURE, CURRENT,

COMPLETE, USEFUL, OR ERROR-FREE, (c) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE WILL BE ACCURATE OR RELIABLE, (d) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR EXPECTATIONS, REQUIREMENTS, AND/OR SPECIFICATIONS, (e) ANY ERRORS IN THE SOFTWARE WILL BE CORRECTED, AND (f) MATERIAL ACCESSIBLE FROM THE EEI WEB SITE OR THE LIST SERVER IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR MECHANISMS.

ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT YOUR OWN DISCRETION AND RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM EEI OR THROUGH OR FROM THE SERVICE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THE TERMS.

YOU SHALL HAVE ABSOLUTELY NO RECOURSE AGAINST EEI AS THE PROVIDER OR HOST OF, OR ANY IN OTHER CAPACITY RELATED TO, THE SERVICE FOR ANY ALLEGED OR ACTUAL INFRINGEMENT OF ANY PROPRIETARY RIGHTS YOU MAY HAVE IN ANYTHING YOU POST ON THE EEI WEB SITE OR THE LIST SERVER OR FOR ANY OTHER REASON.

EEI ACCEPTS NO RESPONSIBILITY FOR THE OPINIONS AND INFORMATION POSTED ON THE LIST SERVER BY OTHERS.

YOUR SOLE REMEDY FOR ANY OF THE FOREGOING IS TO STOP USING THE SERVICE.

16. LIMITATIONS OF LIABILITY: YOU EXPRESSLY UNDERSTAND AND AGREE THAT EEI SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, CONSEQUENTIAL, EXEMPLARY OR OTHER DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF EEI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM, ARISING OUT OF, OR IN ANY WAY CONNECTED TO: (a) THE USE OR THE INABILITY TO USE THE SERVICE (OR ANY HYPERLINKS), OR ANY CONTENT, INCLUDING, BUT NOT LIMITED TO, WHETHER THE CONTENT IS ERROR-FREE, ACCURATE AND/OR CURRENT; (b) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SERVICE; (c) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (d) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SERVICE; OR (e) ANY OTHER MATTER RELATING TO EITHER THE SERVICE SPECIFICALLY OR THE INTERNET GENERALLY, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE.

17. EXCLUSIONS FROM LIABILITY LIMITATIONS: SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES. THEREFORE, SOME OF THE LIMITATIONS OF SECTIONS 16 AND 17 MAY NOT APPLY TO YOU. FURTHER, IF ANY EXCLUSIONS OR LIMITATIONS ARE HELD INAPPLICABLE OR UNENFORCEABLE FOR ANY REASON, THEN EEI'S MAXIMUM LIABILITY FOR ANY TYPE OF DAMAGES TO ANY ONE PERSON SHALL BE LIMITED TO THE LESSER OF YOUR COST OF THE SERVICE OR U.S. \$100.00.

18. COMPLIANCE AND COOPERATION WITH LAW ENFORCEMENT: You understand and agree that EEI shall comply with and/or otherwise cooperate with international, national, state or local law enforcement officials or authorities relating to your use of the Service or material provided by you using the Service.

You acknowledge and agree that EEI may preserve the Content and may also disclose the Content if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably necessary to (a) comply with legal process; (b) enforce the Terms; (c) respond to claims that any Content violates the rights of third parties; or (d) protect the rights, property or personal safety of EEI, its users or any person.

19. ENTIRE AGREEMENT: The Terms represent the entire agreement between us, and our respective heirs, successors and assigns, and supersede any and all prior understandings, statements, or representations, whether electronic, oral or written, regarding the Service or the Content or Information on the EEI Web Site or the List Server. A printed version of this Agreement and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to this Agreement to the extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

20. MODIFICATIONS OF THE TERMS: EEI shall have the right to modify any one or more of the Terms at any time and from time to time without prior notice. The Terms on the EEI Web Site are the current applicable provisions that govern your use of the Service. By using the Service, you have agreed to and accepted all of the Terms without modification or reservation.

21. TERMINATION: EEI shall have the right to terminate your use of the Service for any reason at any time without prior notice.

22. WAIVER: A waiver of any obligation or right under the Agreement shall not be effective unless in writing executed by the party against whom it is being enforced, and shall not be construed as a waiver of any other obligation or right under the Agreement.

23. ENFORCEMENT: The Terms shall be governed by federal law and the laws of the District of Columbia. You consent to the exclusive jurisdiction and venue for any action or dispute in the local and federal courts located in the District of Columbia, United States of America.

24. EQUITABLE RELIEF: You acknowledge that monetary damages may not be a sufficient remedy for the breach of the Agreement and that EEI shall be entitled without waiving any other rights or remedies, to such injunctive or equitable relief, as may be deemed proper by a court of competent jurisdiction. You hereby agree that in the event of a breach or threatened breach of the Agreement by you, it will not be necessary to prove monetary damages and irreparable harm will be presumed.

25. PROHIBITION ON USE: The use of the EEI Web Site or the List Server is unauthorized in any jurisdiction that does not give effect to all of the Terms. EEI makes no claims or representations that the EEI Web Site or the List Server may be lawfully viewed or downloaded outside of the United States of America. Access to the Information may not be legal by certain persons or in certain countries. If you access the EEI Web Site or the List Server from outside of the United States of America, you do so at your own risk and are responsible for compliance with the laws, regulations,

rules and any other requirements (in whatever form) of your jurisdiction.

26. SEVERABILITY: The Terms in the Agreement are severable and shall be construed to the extent of their enforceability in light of the parties' mutual intent if deemed at all unenforceable by a court of competent jurisdiction.

27. SUCCESSORS AND ASSIGNS: You agree that your heirs, successors and assigns shall be bound by the Terms in the Agreement.

[5/14/01]

Find It · Copyright and Policy Statement · Ask EEI

ATTACHMENT A

(only in original)

Confidential Information

ATTACHMENT B

Contents

- 1.) Industry Advertising Spending – 2Q 1999
- 2.) Industry Advertising Spending – 3Q 1999
- 3.) Industry Advertising Spending – 1999
- 4.) DataSource 2000 Survey – Summary Report
- 5.) DataSource 2001 Survey – Executive
Summary
- 6.) DataSource 2000 Survey – data files
- 7.) DataSource 2001 Survey – data files
- 8.) Multiple cost comparisons developed from #6
and #7 (e.g., Customer Care costs per
customer call, Billing costs per customer)