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October 20, 2005

- VIA HAND DELIVERY -

Stephen Johnson, Administrator
United States Environmental Protection Agency
Ariel Rios Building, Mail Code 1101A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule), 70 *Fed. Reg.* 25162

Dear Mr. Johnson:

I am enclosing a second supplement to FPL Group, Inc.'s July 11, 2005 Petition for Reconsideration of the above rule. This second supplement transmits and briefly addresses the final report of Alpine Geophysics, LLC ("Alpine") and ENVIRON International Corporation ("Environ"), dated October 18, 2005 and entitled *Assessment of the Contribution of Florida Emissions to Ozone Nonattainment under EPA's Clean Air Interstate Rule (CAIR).*

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

Sincerely,

John T. Butler

Enclosure
cc: Jeffrey Holmstead, EPA (w/encl.)
Steve Page, EPA (w/encl.)
Brian McLean, EPA (w/encl.)
Kevin McLean, EPA (w/encl.)
Norman Rave, USDOJ (w/encl.)

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BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NOx SIP Call	)))))	**OAR-2003-0053** **FRL-7885-9** **RIN 2060-AL76**

Second Supplement to FPL Group, Inc.'s Request For Reconsideration of EPA's Final Clean Air Interstate Rule (CAIR)

On July 11, 2005, FPL Group, Inc. ("FPL Group") submitted a Petition for Reconsideration (the "Petition") of the Final Clean Air Interstate Rule ("CAIR"). 70 *Fed. Reg.* 25162. FPL Group objected to and requested reconsideration of two aspects of CAIR: (a) EPA's failure to recognize that emission sources in southern Florida do not significantly contribute to downwind ozone or PM2.5 non-attainment, and (b) EPA's determination that fuel adjustment factors should be used to adjust the heat input data from which the state NOx budgets are derived. With respect to the first issue, the Petition advised that FPL Group was involved in modeling to distinguish between the contributions to downwind ozone and PM2.5 non-attainment from sources in northern and southern Florida. FPL Group stated that it had diligently pursued this modeling but had been unable to complete the modeling within sixty days after CAIR was published. FPL Group said that it would submit the results of the modeling and related comments once the modeling was completed.

On October 11, 2005, FPL Group filed a supplement to its Petition, which transmitted the final report on the PM2.5 modeling results and briefly summarized those results and their implications for FPL Group's reconsideration request (the "First Supplement"). At that time, the ozone modeling was not yet complete, but it has since been completed. Attached hereto is the

final report of Alpine Geophysics, LLC ("Alpine") and ENVIRON International Corporation ("Environ"), dated October 18, 2005 and entitled *Assessment of the Contribution of Florida Emissions to Ozone Nonattainment under EPA's Clean Air Interstate Rule (CAIR)* (the "Ozone Report").

As expected from the preliminary modeling results that were discussed in the Petition, the Ozone Report demonstrates clearly that southern Florida sources do not significantly contribute to downwind ozone non-attainment and should not be subject to the CAIR ozone requirements. Specifically, the Ozone Report shows the following:

- As discussed in the First Supplement, the size and geography of Florida make it clearly inappropriate to evaluate the contribution to non-attainment for the state as a whole.
- Alpine and Environ concluded that there are some significant ambiguities, data gaps and discrepancies in the inputs that EPA used to model the ozone contribution from Florida as a whole to Fulton County, Georgia (the only relevant non-attainment county). Those deficiencies are addressed below. Without accepting the validity of the EPA's inputs, however, Alpine and Environ were able to use them and corroborate the EPA's modeling results for the state as a whole.
- Using EPA's modeling techniques and data, Alpine and Environ evaluated the contributions to Fulton County ozone non-attainment separately for six sub-regions of Florida. Based on those results, Alpine and Environ defined a line of demarcation between north Florida and south Florida. The modeling results show that south Florida clearly satisfies the EPA's

initial screening analysis ("ISA") criteria for determining that an upwind source does not contribute significantly to non-attainment. Specifically, the results show that south Florida has a source apportionment episode average contribution of only .25%, which easily satisfies the EPA's "insignificance" criterion for this metric of "less than 1%." Moreover, the results also show that south Florida has a zero-out maximum 8-hour contribution of only 1.1 ppb, easily satisfying the EPA's "insignificance" criterion for this metric of "less than 2 ppb." According to the EPA's ISA protocol, a source does not significantly contribute if it meets any one of the three ISA criteria. The ozone modeling results show that south Florida in fact meets two of those criteria.

- In contrast, the modeling results show that north Florida's contribution to non-attainment in Fulton County fails to meet any of the ISA "insignificance" criteria.

The Petition cited *Michigan v. EPA*, 213 F.3d 663 (D.C. Cir. 2000) in support of FPL Group's position that EPA improperly failed to consider separately the non-attainment contributions from southern and northern Florida. The First Supplement concludes that, under *Michigan v. EPA,* the EPA may not properly subject south Florida to CAIR's PM2.5 requirements because the PM2.5 modeling results show that south Florida does not significantly contribute to PM2.5 non-attainment. That conclusion applies *pari passu* to the ozone modeling results: because those results show that south Florida does not significantly contribute to ozone non-attainment, EPA may not properly subject south Florida to CAIR's ozone requirements.

FPL Group incorporates herein by reference the discussion from the First Supplement of *Michigan v. EPA*.

As noted above, Alpine and Environ found significant ambiguities, data gaps and discrepancies in the inputs that EPA used to model the ozone contribution from Florida as a whole to Fulton County. Alpine and Environ had to engage in a painstaking process extending over several months and multiple iterations in order to identify, understand and address the various deficiencies in the EPA's modeling documentation. All of this had to be accomplished before Alpine and Environ could effectively evaluate the south Florida contribution to ozone non-attainment using the EPA's model. This lengthy process has significantly delayed Alpine's and Environ's finalizing the Ozone Report. It is simply unrealistic to expect that FPL Group or anyone else could have understood, appreciated, evaluated and commented upon the significance of EPA's modeling for south Florida within the comment periods afforded in the CAIR rulemaking.

When Alpine and Environ finally succeeded in identifying and addressing the deficiencies in EPA's modeling, its modeling results using the EPA inputs show that Florida as a whole contributes only .79% to the source apportionment episode average contribution ISA metric. This is clearly below the EPA's "insignificance" criterion for that metric of "less than 1%." From these modeling results, the only way that EPA could have concluded that *any* of Florida should be subjected to the CAIR ozone requirements would be to engage in the semantical gymnastics of rounding .79% to the whole number "1" and then asserting that the rounded result is not "less than 1%." This is apparently what EPA did in the CAIR rulemaking, and it provides an additional reason why subjecting Florida to the CAIR ozone requirements should be reconsidered.

Respectfully submitted,

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Attorneys for FPL Group, Inc.

By: _____
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