

**Marguerite McLean**

100009-EI

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**Sent:** Monday, August 02, 2010 3:26 PM  
**To:** Filings@psc.state.fl.us  
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**Subject:** e-filing (Dkt. No. 100009-EI)  
**Attachments:** 100009 OPC Response to FPL confid.sversion.doc

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket No. 100009-EI

In re: Nuclear Cost Recovery Clause.

c. Document being filed on behalf of Office of Public Counsel

d. There are a total of 7 pages.

e. The document attached for electronic filing is Citizen's Response and Opposition in Part to Florida Power & Light Company's Request for Confidential Classification of Staff's Audit Report on Project Management Internal Controls; Request for In Camera Inspection of Document.  
(See attached file: 100009 OPC Response to FPL confid.sversion.doc)

Thank you for your attention and cooperation to this request.

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DOCUMENT FILED DATE

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FPSC-COMMISSION CLERK

8/2/2010

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Nuclear Power Plant            )  
Cost Recovery Clause                    )

Docket No. 100009-EI  
Filed: August 3, 2010

**CITIZENS' RESPONSE AND OPPOSITION IN PART TO FLORIDA POWER & LIGHT  
COMPANY'S REQUEST FOR CONFIDENTIAL CLASSIFICATION OF STAFF'S  
AUDIT REPORT ON PROJECT MANAGEMENT INTERNAL CONTROLS;  
REQUEST FOR *IN CAMERA* INSPECTION OF DOCUMENT**

The Citizens of Florida (Citizens), through the Office of Public Counsel (OPC), file this response in partial opposition to the request of Florida Power & Light Company (FPL) dated July 14, 2010, for confidential classification of the Staff's Audit Report on FPL's Project Management Internal Controls for Nuclear Plant Upate and Construction Projects (Staff Audit).

1. On July 14, 2010, FPL filed a request for confidential classification of the Staff's Audit Report and served the request on parties to the docket by mail. Staff witnesses subsequently attached the Audit Report to their jointly sponsored testimony, which Staff filed on July 20, 2010. OPC received a heavily redacted copy of the Audit Report on July 21, 2010. OPC asked FPL to provide OPC an unredacted copy of the Audit Report. Following the established practice, which is designed to maintain confidentiality of a document for which a utility seeks confidential classification while providing OPC access to the document and an opportunity to evaluate the claim of confidentiality, FPL filed a motion for temporary protective order on July 28, 2010, which OPC did not contest.

2. In its review of a document for which a utility has requested confidential classification, OPC is guided by two considerations. There is the need to ensure that

OPC receives access to and use of information that is sufficient for its litigation purposes. There is also the consideration of whether the particular claim of confidentiality meets the standard of satisfying Florida's general policy favoring public access to information prepared or received by public agencies, while preserving the utility's need to maintain confidentiality of certain information, the disclosure of which the Florida Legislature has found could be harmful. As the Commission is aware, once the Commission has granted confidential status to a document, the ability of parties and Staff to refer to the information during hearings and in post-hearing briefs and recommendations becomes severely constrained. OPC's ability to conduct cross-examination or argue a point should not be hampered by claims that fall short of the statutory standard. Further, while OPC and the Commission must take seriously the need to safeguard information that meets the legislative standard governing confidentiality, OPC believes that it and the Commission also have a responsibility to ensure that the public's right to information is not denied on the basis of claims that fall short of that standard. For the following reasons, OPC submits that in this instance portions of FPL's claim of confidentiality are overbroad.

3. Section 366.093(3), Florida Statutes, provides in part that proprietary confidential business information is information which would, if disclosed, cause harm to ratepayers or a company's business operations. Examples of such information are provided in the statute.

4. Part of FPL's request asks that information related to bids or contractual data, such as pricing or other terms, be held confidential. The request also asks that information related to competitive interests, such as payments to vendors for specific

services, and descriptions of FPL warranty claims against particular vendors, be held confidential. In our view these are valid claims for confidentiality, and OPC does not oppose them.

5. On the other hand, portions of FPL's claim go too far. FPL asks that certain information which is critical of FPL to be held confidential, even though no competitively sensitive information would be disclosed and FPL cannot show how its business operations would be harmed by the disclosure. The Florida Public Service Commission (PSC) must reject FPL's request which would keep such information from the public.

6. Information which is merely negative in nature is not the same as information which would be harmful to the company's business operations if disclosed. Information must meet the latter criterion in order to be shielded from public disclosure under section 366.093, Florida Statutes.

7. A good example of information which FPL seeks to shield, but the disclosure of which has not been shown to be harmful to the company's business operations, is found at pages 41 through 44 of the staff audit. This information relates to an independent investigation conducted in response to an employee complaint letter. One or two specific dollar amounts or percentages might be subject to valid claims of confidentiality, but the vast majority of information is not. FPL's request for confidentiality claims that disclosure of the information *could* have a chilling effect on the company's willingness to conduct such investigations and that the investigation is *similar* to an internal audit. These claims, even if true, are insufficient to deny the public access to this important information. These claims do not satisfy the definition of

proprietary confidential business information contained in section 366.093(3), Florida Statutes.

8. Another example is found at pages 24 through 26 of the Staff audit under the section entitled "EPU Management Replacement and Restructure." All of the matters showing the reasons for the EPU management replacement and restructure have been redacted by the company. As an *in camera* inspection of the unredacted document will show, FPL has provided no valid reason why these reasons should be kept secret from the public. Disclosure of the information may be undesirable from the company's point of view, but its disclosure would not be harmful to the company's business operations.

9. To illustrate OPC's point regarding the potential impact of FPL's claim on the proceedings: Unless the Commission denies FPL's claim in part, during the hearing on FPL's petition to recover nuclear-related costs OPC and others would not even be able to articulate the two-word phrase that appears at page 50, Section 4.2.2 "Conclusions and Recommendations," second line from the bottom, ninth and tenth words. The difficulty of referring to this phrase is the most effective proof both of FPL's overreaching, and of the prejudicial impact that granting its request in full would have on OPC and other parties to the proceeding.

10. Citizens request the Prehearing Officer to conduct an *in camera* inspection of the unredacted document and to deny FPL's claims of confidentiality for the materials identified and described in the preceding paragraphs.

Respectfully submitted,

s/ Joseph A. McGlothlin  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and foregoing **CITIZENS' RESPONSE AND OPPOSITION IN PART TO FLORIDA POWER & LIGHT COMPANY'S REQUEST FOR CONFIDENTIAL CLASSIFICATION OF STAFF'S AUDIT REPORT ON PROJECT MANAGEMENT INTERNAL CONTROLS; REQUEST FOR *IN CAMERA* INSPECTION OF DOCUMENT** has been furnished by electronic mail and U.S. Mail on this 2nd day of August, 2010, to the following:

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