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100009-EI

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Sent: Friday, August 06, 2010 4:48 PM
To: Filings@psc.state.fl.us
Cc: Alex Glenn; Anna Williams; Bill Jacobs; Blaise N. Huhta; Bryan J. Anderson; Cary Cook; Dianne Triplett; F. Alvin Taylor; Gary A. Davis ; J. Burnett; J. McWhirter; James Brew; Jeanne Costello; Jessica Cano; John C. Moyle, Jr.; Keino Young; Ken Hoffman; Lisa Bennett; M. Walls; Matthew R. Bernier; Paul Lewis; Randy B. Miller; Schef Wright; Shayla McNeill; Vicki Kaufaman; Wade Litchfield
Subject: PUBLIC COUNSEL'S AUGUST 6, 2010 FILING PURSUANT TO ORDER NO. PSC-10-0482-PCO-EI
Attachments: PUBLIC COUNSEL'S AUGUST 6, 2010 FILING PURSUANT TO ORDER NO. PSC-10-0482-PCO-EI.pdf

Electric Filing

a. Person responsible for this electronic filing:

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b. Docket No. 100009-EI

In re: Nuclear Power Plant Cost Recovery Clause.

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

d. There are a total of 9 pages.

e. The document attached for electronic filing is the PUBLIC COUNSEL'S AUGUST 6, 2010 FILING PURSUANT TO ORDER NO. PSC-10-0482-PCO-EI. Thank you for your attention and cooperation to this request.

Monica R. Woods
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DOCUMENT NUMBER DATE

06558 AUG-6 2010

FPSC-COMMISSION CLERK

8/9/2010

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear Power Plant)

Docket No. 100009-EI

Cost Recovery Clause)

Filed: August 6, 2010

**PUBLIC COUNSEL'S AUGUST 6, 2010 FILING PURSUANT TO
ORDER NO. PSC-10-0482-PCO-EI**

Public Counsel will participate in the confidentiality hearing described in Order No. PSC-10-0482-PCO-EI, as resources permit, in light of the intense preparation stage of this case.

The Public Counsel does not plan to put on any witnesses.

On August 3, 2010 the Public Counsel filed a *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*. ("Response") See Attachment A.

This response sets out the Public Counsel's position of confidential information, generally and the FPL request specifically.

Public Counsel identifies the documents listed in Attachment B, in addition to the documents in the response, as needing a confidentiality determination. Furthermore, the Company redactions to the testimony of William R. Jacobs, Ph.D., in both PEF and FP&L portions of the docket should be reviewed.

Public Counsel is ready to make argument in any hearing held on confidentiality but opines that it is not statutorily positioned to shoulder a burden of proving or disproving the

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confidentiality of any document.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C. Rehwinkel", written over a horizontal line.

Charles J. Rehwinkel
Associate Public Counsel

Charlie Beck
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Attorneys for the Citizens
Of the State of Florida

DOCKET NO. 100009-EI
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing **PUBLIC COUNSEL'S AUGUST 6, 2010**
FILING PURSUANT TO ORDER NO. PSC-10-0482-PC-EI has been furnished by U.S. Mail
and electronic mail to the following parties on this 6th day of August, 2010.

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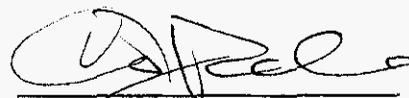
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OPC receives access to and use of information that is sufficient for its litigation purposes. There is also the consideration of whether the particular claim of confidentiality meets the standard of satisfying Florida's general policy favoring public 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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List of Confidential Documents

09NC-OPCPOD3-61-000053
09NC-OPCPOD3-61-000057
09NC-OPCPOD3-64-000012
10-NC-OPCPOD1-1-000023
10NC-OPCPOD1-1-000039
10NC-OPCPOD1-1-000057
10NC-OPCPOD1-1-000061
10NC-OPCPOD1-1-000097
10NC-OPCPOD1-3-000005
10NC-OPCPOD1-9-000135
10NC-OPCPOD1-9-000153
10NC-OPCPOD1-40-000521
10NC-OPCPOD3-54-000001
10NC-OPCPOD3-54-000014
10NC-OPCPOD3-54-000015
10NC-OPCPOD3-56-000063
PEF Exhibit JL-6, page 22

DOCUMENT # FPSC-541:
06558 AUG-6 9
FPSC-COMMERCIAL/CI/CI