

**Diamond Williams**

100009-EI

**From:** LOWE, AMY [Amy.Lowe@fpl.com]  
**Sent:** Monday, August 09, 2010 4:33 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** Electronic Filing - Docket # 100009-EI  
**Attachments:** FPL's Response to OPC's Objection in Part to Confidentiality Request and Response to Request for In Camera Inspection.pdf; FPL's Response to OPC's Objection in Part to Confidentiality Request and Response to Request for In Camera Inspection.doc

**Electronic 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. The documents are being filed on behalf of Florida Power & Light Company.

d. There are a total of seven (7) pages.

e. The document attached for electronic filing is:

**FLORIDA POWER & LIGHT COMPANY'S RESPONSE TO OPC'S OBJECTION IN PART TO CONFIDENTIALITY REQUEST AND RESPONSE TO REQUEST FOR IN CAMERA INSPECTION**

*(See attached file(s): FPL's Response to OPC's Objection in Part to Confidentiality Request and Response to Request for In Camera Inspection.pdf;  
 FPL's Response to OPC's Objection in Part to Confidentiality Request and Response to Request for In Camera Inspection.doc)*

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Nuclear Power Plant )  
Cost Recovery Clause )

Docket No. 100009-EI  
Filed: August 9, 2010

**FLORIDA POWER & LIGHT COMPANY'S RESPONSE TO  
OPC'S OBJECTION IN PART TO CONFIDENTIALITY REQUEST  
AND RESPONSE TO REQUEST FOR IN CAMERA INSPECTION**

Florida Power and Light Company ("FPL") hereby responds to the Office of Public Counsel's ("OPC's") objection in part to FPL's Request for Confidential Classification of Staff's Audit Report on Project Management Internal Controls and request for in camera inspection, and states as follows:

1. On July 14, 2010, FPL filed its Request for Confidential Classification of Staff's Audit Report on Project Management Internal Controls ("Confidentiality Request"). On August 3, 2010, OPC filed its "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." Although OPC has styled it filing as a "Response," it appears to be an objection (in part) as contemplated by Rule 25-22.006(3)(b), Florida Administrative Code. Pursuant to that rule, a party to a formal proceeding may file an objection to a utility's request for confidential classification. Accordingly, FPL is hereby responding to OPC's objection<sup>1</sup> and OPC's request for an in camera inspection of the documents that are the subject of FPL's confidentiality request.

2. First, it is important to note that FPL's confidentiality request in no way restricts OPC's or the Commission's access to the confidential information, nor does it restrict access by any other party to the proceeding that has signed a confidentiality agreement with FPL. OPC

<sup>1</sup> Ordinarily, a response to a response is not accepted by the Commission. *See, e.g.* Order No. PSC-09-0602-PCO-EI, issued Sept. 4, 2009. However, as described above, this is a response to an objection, not a response to a response, and is therefore permissible.

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sites the “need to ensure OPC receives access to” the confidential information, (*OPC Objection*, p. 1-2), but OPC has already received an unredacted copy of the document that is the subject of FPL’s request (*OPC Objection*, p. 1), and will continue to receive confidential documents upon request, subject to a Motion for Temporary Protective Order protecting the document from public disclosure.

3. OPC also claims that the ability of parties and Staff to refer to the information during hearings may be constrained, and that its cross examination may be hampered. *OPC Objection*, p. 2. However, use of confidential information at a hearing is routinely accomplished at the Commission in accordance with Rule 25-22.006(8), Fla. Admin. Code, and the Order Establishing Procedure for each hearing, which contains standardized instructions for the handling of confidential information. See Order No. PSC-10-0115-PCO-EI, p. 7. That being said, FPL recognizes the need to reach a balance between protecting proprietary confidential business information and enabling an unencumbered hearing process. FPL is committed to work with OPC to help facilitate the use of the confidential material at hearing.

4. Substantively, OPC takes issue with FPL’s confidentiality request with respect to two particular sections of the audit report. First, OPC points to pages 41 through 44, which discusses an internal investigation into an employee complaint. As described in FPL’s June 14th confidentiality request, the substance of this investigation should be maintained as confidential for many of the same reasons that internal auditing information is expressly and automatically entitled to confidential treatment under Florida law. See § 366.093(3)(b), Fla. Stat. The purpose of the investigation was to assess certain procedures and controls, and report the findings of that assessment to senior management. Utilities should be encouraged to conduct such self-critical investigations and assessments, the results of which are used to improve operations for the

benefit of customers. But the public disclosure of such an investigation could have the opposite effect – causing companies to be hesitant about initiating such investigations, thereby missing out on the discovery of opportunities for operational improvement. Further, because the investigation included interviews with employees, public disclosure could have a chilling effect on employees' willingness to report concerns or otherwise fully cooperate with such investigations. Employee cooperation is critical to conducting a robust investigation. Because its public disclosure would harm FPL's operations and its customers, and because it has been treated by FPL as confidential, this information meets the requirements of Section 366.093(3), Fla. Stat.

5. The fact that this information is similar to an internal audit, which is entitled to confidential treatment under Florida law, is additional support for its confidential designation (but not the sole support as OPC implies). The Commission has recognized that internal investigations into an employee complaint should be treated as confidential, and has previously granted confidential classification to material pertaining to a company's internal investigation on the grounds that the investigation was similar to an internal audit. In Order No. PSC-97-0039-CFO-GU, Docket No. 960502-GU, *In Re: Application for Rate Increase by City Gas Company of Florida*, (issued Jan. 9, 1997), the Commission considered a company's request for confidential treatment of Commission Staff audit workpapers that related to an internal investigation performed by the company. The company argued that the information was entitled to confidential treatment because it discussed the internal controls and inner workings of the company, and because it may have a chilling effect on the company's willingness to perform such investigations and share the results with Staff. The prehearing officer determined that disclosure would be harmful to the company because it may discourage employees from

reporting problems and also because it was similar to internal auditing information that is protected pursuant to Section 366.093(3)(b), Florida Statutes.<sup>2</sup>

6. The second portion of Staff's report that OPC disputes as being confidential is found on pages 24-26. This section reflects Staff's opinion on certain personnel changes within the Extended Power Uprate organization in a manner that reflects on particular employee performance. While FPL disagrees with Staff's position and the conclusions Staff draws, Staff has full access to this information and can make recommendations as they see fit based on the information, without the need to publicly disseminate it.

7. The discussion on pages 24-26 constitutes personnel information that is unrelated to compensation, duties, qualifications, or responsibilities and is therefore exempt from public disclosure pursuant to Section 366.093(3)(f), Florida Statutes. However, even if one were to take the position that this information is somehow related to compensation, duties, qualifications, or responsibilities, it should be determined to be confidential because it meets the general definition of confidential information pursuant to Section 366.093(3), Florida Statutes. Public disclosure of this information would be similar to the disclosure of an employee's regular performance review – clearly not information that employees would like discussed publicly. Public disclosure of this type information by the Company or the Commission would have an adverse impact on employee satisfaction with the Company, and could cause employees to seek employment elsewhere. This would result in the loss of highly skilled and trained employees, and could also hinder FPL's ability to attract new talent, all to the detriment of FPL's business operations and FPL's customers. Because its public disclosure would harm FPL's operations and its customers, and because it has been treated by FPL as confidential, this information meets the requirements

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<sup>2</sup> The prehearing officer also determined that the information should be kept confidential because it discussed personnel information unrelated to compensation, duties, qualifications or responsibilities.

of Section 366.093(3), Fla. Stat. Further, confidential treatment of Staff's discussion of the personnel changes is necessary to protect the employees' rights to privacy. *See*, Art. V, § 23, Fla. Const.

8. Finally, FPL notes that the two-word phrase specifically identified by OPC as "proof" of overreaching (*OPC Objection*, p. 4) is no longer confidential because it was subsequently disclosed by Staff witnesses Lynne Fisher and David Rich in their joint testimony filed June 20, 2010. Accordingly, FPL will file a revised request that removes this phrase from the scope of requested confidential treatment and OPC will be able to articulate the phrase publicly at hearing, without restriction. For the remainder of the report, FPL is willing to continue to work with OPC in identifying information that can be discussed publicly in order to facilitate OPC's participation in the proceeding.

9. In response to OPC's request for an in camera inspection, FPL has no objection. However, FPL notes that such request may be moot in light of Order No. PSC-10-0482-PCO-EI, which establishes a process for examining pending confidentiality requests on pre-filed testimony and exhibits. Staff's audit report, and FPL's request for confidential classification, will be subject to that process.

Respectfully submitted this 9th day of August, 2010.

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**CERTIFICATE OF SERVICE  
DOCKET NO. 100009-EI**

I HEREBY CERTIFY that a true and correct copy of FPL's Response to OPC's Objection in Part to Confidentiality Request and Response to Request for In Camera Inspection was served electronically this 9th day of August, 2010 to the following:

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