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Public Service Commission

December 12, 2002

Mr. R. Wade Litchfield
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408-0420

Re: Docket 020001-EI - Request for extension of confidential classification of material provided in Audit No. 99-033-4-1, Document Nos. 08555-99 and 09077-99

Dear Mr. Litchfield:

On September 18, 2002, Florida Power & Light Company (FPL) filed a request for an extension of confidential protection for certain portions of staff's working papers prepared in connection with the FPL Fuel Cost Recovery Audit for the 9 Month Period Ended December 31, 1998, Audit No. 99-033-4-1. The following deficiency was found in reviewing FPL's request:

- 1) Working Paper 9 (3 pages), List of Internal Audits
- 2) Working Paper 43-2 (25 pages), Computation of Average Unit Cost
- 3) Working Paper 43-3 (4 pages), Sample of Fuel Accounts
- 4) Working Paper 43-3/1 (2 pages), Sample of Fuel Accounts
- 5) Working Paper 45 (1 page), Dismantlement and Decommission
- 6) Working Paper 45-1 (1 page), Allocation of DOE's D&D Payment
- 7) Working Paper 45-1/1 (3 pages), Special Allocation Invoice for Dismantlement & Decommission Fund
- 8) Working Paper 45-1/1-1 (3 pages), Invoice #990015
- 9) Working Paper 4-1/1-3 (1 page), Special Payment Request
- 10) Working Paper 46-2/1-1 (2 pages), Allocation of Variance

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DEFICIENCY

Section 366.093 (4), Florida Statutes, requires that the utility show why the release of information which has been held as confidential for 18 months would still cause harm. FPL has requested extension for the confidential period beyond 18 months for the following types of information on the basis merely that these documents are sensitive. The utility needs to justify why, after 18 months, release of the information would still harm the company.

COAL, COAL TRANSPORTATION, OIL, AND OIL TRANSPORTATION INFORMATION

The Commission limits protection to fuel information concerning purchases of coal, coal transportation, fuel oil and fuel oil transportation from 18 months to two years – the time it would take to negotiate subsequent purchases of coal and oil. In addition, FPSC Form 423-1a, filed monthly by FPL with the Florida Public Service Commission reports monthly coal, oil and associated transportation volumes and costs for each FPL generating plant. Once 24 months passes, the information presented on FPSC Forms 423-1a becomes public record. Since more than 24 months has passed since the associated forms 423-1a for 1998 and 1999 have been filed, the information concerning coal and oil costs presented in these audit working papers is public record and therefore appears ineligible for an extension of a confidential classification.

GAS PURCHASES

Information concerning gas purchases (Freight On Board) concerning quantities and total cost incurred is reported monthly by generating plant by FPL to the Federal Energy Regulatory Commission on FERC Form 423. Since FERC Form 423 information concerning 1998 and 1999 gas volumes or total cost for gas concerning FPL generating plants is public record; therefore this information also appears ineligible for a confidential classification.

NUCLEAR FUEL COSTS

“Nuclear Fuel Cost of System Generation”, “Nuclear Fuel Disposal Costs”, and “DOE Decontamination and Decommissioning Cost” are reported to the Florida Public Service Commission monthly as these costs are charged to the ratepayer through the monthly customer bills.

“Nuclear Fuel Cost of System Generation” presents the cost associated with the purchase and operational handling of nuclear fuel.

“Nuclear Fuel Disposal Costs” present the cost allowed by the Florida Public Service Commission to dismantle and decommission nuclear power plant.

Lastly, “DOE Decontamination and Decommissioning Cost” are charges determined, billed, and received by the U.S. Department of Energy to dispose of spent nuclear fuel.

Within this filing, we found the following: no specific rationale, explanation, description of any rule or regulation, or cite of a prior decision of any court or administrative body as to why information concerning general nuclear fuel costs should be granted extended confidential protection beyond 18 months. Absent such a showing that extended protection is needed, general nuclear fuel cost information would not qualify for an extended confidential protection.

Potentially, this information could include long term contracts for purchasing or operational handling of nuclear fuel for which historical Commission policy would allow protection of contract terms until replacement contracts could be negotiated for a period of up to 5 years. See, Order No. 23837, issued December 6, 1990, in Docket No. 900001-EI, and Order No. PSC-94-1258-CFO-EI, issued October 11, 1994, in Docket No. 940001-EI.

However, if the information to be protected is information concerning plant disposal costs or "Nuclear Fuel Disposal Costs", extensive information is filed during periodic hearings conducted by the Florida Public Service Commission to determine what these costs should be. Such information would not appear to be eligible for a confidential classification.

Lastly, if the information concerns fuel disposal costs paid to the U.S. Department of Energy, the burden faced by the utility is to show that this information is not otherwise available in federal filings or reports or required to be paid by federal rule or regulation such that the information would not cause harm if it was released after 18 months.

To justify any extension of confidential protection, FPL must specifically identify which type of cost information is being protected and why the information should be protected for a period longer than 18 months.

INTERNAL AUDITS

Information concerning internal audits is not accompanied by a showing as to why it should be granted a confidential classification. In this instant case, it appears that only a listing of internal audits performed is present within staff's working papers. It seems that 18 months protection of the information provides management with sufficient time to respond to findings within its own internal audit reports. The utility should explain and justify why a listing of internal audit reports, or how the name of an specific internal audit report, remains sensitive after it has been protected for 18 months.

You may, as necessary, revise your request to include revising your pleading, justification tables, accompanying testimony, highlighted copies or redacted copies concerning these matters within three weeks from the date of this letter. Otherwise, I will make a recommendation based upon the current filing.

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If you have any further questions regarding this matter, please do not hesitate to contact me at (850) 413-6218 or Bob Freeman, Government Analyst, at (850) 413-6485.

Sincerely,



Katherine N. Echtenacht
Office of the General Counsel

KE/

cc: Division of the Commission Clerk and Administrative Services
Division of Auditing and Safety (Vandiver, Freeman)