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Public Service Commission

August 5, 2009

Jessica A. Cano
Florida Power & Light Co.
700 Universe Boulevard
Juno Beach, FL 33408-0420

Re: Docket No. 090009-EI – Nuclear Cost Recovery Clause – Florida Power & Light Company’s request for confidential classification of portions of staff audit working papers prepared during “Florida Power & Light Company’s Nuclear Cost Recovery Clause Audit for the Year Ended December 31, 2008,” Audit Control No. 08-248-4-1, Document Nos. 05661-09, 05662-09 and 06128-09.

Dear Ms. Cano:

On June 19, 2009, Florida Power & Light Company (FPL) filed a request for confidential classification of certain portions of staff audit working papers (WP) prepared in response to staff’s “Florida Power & Light Company’s Nuclear Cost Recovery Clause Audit for the Year Ended December 31, 2008.” After reviewing this request, we have identified the following 5 perceived issues:

Issue 1

According to Rule 25-22.006(4), Florida Administrative Code (F.A.C.), the utility is required to identify by line and page where all sensitive information is found. The utility is also required to file highlighted and public-use redacted copies of the information. For the following staff working papers, FPL did not provide a line and page justification or identify the sensitive material, although it did provide highlighted and redacted copies of the information. Does the utility seek confidential classification of the following staff working papers? If so, please provide a line-by-line justification for the following:

- WP 47-2, 2 pages, titled “FPLE Charge Back”
- WP 47-3, 3 pages, titled “FPLE Charge Back”
- WP 47-4, 1 page, titled “FPLE Charge Back”
- WP 47-4/1, 6 pages, titled “FPLE Charge Back”
- WP 48-1, 7 pages, titled “Sample”
- WP 48-2, 6 pages, titled “Sample”

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Issue 2

In Staff Audit Manager Ngo's June 1, 2009, exit conference letter to Carlos Diaz, the staff identified by page number and title all sensitive materials retained by the staff during this audit. The staff manager also provided FPL with copies of the sensitive material that was to be retained. According to Rule 25-22.006(3)(a)2, F.A.C., absent good cause shown, failure to file a request for confidentiality within 21 days of the audit exit conference means that the utility has waived confidentiality for that material. The following audit working papers were omitted from FPL's request for confidentiality. Unless FPL modifies its request to include this material, it will be considered public information.

WP 46-1/2-2	WP 46-1/2-2/1	WP 46-2/1-1	WP 47-1
WP 47-1/1	WP 47/1-2	WP 47-1/3	WP 48-1/1
WP 48-1/2	WP 48-1/2	WP 48-1/3	WP 48-1/4
WP 48-1/5	WP 48-1/6	WP 48-1/7	WP 48-1/8
WP 48-1/9	WP 48-1/10	WP 48-1/11	WP 48-1/12
WP 48-1/13	WP 48-1/14	WP 48-2/1	WP 48-2/2
WP 48-2/3	WP 48-2/4	WP 48-2/5	WP 48-2/6
WP 48-3/4	WP 48-4	WP 48-5	WP 48-5/1
WP 48/5/1-1	WP 48-5/1-1/1	WP 48-5/1-3	WP 48-5/1-4
WP 48-5/1-5	WP 48-5/1-6	WP 48-5/1-7	WP 48-5/2
WP 49-2	WP 49-2/1		

Issue 3 – WP 9, 4 pages

These pages contain the staff auditor's notes concerning non-compliant transactions entered into by FPL. These transactions may be subject to further action by the Commission. Release of information concerning these potentially non-compliant transactions would not cause harm to the utility, and in some instances the information reports employee compensation. Please review this material and provide justification as to why all this material should be granted confidential classification. (Regarding audit information, please see Order No. 25297, issued on November 5, 1991, in Docket No. 890190-TL, In re: Petition of Citizens of the State of Florida to investigate SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S cost allocation procedures).

Issue 4 – WP 43, pages 1-3 and 5-8

Section 366.093(3), Florida Statutes (F.S.), provides that for information to be granted confidential classification, its release must cause harm to the utility, and the information must not have been released to the public (i.e. must be private). Portions of the information described above do not appear to meet this criteria. Please provide specific justifications as to why all the material in the above-listed audit working papers qualifies for confidential classification.

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Issue 5

Throughout its request for confidential classification, FPL requests that employee personnel information concerning duties and responsibilities, such as who is responsible for overseeing the nuclear projects, be treated as confidential. Section 366.093(3)(f), F.S., provides that employee information related to compensation, duties, responsibilities and qualifications is not eligible for confidential classification. Please explain and provide justification as to why the Commission should change its policies and allow utility employee duties and responsibilities to be treated as confidential. (For the Commission decision concerning non-disclosure agreements, please see Order No. PSC-93-1311-CFO-TL, issued on September 9, 1993, in Docket Nos. 920260-TL, 910163-TL, 910727-TL and 900960-TL.).

Response to Perceived Deficiencies

Within 14 days from the date of this letter, FPL may modify its pleading, justifications, redacted or highlighted copies with respect to its request for confidential classification. Otherwise, a recommendation will be presented to the Prehearing Officer based upon the existing record.

If you have any questions concerning this matter, please contact the undersigned at (850) 413-6076 or anwillia@psc.state.fl.us.

Sincerely,



Anna R. Williams, Esq.
Office of the General Counsel

CC: Office of Commission Clerk
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