

Ruth Nettles

090505-EI

From: Goorland, Scott [Scott.Goorland@fpl.com]
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Subject: Electronic Filing / Dkt #090505-EI / FPL's Objections and Responses to OPC's 1st POD (1-4) and 2nd POD (5-6)
Attachments: 11.19.09.FPL's Responses and Objections to OPC 1ST & 2ND PODs (090505).doc; 11.19.09.FPL's Responses and Objections to OPC 1ST & 2ND PODs (090505).pdf

Electronic Filing

a. Person responsible for this electronic filing:

Scott A. Goorland, Esq.
700 Universe Boulevard
Juno Beach, FL 33408
561-304-5639
scott.goorland@fpl.com

b. Docket No. 090505 - EI
IN RE: Review of replacement fuel costs, associated with the February 26, 2008 outage on Florida Power & Light Company's electrical system

c. The Document is being filed on behalf of Florida Power & Light Company.

d. There are a total of 7 pages

e. The document attached for electronic filing is Florida Power & Light Company's Objections and Responses to the Office of Public Counsel's First Request for Production of Documents (Nos. 1-4) and Second Request for Production of Documents (Nos. 5-6)

Scott A. Goorland, Esq.
700 Universe Boulevard
Juno Beach, FL 33408
561-304-5639
scott.goorland@fpl.com

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Review of replacement fuel costs)
associated with the February 26, 2008 outage)
on Florida Power & Light Company's)
electrical system.)

Docket No: 090505-EI
Date: November 19, 2009

FLORIDA POWER & LIGHT COMPANY'S OBJECTIONS AND RESPONSES TO THE
OFFICE OF PUBLIC COUNSEL'S FIRST REQUEST FOR PRODUCTION OF
DOCUMENTS (NOS. 1-4) AND SECOND REQUEST FOR
PRODUCTION OF DOCUMENTS (NOS. 5-6)

Florida Power & Light Company ("FPL"), pursuant to Rule 1.350, Florida Rules of Civil Procedure, and Rule 28-106.206, Florida Administrative Code, submits the following objections and responses to the Office of Public Counsel's ("OPC's") First Request for Production of Documents (Nos. 1-4) and Second Request for Production of Documents (Nos. 5-6). These discovery requests were originally served in Docket No. 090001-EI, but review of replacement fuel costs associated with the February 26, 2008 outage was subsequently spun off to Docket No. 090505-EI by Order No. PSC-09-0723-PHO-EI, dated October 30, 2009. Accordingly, FPL is responding to OPC's discovery requests in Docket No. 090505-EI.

I. General Objections

FPL objects to each and every discovery request that calls for information protected by the attorney-client privilege, the work product doctrine, the accountant-client privilege, the trade secret privilege, or any other applicable privilege or protection afforded by law, whether such privilege or protection appears at the time response is first made or is later determined to be applicable for any reason. FPL in no way intends to waive any such privilege or protection. The nature of the any such document(s) will be described in a privilege log prepared and provided by FPL.

In certain circumstances, FPL may determine, upon investigation and analysis, that information responsive to certain discovery requests to which objections are not otherwise asserted is confidential and proprietary and should not be produced without provisions in place to protect the confidentiality of the information, if at all. By agreeing to provide such information in response to such request, FPL is not waiving its right to insist upon appropriate protection of confidentiality by means of a protective order or other action to protect the confidential information requested. FPL asserts its right to require such protection of any and all documents that may qualify for protection under the Florida Rules of Civil Procedure and other applicable statutes, rules and legal principles.

FPL is a large corporation with employees located in many different locations. In the course of its business, FPL creates numerous documents that are not subject to Florida Public Service Commission or other governmental record retention requirements. These documents are kept in numerous locations and frequently are moved from site to site as employees change jobs or as business is reorganized. Therefore, it is possible that not every relevant document may have been consulted in developing FPL's responses to the discovery requests. Rather, these responses provide all the information that FPL obtained after a reasonable and diligent search conducted in connection with these discovery requests. To the extent that the discovery requests propose to require more, FPL objects on the grounds that compliance would impose an undue burden or expense on FPL.

FPL objects to each discovery request to the extent that it seeks information that is not relevant to the subject matter of this docket and is not reasonably calculated to lead to the discovery of admissible evidence.

FPL objects to each and every discovery request to the extent it is vague, ambiguous overly broad, imprecise, or utilizes terms that are subject to multiple interpretations but are not properly defined or explained for purposes of such discovery requests. Any responses provided by FPL will be provided subject to, and without waiver of, the foregoing objection.

FPL also objects to each and every discovery request to the extent it calls for FPL to prepare information in a particular format or perform calculations or analyses not previously prepared or performed as purporting to expand FPL's obligations under applicable law.

FPL objects to providing information to the extent that such information is already in the public record before the Florida Public Service Commission and available to the requesting Party through normal procedures.

FPL objects to each and every discovery request that calls for the production of documents and/or disclosure of information from FPL Group, Inc. and any subsidiaries and/or affiliates of FPL Group, Inc. that do not deal with transactions or cost allocations between FPL and either FPL Group, Inc. or any subsidiaries and/or affiliates. Such documents and/or information do not affect FPL's rates or cost of service to FPL's customers. Therefore, those documents and/or information are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Furthermore, FPL is the party appearing before the Florida Public Service Commission in this docket. To require any non-regulated entities to participate in irrelevant discovery is by its very nature unduly burdensome and overbroad. Subject to, and without waiving, any other objections, FPL will respond to the extent the request pertains to FPL and FPL's rates or cost of service charged to FPL's customers. To the extent any responsive documents contain irrelevant affiliate information as well as information related to FPL and

FPL's rates or cost of service charged to its customers, FPL may redact the irrelevant affiliate information from the responsive document(s).

FPL objects to any production location other than the location established by FPL, at FPL's Tallahassee Office, 215 S. Monroe Street, Suite 810, Tallahassee, FL 32301.

FPL objects to each and every discovery request and any instructions that purport to expand FPL's obligations under applicable law.

In addition, FPL reserves its right to count discovery requests and their sub-parts, as permitted under the applicable rules of procedure, in determining whether it is obligated to respond to additional requests served by any party.

FPL expressly reserves and does not waive any and all objections it may have to the admissibility, authenticity or relevancy of the information provided in its responses.

Notwithstanding any of the foregoing general objections and without waiving these objections, FPL intends in good faith to respond to OPC's discovery requests.

II. Specific Objections

FPL incorporates by reference all of the foregoing General Objections into its Specific Objections set forth below as though fully stated herein.

Request for Production No. 3: FPL objects to the production of certain documents identified below that would be responsive to Request for Production No. 3, which calls for all documents in FPL's "possession, custody or control analyzing the cause of the February 26, 2008 outage." FPL has received letters from and provided letters to FERC which would be responsive to this request. These letters contain specific quotations and pages from deposition transcripts provided to FPL by FERC staff of depositions of certain FPL employees taken by

FERC staff. FPL received these deposition transcripts from FERC staff pursuant to an agreement by FPL to maintain confidentiality of the documents. Producing the portions of those letters containing the deposition quotations and pages would be inconsistent with the confidentiality conditions. FPL has inquired with the FERC staff but has not received permission to release to OPC the materials identified above. Subject to, and without waiving, any other objections, FPL will provide the letters identified above with the information related to the depositions redacted from the documents.

Request for Production No. 5: FPL objects to the production of certain documents identified below that would be responsive to Request for Production No. 5, which calls for “all documents sent by FPL to, or received from, the Federal Energy Regulatory Commission, and please provide all documents sent to, or, received from, any member of the staff of the Federal Energy Regulatory Commission, related to the February 26, 2008 outage.” FPL has received from FERC staff transcripts of depositions of certain FPL employees taken by FERC staff, including exhibits, pursuant to agreement by FPL to maintain confidentiality of the documents. Producing the deposition transcripts or exhibits to OPC would be inconsistent with those confidentiality conditions. FPL has also received letters from FERC, which contain specific quotations from the depositions provided by FERC staff. Producing the portions of those letters containing the deposition quotations would likewise be inconsistent with the confidentiality conditions. Finally, FPL has received from FERC copies of responses to FERC data requests provided by S&C Electric Company. As with the depositions, these documents were provided to FPL pursuant to agreement by FPL to maintain the confidentiality of the material. Producing these responses to OPC would be inconsistent with those confidentiality conditions. FPL has

inquired with the FERC staff but has not received permission to release to OPC the materials identified above. FPL will produce all other documents in its possession that are responsive to this request.

III. Responses

First Request for Production of Documents (Nos. 1-4) and Second Request for Production of Documents (Nos. 5-6). Pursuant to Rule 28-106.206, Florida Administrative Code, and Rule 1.350, Florida Rules of Civil Procedure, and consistent with its objections, FPL will make the documents available for inspection and review by OPC at FPL's Tallahassee Office, 215 S. Monroe Street, Suite 810, Tallahassee, FL 32301, during regular business hours, 8 a.m. to 5 p.m., Monday through Friday, upon reasonable notice to FPL's counsel.

Respectfully submitted,

R. Wade Litchfield, Esq.
Vice President and Chief Regulatory Counsel
John T. Butler, Esq.
Managing Attorney
Scott A Goorland
Principal Attorney
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408
Telephone: (561) 304-5633
Facsimile: (561) 691-7135

BY: /s/ Scott A. Goorland
Scott A. Goorland
Fla. Bar No. 0066834

CERTIFICATE OF SERVICE
Docket No. 090505-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically this 19th day of November, 2009, to the following:

Lisa Bennett, Esq.
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

J. R. Kelly, Esq.
Charles J. Rehwinkel, Esq.
Charles Beck, Esq.
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399

By: /s/ Scott A. Goorland
Scott A. Goorland