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July 14, 2010

VIA HAND DELIVERY

Ms. Ann Cole  
Division of the Commission Clerk and  
Administrative Services  
Florida Public Service Commission  
Betty Easley Conference Center  
2540 Shumard Oak Boulevard, Room 110  
Tallahassee, FL 32399-0850

CLAIM OF CONFIDENTIALITY  
 NOTICE OF INTENT  
 REQUEST FOR CONFIDENTIALITY  
 FILED BY OPC

FOR DN 05781-10, WHICH  
IS IN LOCKED STORAGE. YOU MUST BE  
AUTHORIZED TO VIEW THIS DN. - CLK

Re: Docket No. 100009-EI; Nuclear Power Plant Cost Recovery Clause

Dear Ms. Cole:

Enclosed for filing on behalf of Florida Power & Light Company ("FPL") are an original and seven (7) copies of its Request for Confidential Classification of Staff's audit report, entitled "Review of Florida Power & Light's Project Management Internal Controls for Nuclear Plant Uprate and Construction Projects". The original includes Exhibit A through D. The seven (7) copies include Exhibits B through D only.

Exhibit A consists of the confidential report, and all information that FPL asserts is entitled to confidential treatment has been highlighted. Exhibit B is an edited version of Exhibit A, in which the information FPL asserts is confidential has been redacted. Exhibit C is a justification table supporting FPL's Request for Confidential Classification. Exhibit D contains copies of the affidavits of Steven Scroggs, Bruce Beisler, and Antonio Maceo in support of FPL's Request for Confidential Classification. The original affidavits will be filed via a separate transmittal. Also included in this filing is a compact disc containing FPL's Request for Confidential Classification and Exhibit C only in Microsoft Word format.

Please contact me if you or your Staff has any questions regarding this filing.

Sincerely,

Jessica A. Cano

- COM
- APA
- ECR
- GCL
- RAD
- SSC
- ADM
- OPC
- CLK  *Pend*

Enclosures  
cc: Parties of Record (w/out enc.)

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Nuclear Power Plant                    )  
Cost Recovery Clause                        )

Docket No. 100009-EI  
Filed: July 14, 2010

**FLORIDA POWER & LIGHT COMPANY'S  
REQUEST FOR CONFIDENTIAL CLASSIFICATION OF  
STAFF'S AUDIT REPORT ON PROJECT MANAGEMENT INTERNAL CONTROLS**

Pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, Florida Power & Light Company ("FPL") requests confidential classification of certain material contained in the Staff of the Florida Public Service Commission's ("Staff's") audit report entitled "Review of Florida Power & Light's Project Management Internal Controls for Nuclear Plant Uprate and Construction Projects" (the "Audit Report"). In support of its request, FPL states as follows:

1. During Staff's audit, Staff was provided with various confidential documents. By letter dated June 21, 2010, Staff indicated its intent to retain certain audit work papers and include certain confidential information in its Audit Report. On June 23, 2010, FPL requested an audit exit conference. The exit conference was held on June 28, 2010. Pursuant to Rule 25-22.006(3)(a)2, Florida Administrative Code, FPL has 21 days from the date of the exit conference, or until July 21, 2010, to file a formal request for confidential classification with respect to the Audit Report and the work papers. FPL is filing this request for the Audit Report on an expedited basis per Staff's request. FPL's request for confidential classification for the workpapers will be filed by July 21, 2010, pursuant to Rule 25-22.006(3)(a)2, Florida Administrative Code.

2. The following exhibits are included with and made a part of this request:
  - a. Exhibit A includes a copy the confidential Audit Report, on which all information that is entitled to confidential treatment under Florida law has been highlighted.
  - b. Exhibit B consists of a redacted copy of the confidential Audit Report.
  - c. Exhibit C is a table containing the specific line and page references to the confidential information for which confidential treatment is sought, and references to the specific statutory basis or bases for the claim of confidentiality and to the affidavit in support of the requested classification.
  - d. Exhibit D includes the affidavits of Steven Scroggs, Bruce Beisler, and Antonio Maceo.

3. FPL submits that the highlighted information in Exhibit A is proprietary confidential business information within the meaning of Section 366.093(3), Florida Statutes. Section 366.093(3), Florida Statutes, defines confidential information as information that is intended to be and is treated by the company as private in that the disclosure of the information would cause harm to the ratepayers or the company's business operations, and has not been disclosed publicly. Pursuant to Section 366.093, such information is entitled to confidential treatment and it is exempt from the disclosure provisions of the public records law. Thus, once the Commission determines that the information in question is proprietary confidential business information, the Commission is not required to engage in any further analysis or review such as weighing the harm of disclosure against the public interest in access to the information.

4. As the affidavits included in Exhibit D indicate, the Audit Report contains information related to bids or contractual data, such as pricing or other terms, the public

disclosure of which would violate nondisclosure terms of FPL's contracts with certain vendors and impair FPL's ability to contract for goods or services on favorable terms in the future, to the detriment of FPL and its customers. This information is also related to competitive interests, and its disclosure would impair the competitive business of either FPL or its vendors. For example, payments to vendors for specific services, and descriptions of FPL warranty claims against particular vendors are included in the Audit Report. This information is treated by FPL as private, and its confidentiality has been maintained. Such information is protected by Sections 366.093(3)(d) and 366.093(3)(e), Florida Statutes.

5. Additionally, Staff's Audit Report contains information related to internal auditing controls and reports of internal auditors. Full and unfettered disclosure of information to the Internal Auditing Department is essential for the department to fulfill its role, and the confidential status of internal auditing findings and reports supports such disclosure. The release of information related to internal auditing and reports of internal auditors would be harmful to FPL and its customers because it may affect the effectiveness of the Internal Auditing Department itself. This information is treated by FPL as private, and its confidentiality has been maintained. Such information is protected from public disclosure pursuant to Section 366.093(3)(b), Florida Statutes.

6. The Staff Audit Report also provides Staff's opinion on certain personnel changes within the Extended Power Uprate organization. Staff's opinion reflects, and is based upon, employee personnel information that is unrelated to compensation, duties, qualifications, or responsibilities. 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 with unregulated entities. 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. Accordingly, this information is protected pursuant to Section 366.093(3)(f), Florida Statutes. Even if one were to take the position that the information is somehow related to employee duties or responsibilities, the information can and should be maintained as confidential pursuant to the general definition of confidential information in Section 366.093(3), Florida Statutes. *See Florida Power & Light Company, et. al, v. Florida Public Service Commission*, 31 So. 3d 860 (Fla. 1st DCA 2010) (holding that it is error to fail to consider whether information falls within the definition of proprietary confidential business information). This information is treated by FPL as private, and its confidentiality has been maintained. It is therefore proprietary confidential business information pursuant to Section 366.093(3), Florida Statutes.

7. Further, confidential treatment of Staff's discussion of the personnel changes is necessary to protect the employees' rights to privacy. The employees are identified in Staff's Audit Report by title. In Florida, a citizen's right to privacy is independently protected by the state constitution. *See*, Art. V, § 23, Fla. Const. Accordingly, the citizens of Florida, in amending the state constitution, explicitly recognized individual privacy interests. FPL consistently seeks to protect the privacy interests of both its employees and customers to the extent possible.

8. Finally, Staff's Audit Report contains information related to an investigation commissioned by FPL to examine an employee complaint letter. This information includes specifics about the complaint, the manner in which the investigation was conducted, and the conclusions of the investigation. Disclosure of this information could have a chilling effect on the Company's willingness to conduct such investigations and share the results with Staff.

Additionally, 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. Accordingly, the investigation is similar to an internal audit, and the potential harm to FPL and its customers if the information is disclosed is similar to the harm that would be caused by disclosure of internal auditing information. The Commission has recognized that this type of information 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. *See, e.g., In Re: Application for Rate Increase by City Gas Company of Florida*, Order No. PSC-97-0039-CFO-GU, Docket No. 960502-GU (issued Jan. 9, 1997). This information is treated by FPL as private, and its confidentiality has been maintained. It is therefore proprietary confidential business information pursuant to Section 366.093(3), Florida Statutes.


9. Upon a finding by the Commission that the information highlighted in Exhibit A, and referenced in Exhibit C, is proprietary confidential business information, the information should not be declassified for a period of at least eighteen (18) months and should be returned to FPL as soon as the information is no longer necessary for the Commission to conduct its business. *See* § 366.093(4), Fla. Stat.

**WHEREFORE**, for the above and foregoing reasons, as supported by the exhibits and affidavits included herewith, Florida Power & Light Company respectfully requests that its Request for Confidential Classification be granted

Respectfully submitted,

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By:

  
Jessica A. Cano  
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**CERTIFICATE OF SERVICE  
DOCKET NO. 100009-EI**

I HEREBY CERTIFY that a true and correct copy of FPL's Request for Confidential Classification (without attachments) was served by U.S. Mail this 14th day of July, 2010, to the following:

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**Re: Acknowledgement of Confidential Filing in Docket No. 100009-EI**

**This will acknowledge receipt by the Florida Public Service Commission, Office of Commission Clerk, of a CONFIDENTIAL DOCUMENT filed on July 14, 2010, in the above-referenced docket.**

**Document Number 05781-10 has been assigned to this filing, which will be maintained in locked storage.**

**If you have any questions regarding this document, please contact Kim Peña, Records Management Assistant, at (850) 413-6393.**