

MEMORANDUM

SEPTEMBER 22, 2010

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TO: ANN COLE, COMMISSION CLERK, OFFICE OF COMMISSION CLERK
FROM: LISA BENNETT, SENIOR ATTORNEY *LB*
RE: DOCKET NO. 100009-EI - NUCLEAR COST RECOVERY CLAUSE.

Please place the attached e-mail and correspondence in Docket No. 100009-EI.

LCB/th
Attachments

DOCUMENT NUMBER DATE

07950 SEP 22 0

FPSC-COMMISSION CLERK

From: Thomas Saporito [mailto:saporito3@gmail.com]

Sent: Wednesday, September 22, 2010 2:28 PM

To: Lisa Bennett

Cc: Blaise N. Huhta; Bryan Anderson; Captain Shayla McNeill; Charles Rehwinkel; dianne.triplett@pgnmail.com; E. Leon Jacobs; F. Alvin Taylor; gadavis@enviroattorney.com; J. Michael Walls; J. R. Kelly; Jack Leon; jwhitlock@enviroattorney.com; James Brew; Jessica Cano; John McWhirter; John T. Burnett; Jon C. Moyle Jr.; Joseph McGlothlin, Esq.; Natalie Futch Smith; Paul Lewis; Randy B. Miller; Tiffany Cordes; Vicki Gordon Kaufman; Wade_Litchfield; Stephen Garl; Jim Breman; Mark Laux; Cayce Hinton; Dale Buys

Subject: Re: Briefs for Docket 100009, NCRC

Dear Ms. Bennett:

Please see that attached document for consideration by the PSC staff and the PSC Commissioners in the subject matter docket involving the Florida Power and Light Company.

Should you have any questions regarding this matter, please do not hesitate to contact me at your convenience.

Kind regards,

/s/ Thomas Saporito

Thomas Saporito, Executive Director
EndangeredPlanetEarth.blogspot.com
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Electronic Mail: saporito3@gmail.com

Advocate of Greenpeace USA - Think Before Printing and Save a Tree

On 9/10/2010 11:14 AM, Lisa Bennett wrote:

I would appreciate when you file and serve your briefs today, that you include Commission staff members Stephen Garl, Jim Breman, Mark Laux, Cayce Hinton; and Dale Buys. I have copied them in this email so that you will have their email address. Thank you.

Lisa C. Bennett
Office of the General Counsel
2540 Shumard Oak Boulevard
Tallahassee, FL
850-413-6230

From the Desk of Thomas Saporito

Post Office Box 8413, Jupiter, Florida 33468
Voice: 561-972-8363 Fax: 561-247-6404
Electronic Mail: saporito3@gmail.com

September 22, 2010

John V. Gillies
Special Agent in Charge
U.S. Department of Justice
Federal Bureau of Investigation
16320 N.W. 2nd Avenue
North Miami Beach, Florida 33169

In re: Your Letter Dated August 12, 2010 (In reference to a September 13, 2009, complaint against the Florida Power and Light Company)

Dear Mr. Gillies:

This serves to acknowledge receipt of your letter dated August 12, 2010, related to a complaint filed by the undersigned on September 13, 2009, against the Florida Power and Light Company (FPL) seeking an investigation of FPL by the U.S. Department of Justice (DOJ) - Federal Bureau of Investigation (FBI) related to certain and specific allegations of apparent illegal activities on the part of FPL in representations made to the Florida Public Service Commission (PSC) regarding one or more rate cases brought by FPL before the PSC. In your aforementioned letter, you state in relevant part that:

" . . . After a careful and thorough review of your complaint, we have determined that, at this time, there does not appear to be a violation within the FBI's jurisdiction which could be successfully prosecuted and proven beyond a reasonable doubt in a Federal District Court. . . "

Id. at *1.

Please be advised that additional evidence has surfaced with respect to FPL activities and conduct in providing sworn testimony under oath before the PSC related to one or more pending rate cases where FPL is seeking an increase in rates to be charged to its customers. Notably, a recent "independent" review of FPL corporate records by Concentric Energy Advisers (CEA) documented that an FPL employee who testified before the PSC on September 8th, 2009, presented out-of-date cost estimates for improvements to increase capacity at FPL's Turkey Point and Port St. Lucie nuclear plants. A \$300-million, or 27 percent, increase in the cost of the projects should have

been disclosed but was not - according to the CEA report. Thus, one or more FPL employees appear to have given perjured testimony before the PSC in an apparent illegal motive to gain monetary compensation vis-a-vi a unwarranted rate increase to FPL customers through a cost recovery rate case before the Commission.

Notably, subsequent to learning that information, the PSC through Commissioner Nathan Skop (Skop) sought the sworn testimony of the FPL CEO, Armando Olivera (Olivera) through a simple verbal request to FPL counsel - to further explore and investigate FPL's prior sworn testimony in these circumstances and to compare the same against the findings in the CEA report. FPL counsel responded to the PSC request for Olivera's sworn testimony by aggressively singling out Commissioner Skop and verbally attacking Skop at the bench before the PSC and staff and the public. FPL counsel adamantly refused to produce Olivera - and suggested that if the PSC were to issue a subpoena for Olivera's testimony - that FPL would drag the process through the courts. As the issue escalated before the PSC, FPL filed a motion in Federal Court to have Skop removed from further consideration of FPL's pending rate case matters. See, two attachments included herewith.

Thus, it is patently clear that the FBI now has ample evidence to move forward and initiate an agency "criminal" investigation of FPL as a matter of law. The DOJ simply cannot allow a regulated utility such as FPL to undermine the authority of the PSC in actions and conduct which serves to intimidate other PSC Commissions and staff to rule in the utility's favor. It is incumbent upon the PSC to conduct investigations where necessary to protect the interests of Florida citizens in these circumstances - and therefore the PSC must have unfettered access to individuals as necessary to conduct such investigations accordingly.

In closing, the undersigned once again requests that the DOJ through the FBI act in an expeditious and timely manner to investigate the actions and conduct of FPL in the circumstances described above and illustrated in the two enclosed attachments; and that the DOJ intervene to quash the pending FPL motion filed in Federal Court remove Commissioner Skop from [his] appointed duties to review, consider, and decide pending FPL rate cases.

Respectfully,


Thomas Saporito

cc: Eric Holder, U.S. Attorney General
Florida Public Service Commission



U.S. Department of Justice

Federal Bureau of Investigation

In Reply, Please Refer to
File No. 194-0

16320 NW 2nd Avenue
North Miami Beach
Florida, 33169

RECEIVED
173 Aug 2010

August 12, 2010

RE: Your complaint dated 09/13/2009

Dear Mr. Saporito:


This letter is in response to your written complaint in which you advised that FPL employees recruited individuals to speak in favor of a proposed FPL rate hike during multiple local service hearings in 2009. Some of the individuals asked to speak in favor of the rate increase, had undisclosed ties to FPL.

After a careful and thorough review of your complaint, we have determined that, at this time, there does not appear to be a violation within the FBI's jurisdiction which could be successfully prosecuted and proven beyond a reasonable doubt in a Federal District Court. Therefore, at this time, we are declining to take action on your complaint.

We appreciate your vigilance and recognize that efforts like yours provide the assistance needed to ensure a safe environment for all our communities.

Sincerely,

John V. Gillies
Special Agent in Charge

By: 
John J. Bernardo
A/Supervisory Special Agent

Posted on Friday, 08.17.10

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PSC commissioner fights FPL's attempt to remove him

BY MARY ELLEN KLAS
HERALD/TIMES TALLAHASSEE BUREAU

TALLAHASSEE -- Public Service Commissioner Nathan Skop fired back at Florida Power & Light Thursday, formally denying the company's request to have him removed from its 13 remaining utility cases before his term ends in January.

Skop's 17-page response also attempts to address many of the arguments being made by FPL in a Sept. 8 motion filed in the First District Court of Appeal. The company asked the court to remove Skop from all its pending cases because it believes it can't get a fair hearing based on comments Skop made during recent hearings.

Skop told reporters on June 30 and July 1 that the decision by the PSC Nominating Council not to interview him and PSC Commission Chairman Nancy Argenziano for reappointment was "payback" for the commission's unanimous decision to reject the rate cases of FPL and Progress Energy.

"Commissioner Skop's outbursts followed a year in which his conduct toward FPL in fact-finding hearings has become increasingly more hostile and adversarial, FPL's motion stated.

FPL filed the nearly 400-page motion after Skop refused to recuse himself from voting in a nuclear cost recovery hearing on Sept. 2. He then opposed FPL's request for a \$31 million increase in customer bills that the company wanted to take effect in January, but the commission voted 3-2 to support the increase.

Skop argued then that he was not obligated to remove himself because the law requires a request for recusal to occur prior to the hearing, not during the proceeding.

In his response on Thursday, Skop said that the reason a motion to disqualify a commissioner should be filed before a case is heard is to prevent companies from using the tactic to "relieve a party's discomfort when the going gets tough during an agency proceeding," especially if a commissioner pursues "an unexpectedly irksome line of questions.

"Such an untethered, free-roaming threat of recusal would seriously impair the ability of the Commission to carry out its important responsibilities," he wrote.

Skop argued that he has no bias against FPL, and that his statements referred to the legislatively-controlled nominating council and were also aimed at Progress Energy Florida.

"I voted against PEF's rate increase requests as well as FPL's, and noted in the July 1, 2010, statement that the Nominating Council's 'payback' reflected my participation in PEF's rate case as well as FPL's rate case," Skop wrote in his order.

"Apparently, PEF, having filed no motion similar to FPL's, does not interpret the exact same public statements of mine as seeking to blame PEF for my failure to be interviewed by the Nominating Council," he said. He added that FPL's argument was "tenuous and speculative" and provided insufficient grounds to require his disqualification.

The matter will now move to court, where the FPL case is pending.

Mary Ellen Klas can be reached at meklas@miamiherald.com



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By **SUSAN SALISBURY**
Palm Beach Post Staff Writer

Updated: 8:56 p.m. Thursday, Aug. 26, 2010
Posted: 8:38 p.m. Thursday, Aug. 26, 2010

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Florida Public Service Commissioner Nathan Skop continued to demand a full-fledged hearing on Juno Beach-based Florida Power & Light Co.'s nuclear costs Thursday, saying that a consultant's report raised "red flags" about the information the company provided to the PSC last year.

"I will not be intimidated by FPL. I have no intention of backing down," Skop said.

A shorter version of the hearing expected to include just two witnesses began Thursday and is scheduled to continue today.

Last week FPL and the Office of Public Counsel reached an agreement which, if the PSC approves, would allow the company to charge \$31 million in nuclear costs in 2011 but postpone questions about the costs until next year.

A June 23 report prepared by Concentric Energy Advisors of Marlborough, Mass., said that an FPL employee who testified before the PSC on Sept. 8, 2009, presented out-of-date cost estimates for improvements to increase capacity at FPL's Turkey Point and Port St. Lucie nuclear plants. A \$300 million, or 27 percent, increase in the cost of the projects should have been disclosed but was not, the report said.

Skop said he is tired of what he called FPL's "selective disclosure, spin and withholding of facts."

"I have lost my job because I do my job," said Skop, who lost a bid for reappointment to the commission. His term ends Jan. 1.

In a contentious daylong hearing, Skop hammered away at FPL, saying he wants to know who knew what and when regarding the updated cost estimates.

He also pointed to an Aug. 13 letter from FPL to the Nuclear Regulatory Commission stating that FPL was withdrawing its application to upgrade its Port St. Lucie plant that was not submitted to the PSC until Aug. 23.

FPL still plans to increase capacity at the plant, but after the NRC requested additional technical information, it decided to withdraw its application for now, said Terry Jones, FPL's vice president of nuclear power uprate.

FPL attorney Bryan Anderson objected to many of Skop's questions to Jones, saying they were inappropriate. He objected when Skop brought up an April 2 letter that Lew Hay, CEO of FPL's parent company NextEra Energy Inc., wrote to employees. In that letter, Hay said he is proud of the accurate information the company furnishes to shareholders. Skop asked Jones if he received the letter.

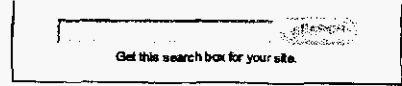
"This letter does not come within 100 yards of the testimony of this witness," Anderson said, adding the Hay letter does not involve nuclear costs.

In February, an employee wrote a letter to Hay stating that he was concerned about the accuracy of cost estimates FPL would be reporting to the PSC in upcoming hearings.

Skop tried to get Jones to say that the statements Hay made in the letter to employees about accurate information was in sharp contrast to what occurred.

Concentric CEO John Reed is expected to testify today.

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a. Person responsible for this electronic filing:

Thomas Saporito
Post Office Box 8413
Jupiter, Florida 33468-8413
Phone: (561) 972-8363
Email: saporito3@gmail.com

b. Docket No. 100001 EI

In re: Petition for rate increase (nuclear cost recovery) by Florida Power and Light Company.

c. Document being filed on behalf of Thomas Saporito.

d. There are a total of 5 pages.

e. The document attached for electronic filing is "Letter to John V. Gillies, Special Agent - Federal Bureau of Investigation - Request for Investigation of Florida Power and Light Company"

Thank you for your timely attention and cooperation to this request.

Kind regards,


Thomas Saporito

22 SEPT 2010 