BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida Power & Light Company	Docket No: 080677-EI
In re: 2009 depreciation and dismantlement study by Florida Power & Light Company	Docket No. 090130-EI Filed: August 20, 2009

FLORIDA POWER & LIGHT COMPANY'S NOTICE OF INTENT TO REQUEST CONFIDENTIAL CLASSIFICATION OF REQUESTED COMPENSATION INFORMATION AND REQUEST FOR CONTINUED CONFIDENTIAL TREATMENT OF PREVIOUSLY PROVIDED COMPENSATION INFORMATION PENDING APPEAL

Florida Power & Light Company ("FPL") hereby files this Notice of Intent to Request Confidential Classification of Requested Compensation Information and Request for Continued Confidential Treatment of Previously Provided Compensation Information Pending Appeal.

In accordance with the decision on Items 4 and 4a made by the Florida Public Service Commission (the "Commission") in the above-referenced dockets at its Agenda Conference on August 18, 2009, FPL is filing itemized employee compensation information including the requested job titles. The itemized employee compensation information without titles was previously provided in response to Staff's Third Set of Interrogatories Nos. 16-17, Staff's Fourth Set of Interrogatories No. 32, and Staff's Eighth Set of Interrogatories No. 97. FPL is also filing workpapers supporting MFR Schedule C-1 "Adjusted Jurisdictional Other O&M Expenses." (Please refer to FPL's response to the Office of Public Counsel's First Request for Production of Documents No. 13 for additional workpapers.) The requested information is enclosed in a separate envelope labeled "**ATTACHMENT A - CONFIDENTIAL INFORMATION.**" FPL, pursuant to Rule 25-22.006(3)(a) and (d), Florida Administrative Code, requests confidential handling of the materials provided herewith. Also attached hereto are the following: FPL's

COM
ECR 5
GCL 1
GPC
RCP
SSC
SGA
ADM
CLK 1

This docketed notice of intent was filed with Confidential Document No. 08697-09. The document has been placed in confidential storage pending timely receipt of a request for confidentiality.

Second Revised Request for Confidential Classification dated August 13, 2009 without attachments (Exhibit B); Staff's Motion to Compel with exhibits (Exhibit C); Staff's recommendation on issues 4 and 4A for the August 18, 2009 Agenda Conference with exhibits (Exhibit D); and the Vote Sheet from the August 18, 2009 Agenda Conference (Exhibit E).

For all the reasons stated in FPL's Second Revised Request for Confidential Classification dated August 13, 2009, as further articulated by counsel for FPL during the discussion of Items 4 and 4A at the August 18, 2009 Agenda Conference, all of which are incorporated herein by reference, FPL maintains its position that this information is, and should be treated as, confidential. FPL expressly reserves its position that this information is confidential and this filing is intended only to comply with the Commission's decision on Items 4 and 4A at the August 17, 2009 Agenda Conference and should not be interpreted or construed as a waiver by FPL of its position, or any argument in support of its position, that the information filed herewith is "proprietary confidential business information" as defined under Section 366.093(3), Florida Statutes. FPL requests confidential handling of this information pursuant to Rule 25-22.006(3)(a) and (d) and Rule 25-22.006(10), Florida Administrative Code.

FPL continues to consider the information provided with its Second Revised Request for Confidential Classification to be confidential. Because FPL is providing documents today which incorporate the previously provided information, FPL requests that that attachments to its Second Revised Request for Confidential Classification be returned. In the alternative, consistent with Rule 25-22.006(10), Florida Administrative Code, FPL requests continued confidential handling of the information previously provided, pending final disposition by the Commission, including disposition of any motion for reconsideration, and until judicial review is complete.

Respectfully submitted this 20th day of August, 2009.

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By: _____
for Jessica A. Cano
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Intent to Request Confidential Classification of Requested Compensation Information and Request for Confidential Treatment Pending Appeal, without the attachments, has been furnished electronically and by United States Mail this 20th day of August, 2009, to the following:

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EXHIBIT B

FPL's Second Revised Request for Confidential Classification dated August 13, 2009

(without attachments)

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida Power & Light Company)	Docket No: 080677-EI
In re: 2009 depreciation and dismantlement study by Florida Power & Light Company)	Docket No. 090130-EI Served: August 12, 2009 13

FLORIDA POWER & LIGHT COMPANY'S AND INTERVENORS' SECOND REVISED REQUEST FOR CONFIDENTIAL CLASSIFICATION OF STAFF'S THIRD SET OF INTERROGATORIES NO. 16, STAFF'S FOURTH SET OF INTERROGATORIES NO. 32, AND STAFF'S EIGHTH SET OF INTERROGATORIES NO. 97, AND REQUEST FOR DETERMINATION BY FULL COMMISSION

Florida Power & Light Company ("FPL") and Intervenor FPL employees, pursuant to Rule 25-22.006, Florida Administrative Code, and Section 366.093 of the Florida Statutes, hereby requests confidential classification of competitively sensitive and private compensation information. In support of its request, FPL states as follows:

1. On July 21, 2009, FPL filed a Request for Confidential Classification for its responses to Staff's 3rd Set of Interrogatories No. 16 and Staff's 4th Set of Interrogatories No. 32. As indicated therein, similar information was pending production pursuant to an outstanding discovery request. On July 27, 2009, FPL timely provided its response to the outstanding discovery request (Staff's Eighth Set of Interrogatories Nos. 97) and filed a Revised Request for Confidential Classification to incorporate that response. On August 6, 2009, Staff requested specific supplements to FPL's responses to this discovery, and subsequently, Staff filed a motion compelling FPL to supplement its responses. Accordingly, FPL is filing this Second Revised Request for Confidential Classification to protect confidential information included in FPL's supplemental responses to this discovery. This second revised request, and all exhibits attached hereto, are intended to replace and supersede FPL's July 21st Request, FPL's July 27th Revised

Request, and Exhibits A, B, and C thereto. FPL requests that the Exhibits A, B, and C that were previously provided be returned to FPL and be replaced with those attached. FPL incorporates herein by reference the Exhibit D previously provided.

2. The Staff of the Florida Public Service Commission ("Staff") has requested copies of confidential information contained in FPL's supplemental discovery responses. This request is being filed pursuant to Rule 25-22.006, Florida Administrative Code, to request confidential treatment of the information made available to Staff. FPL understands that similar requests for confidential classification are being made by other electric investor-owned utilities. Given the need for consistency in regulatory determinations on similar issues, and the harm to customers and to FPL's business operations which would result from the disclosure of this information, FPL seeks the determination of the full Commission on this request.

3. Attached hereto and made a part hereof are the following exhibits: Exhibit A consists of documents for which FPL seeks confidential treatment with the confidential information highlighted; Exhibit B consists of edited versions of the documents with the confidential information redacted; and Exhibit C is a table containing a line-by-line and page-by-page identification of the 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. Exhibit D, which was previously provided and which is incorporated herein by reference, is a copy of the affidavit of Kathleen Slattery, attesting to the detrimental impacts FPL anticipates as a result of the public disclosure of this competitively sensitive compensation information.

4. Section 366.093(3), Florida Statutes, sets forth the types of information which may receive confidential treatment. Specifically, that section states as follows:

> Proprietary confidential business information means information, regardless of form or characteristics, which is ***owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed*** unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public. Proprietary confidential business information ***includes, but is not limited to:***
>
> (a) Trade secrets.
> (b) Internal auditing controls and reports of internal auditors.
> (c) Security measures, systems, or procedures.
> (d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms.
> (e) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.
> (f) Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities.

(emphasis added). The statutory standard is clear. Information is entitled to confidential treatment if it: (1) is owned or controlled by the company; (2) is intended to be and is treated by the person or company as private; (3) would cause harm to the ratepayers or the persons' or company's business operations; and (4) has not been disclosed unless disclosed unless pursuant to some order or agreement that further protects the information from public disclosure.

5. The legislature has determined that certain categories of information, i.e., the information listed in subsections (a) through (f), are *automatically* entitled to confidential treatment. But the statute is equally clear that any information that meets the criteria of the statute, as set forth above, is entitled to be protected under Section 366.093. The information subject to this request meets these criteria and should be afforded confidential protection.

6. According to Section 366.093(3)(f), Florida Statutes, personnel information unrelated to compensation is entitled to automatic protection; however, nothing in that section

precludes (and in fact the section specifically authorizes) a determination that information related to compensation *should* be afforded confidential treatment if the relevant criteria are met, particularly given the competitively sensitive nature of the information and the harm to customers and the company's operations which would be a direct result of its disclosure.

7. The Commission has recognized and utilized its ability to protect competitively sensitive compensation information from public disclosure and has determined on multiple occasions that it was appropriate to do so. In each instance, the information was determined to be competitively sensitive and protected by Section 366.093(3)(e), Florida Statutes. *See*, Order No. PSC-05-0626-PCO-EI, issued June 7, 2005, Docket No. 050078-EI, *In re: Petition for rate increase by Progress Energy Florida, Inc.* (allowing employee compensation information to receive confidential treatment); Order No. PSC-02-1755-CFO-GU, issued December 12, 2002, Docket No. 020384-GU, *In re: Petition for rate increase by Peoples Gas System* (allowing executive compensation and executive incentive compensation to receive confidential treatment); Order No. PSC-02-1613-PCO-GU, issued November 21, 2002, Docket No. 020384-GU, *In re: Petition for rate increase by Peoples Gas System* (allowing compensation philosophy and incentive compensation to receive confidential treatment); Order No. PSC-02-0050-PCO-EI, issued January 7, 2002, Docket No. 010949-EI, *In re: Request for rate increase by Gulf Power Company* (allowing incentive compensation plan to receive confidential treatment); Order No. PSC-0102528-CFO-EI, issued December 28, 2001, Docket No. 010001-EI, *In re: Fuel and purchased power cost recovery clause and generating performance incentive factor* (allowing employees' names, positions, and factors considered in their compensation to receive confidential treatment).

8. Thus, the Commission, while having full access to as much individual compensation information as it deems appropriate to fulfill is regulatory functions, has consistently agreed that individual compensation information should not be (nor need be) publicly disclosed. The same principles should be upheld and applied in this instance. The Commission and its Staff has requested and been provided with detailed individual compensation information and will review that information in fulfilling its regulatory responsibilities. But public disclosure of the individual information to which the Commission has access by virtue of its regulatory function is wholly unnecessary to those responsibilities and, as discussed in more detail below and supported through the attached affidavit, would cause irreparable harm both to the company as well as it customers. Moreover, such an action would disregard a longstanding fundamental respect for privacy that the Commission's actions in the past have maintained.

9. FPL recognizes that compensation information in aggregated or summary form in some cases may not meet the criteria for confidential treatment and has not sought such treatment in this instance. For example, in one order denying confidential treatment over summary-level compensation information, the Commission stated that the information that was the subject of that request did not reveal "any specifics of compensation plans or compensation levels ***that would cause irreparable harm to [the utility's] competitive plans***." (emphasis added). Order No. PSC-02-0235-CFO-EI, issued February 25, 2002, Docket No. 010949-EI, *In re: Request for rate increase by Gulf Power Company*. But the Commission went on to state that "the information is given in total dollar amounts and percentages and does not reveal individual employees' names, levels, incentive compensation, or bonuses ***which would be competitively sensitive or confidential in nature***" (emphasis added). *Id.* Clearly the Commission has recognized the competitively sensitive nature of certain types of compensation information in the

past and should do so in this instance as well.

10. FPL has provided, in a publicly available manner, a variety of information related to employee compensation. Consistent with the requirements of the Securities Exchange Commission, FPL publicly discloses specific compensation information for its top officers. Additionally, FPL has provided in response to Staff's Eighth Set of Interrogatories No. 97, a public document containing compensation averages by title for all employees with total compensation greater than $165,000. FPL has provided this data in a publicly available manner, and also has made the detail-level information including names and positions available to the Commission and its Staff. FPL respectfully submits that it has provided all information requested and has cooperated fully with Staff in response to such requests, and that the Commission and its Staff have all the information needed for purposes of its review. FPL is requesting protection only for information whose public disclosure would cause the Company and its customers irreparable harm.

11. The specific information that is the subject of this Request continues to be available to the Commission and its Staff. However, it is not consistent with the interests of FPL or its customers to make this information publicly available. FPL operates within a highly competitive market for talented employees. Disclosure of compensation and incentive compensation information would enable competing employers to meet – or beat – the compensation offered by FPL. This would result in (i) the loss of highly skilled and trained employees to competitors and the inability to attract new talent, or (ii) the need to increase the level of compensation and incentives already paid in order to retain these employees and attract new talent. In other words, public disclosure of this information would become a benchmark for salary negotiations. For example, director X (whether currently employed by FPL or being

recruited by FPL) will demand the same salary as director Y – leaving if his terms are not met or increasing the cost of compensation to the Company if his terms are met. In addition, competitors would be able to pinpoint salaries of specific FPL employees for specific job roles, whether by explicit reference or deduction, thus leading to the poaching of FPL employees by competitors and similarly increasing costs to customers. Recruiting and hiring costs likewise would increase, again imposing additional costs on FPL's customers. The information provided in response to Staff's discovery and supplied as a public document provides adequate information for the Commission to fulfill its ratemaking responsibility while helping to ensure customer costs are not unnecessarily increased by virtue of releasing identifying information with respect to employee compensation.

12. The harm to customers that would directly result from publicly disclosing employee-specific compensation information is obvious. Overall costs and performance will be affected by such disclosure as the Company is forced to pay to retain, or pay to replace and train new employees. These principles are not unique to electric utilities in Florida. For precisely these same reasons, compensation information not otherwise required to be publicly disclosed by Securities and Exchange Commission rules, is held to be confidential by any major company in the United States. Such competitively sensitive information is entitled to protection pursuant to Section 366.093(3)(e), Florida Statutes.

13. Confidential treatment for salary information linked with employee names is also necessary to protect the individual employees' rights to privacy. 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. To protect the privacy interests of its employees (who are not

subject to the mandatory disclosure requirements of the Securities and Exchange Commission), FPL and the Intervenor employees will continue to request confidential treatment for individual employees' salaries linked to their names and titles. FPL maintains this information as confidential and it has not been disclosed.

14. The Commission should determine that the information highlighted in Exhibit A and information linking particular employees to their compensation information is entitled to protection pursuant to Section 366.093(3)(e), Florida Statutes, or alternatively, that this information should be protected as confidential pursuant to the Commission's general authority granted by Section 366.093(3), Florida Statutes, for all the reasons discussed above. Upon a finding by the Commission that the material in Exhibit A for which FPL seeks confidential treatment is proprietary confidential business information within the meaning of section 366.093(3), Florida Statutes, such materials 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, the undersigned respectfully request that this Commission determine that (i) confidential classification of this information is available pursuant to Section 366.093(3), Florida Statutes; (ii) disclosure of competitively sensitive compensation information would detrimentally impact FPL and its customers by reducing the quality of service or increasing the cost of service; (iii) disclosure of individual employees' names and salary information would be a violation of their constitutionally protected privacy interests and (iv) this information therefore should be treated as confidential and protected from public disclosure.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail and electronically this 13TH day of August, 2009 to the individuals listed on the attached service list.

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EXHIBIT C

Staff's Motion to Compel with exhibits

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for increase in rates by Florida Power & Light Company.	DOCKET NO. 080677-EI FILED: August 6, 2009

STAFF'S MOTION FOR ORDER COMPELLING RESPONSES TO INTERROGATORIES

Pursuant to Fla. R. Civ. P. 1.340(a), Fla. R. Civ. P. 1.380(a)(2), and Rule 28-106.204, Florida Administrative Code, the Staff of the Florida Public Service Commission (Staff), by its undersigned attorney, moves the Florida Public Service Commission for an order requiring Florida Power & Light Company (FPL), to fully respond to the following interrogatories concerning allocations of officer, director and employee compensation.

1. On May 22, 2009, Staff served upon FPL its third set of interrogatories (Nos. 9-19). On June 11, 2009, FPL served its objections to Staff's third set of interrogatories. FPL objected to responding to Staff's third set of interrogatories with only "General Objections." Attachment A hereto. FPL made no specific objection to either interrogatory 16 or 17, which were the interrogatories directed at the compensation information.

2. FPL has failed to fully respond to interrogatory Nos. 16 (related to FPL Group) and 17 (related to FPL), which are repeated below:

> For each officer of [FPL Group #16 / Florida Power & Light Company #17] for 2008, 2009, and 2010, please provide the name and title of the officer and the actual or projected compensation amounts for the following:
> a) Base Salary
> b) Stock Awards
> c) Option Awards
> d) Non-Equity Incentive Plan Compensation
> e) All Other Compensation
> f) Total Compensation
> g) Amount of Total Compensation Allocation to FLORIDA POWER & LIGHT

COMPANY
h) Amount of Total Compensation Included in Adjusted Jurisdictional Other O&M Expenses on MFR Schedule C-1, Pages 1, 2, and 3.

FPL's responses to interrogatory Nos. 16 and 17 were evasive or incomplete as follows:

(a). The responses provided for a) through f) are incomplete because the name and title for each officer is not matched with the dollar amounts provided, except for 5 officers. Staff needs this information to evaluate the appropriateness of the employee compensation to be included in rate base.

(b). In addition, the responses provided for a) through f) are incomplete because compensation amounts provided for a) through f) above were developed by applying an "affiliation allocation rate" and do not represent the net "expense to FPL for each individual." The amounts for a) through e) should be gross amounts before any allocations. The total of a) through e) should be provided as the response to f). The responses to g) should then show the amounts allocated to FPL. Staff needs this information to evaluate the appropriateness of the employee compensation and its allocation between FPL Group and FPL for purposes of including such amounts in rate base.

(c). FPL did not respond to h). The responses to h) should identify the amount included in "Adjusted Jurisdictional Other O & M Expenses" shown on MFR Schedule C-1, pages 1 – 3. It would be acceptable for FPL to provide a reasonable estimate and an explanation of how the estimate was developed. Staff needs this information to evaluate FPL's request for inclusion of portions of employee compensation into rate base.

3. On May 29, 2009, Staff served upon FPL its fourth set of interrogatories (Nos. 20-35). On June 18, 2009, FPL served its objections to Staff's fourth set of interrogatories. FPL objected to responding to Staff's fourth set of interrogatories with only "General Objections"

virtually identical to those filed with regard to Staff's third set of interrogatories. Attachment A hereto. FPL made no specific objection to interrogatory 32.

4. FPL failed to fully respond to interrogatory No. 32, which is reflected below:

> For each employee of Florida Power & Light Company whose total compensation is $200,000 or greater, provide the following:
> a. Name/Title
> b. Base Salary (the actual or projected compensation amounts for 2008, 2009, 2010 and 2011)
> c. Overtime Pay (the actual or projected compensation amounts for 2008, 2009, 2010 and 2011)
> d. Bonuses (the actual or projected compensation amounts for 2008, 2009, 2010 and 2011)
> e. Stock Awards (the actual or projected compensation amounts for 2008, 2009, 2010 and 2011)
> f. Option Awards (the actual or projected compensation amounts for 2008, 2009, 2010 and 2011)
> g. Non-Equity Incentive Plan Compensation (the actual or projected compensation amounts for 2008, 2009, 2010 and 2011)
> h. All Other Compensation (the actual or projected compensation amounts for 2008, 2009, 2010 and 2011)
> i. Total Compensation (the actual or projected compensation amounts for 2008, 2009, 2010 and 2011)
> j. Amount of Total Compensation Allocated to Florida Power & Light Company (the actual or projected compensation amounts for 2008, 2009, 2010 and 2011)
> k. Amount of Total Compensation Included in Adjusted Jurisdictional Other O&M Expenses on MFR Schedule C-1, Pages 1, 2 and 3 (the actual or projected compensation amounts for 2008, 2009, 2010 and 2011).

FPL's responses to interrogatory No. 32 were evasive or incomplete as follows:

(a). The name and title a) for each employee is not matched with the dollar amounts provided for b) and k). As stated above, staff needs this information to evaluate the appropriateness of the employee compensation to be included in rate base.

(b). In addition, the responses provided for b) through i) are incomplete because compensation amounts provided for b) through (i) were developed by applying an "affiliation allocation rate" and represent the net "expense to FPL for each individual." The amounts for

b) through h) should be gross amounts before any allocations. The total of b) through h) should be provided as the response to i). The response to j) should then show the amounts allocated to FPL. Staff needs this information to evaluate the appropriateness of the employee compensation and its allocation between FPL Group and FPL for purposes of inclusion into rate base.

(c). FPL originally did not respond to k). The response necessary should have identified the amount included in "Adjusted Jurisdictional Other O & M Expenses" shown on MFR Schedule C-1, pages 1 – 3. In discussions with FPL, staff concurred that it would be acceptable for FPL to provide a reasonable estimate and an explanation of how the estimate was developed. FPL provided a supplemental response on August 5, 2009 which gave staff a reasonable estimate. Staff would still like an explanation of how the estimate was developed.

(d). Further FPL only provided responses to Interrogatory 32 for the year 2008. In its response to the Interrogatory, FPL stated:

> With respect to the requested estimates for 2009 through 2011, FPL does not budget total compensation or its components at the individual employee level. Each FPL business unit budgets for the base salary, overtime, non-equity incentive plan compensation and certain other earnings of its employees, which are aggregated. FPL also maintains a separate corporate budget location where stock awards and option awards are budgeted, also on an aggregate basis. Therefore, forecasting each component of total compensation for each employee listed on attached 2008 schedule for 2009, 2010 and 2011 cannot be done with precision. A fair estimate of 2009, 2010 and 2011 expenses would be to escalate the 2008 numbers in Attachment No. 1 by the MFR C-35 year-over-year increases of gross average payroll per employee for 2009, 2010 and 2011 of 2.64%, 3.41%, and 0.87% respectively.
>
> With respect to the estimates for 2009 through 2011 compensation for officers provided by the Company in FPL's response to Staff's third Set of Interrogatories No. 16, such estimates were possible to perform because all officers are budgeted in one centralized location rather than by each respective business unit. Furthermore, in the centralized budget for officers, "base salary," "non-equity plan compensation," and some "other" compensation expenses are budgeted by

individual. As to the "stock awards" and "options," FPL used the estimated grants that would be awarded to each executive each year. This combination of salary, non-equity incentives, equity and other compensation estimates give a fair view of the amount of compensation each executive may receive in 2009, 2010 and 2011. However, the same individual budget data does not exist in the same format for all employees below officer level.

FPL has only provided complete responses to staff for FPL's 2008 historical year. But FPL has presented its rate case for a projected year of 2010 and a subsequent projected year of 2011. Included in FPL's rate base is employee compensation. Employee compensation is an issue in the proceeding and intervenors have provided testimony questioning employee compensation. Staff needs the requested information to evaluate FPL's proposed rate increase.

5. On June 25, 2009, Staff served upon FPL its eighth set of interrogatories (Nos. 96-97). On July 15, 2009, FPL served its objections to Staff's eighth set of interrogatories. FPL objected to responding to Staff's eighth set of interrogatories with only "General Objections" virtually identical to those filed with regard to Staff's third and fourth sets of interrogatories. Attachment A hereto. FPL made no specific objection to interrogatory No. 97.

6. FPL failed to fully respond to interrogatory No. 97:

> For each employee of Florida Power & Light Company whose total annual compensation is $165,000 or greater but less than $200,000, provide the actual or projected compensation amounts for 2008, 2009, 2010 and 2011 for the following:
> a. Name/Title
> b. Base Salary
> c. Overtime Pay
> d. Bonuses
> e. Stock Awards
> f. Option Awards
> g. Non-Equity Incentive Plan Compensation
> h. All Other Compensation
> i. Total Compensation
> j. Amount of Total Compensation Allocated to Florida Power & Light Company

k. Amount of Total Compensation Included in Adjusted Jurisdictional Other O&M Expenses on MFR Schedule C-1, Pages 1, 2 and 3.

FPL's response was evasive or incomplete as follows:

(a). The name and title a) for each employee is not matched with the dollar amounts provided for b) and k). As stated above, staff needs this information to evaluate the appropriateness of the employee compensation to be included in rate base.

(b). In addition, the responses provided for b) through j) are incomplete because compensation amounts provided for b) through (i) were developed by applying an "affiliation allocation rate" and represent the net "expense to FPL for each individual." The amounts for b) through h) should be gross amounts before any allocations. The total of b) through h) should be provided as the response to i). The response to j) should then identify the amounts allocated to FPL. Staff needs this information to evaluate the appropriateness of the employee compensation and its allocation between FPL Group and FPL.

(c). FPL did not provide a response to k) in its first set of responses. After discussion with staff, FPL provided a supplemental response which adequately addressed staff's question raised by 97(k). It was acceptable for FPL to provide a reasonable estimate. Staff would still like FPL to include an explanation of how the estimate was developed.

(d). Further FPL only provided responses to Interrogatory 97 for the year 2008. In its response to the Interrogatory, FPL stated:

> With respect to the requested estimates for 2009 through 2011, FPL does not budget total compensation or its components at the individual employee level. Each FPL business unit budgets for the base salary, overtime, non-equity incentive plan compensation and certain other earnings of its employees, which are aggregated. FPL also maintains a separate corporate budget location where stock awards and option awards are budgeted, also on an aggregate basis. Therefore, forecasting each component of total compensation for each employee listed on Attachment No. 1 cannot be done with precision. A fair estimate of

> 2009, 2010 and 2011 expenses would be to escalate the 2008 numbers in Attachment No. 1 by the MFR CC-35 year-over-year increases of gross average payroll per employee for 2009, 2010 and 2011 of 2.64%, 3.41%, and 0.87% respectively.

As stated above, staff needs the 2009, 2010, and 2011 information to evaluate FPL's proposed inclusion of employee compensation in rate base. FPL has presented its rate case for a projected year of 2010 and a subsequent projected year of 2011. Included in FPL's rate base is employee compensation. Employee compensation is an issue in the proceeding and intervenors have provided testimony questioning employee compensation. Staff needs the requested information to evaluate FPL's proposed rate increase.

7. Complete responses to interrogatories Nos. 16, 17, 32, and 97 as set forth above is required as part of Staff's analysis in this docket. The Commission reviews expenses for reasonableness. Compensation is a major component of FPL's operating expenses which may be recoverable from ratepayers and, therefore, is a significant component of base rates. In order to determine if the portion of an employee's compensation allocated to FPL is reasonable, the Commission needs to know if the total compensation for that employee is reasonable. Staff is currently unable to determine the reasonableness of compensation allocations between FPL and FPL Group. The purpose of obtaining this information is to show the revenue effect on rates. Ultimately, this information impacts the revenue requirement which translates into rates and charges.

8. In its responses to interrogatories 16, 17, 32, and 97, FPL states:

> Once all of the expenses for 2008 through 2011 were developed, an affiliate allocation rate was then applied to more accurately reflect the amount of expense to FPL for each individual. Please refer to Attachment No. 1 of FPL's response...for more details. Attachment No. 1 is confidential and will be made available by FPL for inspection and review....

Upon Staff's request, FPL filed an un-redacted version of Attachment No. 1 with the Clerk's office with a request for confidential classification. Staff has reviewed this document and it does not provide the information necessary to respond to interrogatories Nos. 16, 17, 32, and 97.

9. In addition to Attachment 1, FPL counsel informed Staff that a "key" exists which would allow Staff to be able to match each employee with their compensation amounts. FPL indicated that the "key" would not provide other information responsive to Staff's interrogatories such as unallocated compensation amounts. Thus even if the "key" is provided to Staff, FPL's response will still not fully comply with Staff's discovery. Staff has asked the utility to provide this "key." FPL takes the position that it will not file the "key" with the Commission, but has allowed Staff to view it at FPL's offices. FPL's position is unsupportable. FPL is required to provide complete responses to interrogatory Nos. 16, 17, 32, and 97 pursuant to Fla. R. Civ. Pro 1.280 and 28-106.206, F.A.C. FPL has made no valid, timely, and specific objection to the interrogatories at issue. Therefore, it is incumbent upon FPL to fully and accurately respond to these interrogatories without delay.

10. Staff has notified FPL of FPL's failure to respond and conferred in good faith with FPL in an effort to secure the requested discovery without Commission action. Attached as Attachment B is an email sent to FPL and all parties and FPL's response to staff's email. While FPL did file a supplemental response to Interrogatories 32(k) and 97(k), and indicated it was willing to provide responses to Interrogatory 32 and 97 for the years 2009 through 2011, it did not indicate it would file complete responses. Staff must have complete responses to all interrogatories except 32 (k) and 97(k), as stated above. Staff needs the information to evaluate FPL's assertion that the employee compensation is appropriate for recovery in rate base.

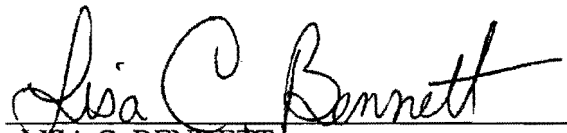
11. Staff notes that FPL's Request for Confidential Classification of those portions of the

responses that FPL did provide to these interrogatories is being considered at the Commission's August 18, 2009, Agenda Conference. FPL's Request for Confidential Classification and staff's Motion to Compel are integrally related. As such, staff requests that the Motion to Compel be considered at the same Agenda Conference.

12 Staff requests that FPL provide a response to this Motion to Compel no later than noon, Monday, August 10, 2009, so that a recommendation including both staff and FPL's positions can be considered by the Commission.

WHEREFORE, Staff requests that the Commission enter an order compelling FPL to respond within two (2) days to each interrogatory and each subpart with answers that are specifically responsive and that are individually and clearly labeled to identify which interrogatory and specific subpart the answer is responsive to.

Respectfully submitted,



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(850) 413-6230

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for increase in rates by Florida Power & Light Company.	DOCKET NO. 080677-EI FILED: August 6, 2009

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to John T. Butler, Esquire, Florida Power & Light Company, 700 Universe Blvd., Juno Beach, Florida 33408-0420, and that a true and correct copy was furnished by electronic and by U.S. Postal Mail, on this 6th day of August, 2009:

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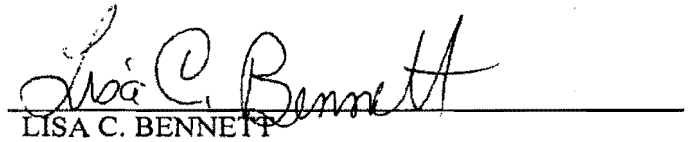

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Attachment A

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for increase in rates by Florida Power & Light Company	)	Docket No. 080677–EI
In Re: 2009 depreciation and dismantlement study by Florida Power & Light Company	)	Docket No. 090130-EI
	)	Served: June 11, 2009

FLORIDA POWER & LIGHT COMPANY'S OBJECTIONS TO STAFF'S THIRD SET OF INTERROGATORIES (NOS. 9-19) AND FIRST REQUEST FOR PRODUCTION OF DOCUMENTS (NOS. 1-3)

Florida Power & Light Company ("FPL"), pursuant to Rules 1.340 and 1.350, Florida Rules of Civil Procedure, and Rule 28-106.206, Florida Administrative Code, submits the following objections the Staff of the Florida Public Service Commission's ("Staff's") Third Set of Interrogatories (Nos. 9-19) and First Request for Production of Documents (Nos. 1-3) in Docket No. 080677-EI.

I. Preliminary Nature of These Objections

FPL's objections stated herein are preliminary in nature. FPL is furnishing its objections consistent with the time frame set forth in the Commission's Order Establishing Procedure, Order No. PSC-09-0159-PCO-EI dated March 20, 2009, and Rule 1.190(e), Florida Rules of Civil Procedure. Should additional grounds for objection be discovered as FPL develops its responses, FPL reserves the right to supplement or modify its objections up to the time it serves its responses. Should FPL determine that a protective order is necessary regarding any of the information requested of FPL, FPL reserves the right to file a motion with the Commission seeking such an order at the time its response is due.

II. 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 document(s), if any, 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 Rutledge, Ecenia & Purnell, P.A., 119 South Monroe Street, Suite 202, Tallahassee, Florida.

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 Staff's discovery requests.

Respectfully submitted this 11th day of June, 2009.

R. Wade Litchfield, Vice President of
Regulatory Affairs and Chief Regulatory Counsel
John T. Butler, Managing Attorney
Scott A. Goorland, Principal Attorney
Attorneys for Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408-0420
Telephone: (561) 691-7101
Facsimile: (561) 691-7135

By: _____
Scott A. Goorland
Florida Bar No. 0066834

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically and by United States Mail 11th day of June, 2009, to the following:

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By: _____
Scott A. Goorland

Attachment B

Lisa Bennett

From: Smith, Natalie [Natalie.Smith@fpl.com]

Sent: Thursday, August 06, 2009 3:01 PM

To: Lisa Bennett; Brian P. Armstrong Esq. ; Cecilia Bradley Esq.; J. R. Kelly ; J. Spina; Leon, Jack; John LaVia; John McWhirter; Butler, John; Jon C. Moyle Jr.; Joseph Mcglothlin, Esq.; jyarbrough@southdaytona.org; K. Wiseman; L. Purdy; mbraswell@sugarmansusskind.com; Mark F. Sundback; Marlene Stern ; Robert A. Sugarman; Schef Wright ; Scott E. Simpson; Shayla McNeill; sda@trippscott.com; TPerdue@aif.com; support@saporitoenergyconsultants.com; Vicki Gordon Kaufman ; Litchfield, Wade

Cc: Andrew Maurey; Anna Williams; Arlisha Roberts; Betty Gardner; Brendan Hadder; Cayce Hinton; Cheryl Bulecza-Banks; Christy Piper; Clarence Prestwood; Clayton Lewis; Connie Kummer; Craig Hewitt; Dale Buys; David Dowds; Devlin Higgins; Elisabeth Draper; Jean Hartman; John Slemkewicz; Kaley Thompson; Karen Webb; Kathy Lewis; Marshall Willis; Martha Brown; Michael Springer; Pat Lee; Paul Stallcup; Paul Vickery; Pete Lester; Rhonda Hicks; Shari Cornelius; Sheri Coverman; Sid Matlock; Stacey Livingston; Stephen Garl; Sue Ollila; Theresa Walsh; Tom Ballinger; Walter Clemence

Subject: RE: FPL Responses to Staff Interrogatories, Docket No. 080677

Lisa,

In regard to your request for an excel spreadsheet applying escalation factors per employee for 2009, 2010 and 2011, FPL agrees to provide the requested spreadsheet.

Regarding jurisdictional O&M, FPL agrees to respond to 16(h) and 17(h) and 32(k) and 97(k) with a more detailed description and assumptions as to the calculation of MFR Schedule C-1.

In regard to your request for gross amounts on interrogatory nos. 16 and 17 (a)-(f) and 32 and 97 (a)-(i), FPL is working on a response that it hopes will meet staff's needs.

FPL has the same employee privacy concerns and concerns about driving up compensation costs with providing specific or generic job titles as it does with providing individual names. Given all of the compensation information FPL has provided or made available with the ability to cross-check, we feel that staff has what it needs to satisfy its responsibilities without subjecting FPL to employee privacy concerns and higher compensation costs.

Thank you very much for the opportunity to respond.

Natalie

From: Lisa Bennett [mailto:LBENNETT@PSC.STATE.FL.US]
Sent: Thursday, August 06, 2009 1:56 PM
To: Brian P. Armstrong Esq. ; Cecilia Bradley Esq.; J. R. Kelly ; J. Spina; Leon, Jack; John LaVia; John McWhirter; Butler, John; Jon C. Moyle Jr.; Joseph Mcglothlin, Esq.; jyarbrough@southdaytona.org; K. Wiseman; L. Purdy; mbraswell@sugarmansusskind.com; Mark F. Sundback; Marlene Stern ; Smith, Natalie; Robert A. Sugarman; Schef Wright ; Scott E. Simpson; Shayla McNeill; sda@trippscott.com; TPerdue@aif.com; support@saporitoenergyconsultants.com; Vicki Gordon Kaufman ; Litchfield, Wade
Cc: Andrew Maurey; Anna Williams; Arlisha Roberts; Betty Gardner; Brendan Hadder; Cayce Hinton; Cheryl Bulecza-Banks; Christy Piper; Clarence Prestwood; Clayton Lewis; Connie Kummer; Craig Hewitt; Dale Buys;

David Dowds; Devlin Higgins; Elisabeth Draper; Jean Hartman; John Slemkewicz; Kaley Thompson; Karen Webb; Kathy Lewis; Lisa Bennett; Marshall Willis; Martha Brown; Michael Springer; Pat Lee; Paul Stallcup; Paul Vickery; Pete Lester; Rhonda Hicks; Sharl Cornelius; Sherl Coverman; Sid Matlock; Stacey Livingston; Stephen Garl; Sue Ollila; Theresa Walsh; Tom Ballinger; Walter Clemence
Subject: FPL Responses to Staff Interrogatories, Docket No. 080677
Importance: High

Natalie,

Earlier today you and I spoke regarding staff's need for responses to its interrogatories and whether or not it was necessary for staff to file a Motion to Compel. In response to our earlier conversation, I wanted to clearly articulate exactly what staff needs to have from FPL to satisfy our interrogatory requests.

For responses to Interrogatories 16 and 17, staff must have by individual job positions, total compensation levels by job position. (Staff must have individual job positions and each component that comprises total compensation levels, as well as total compensation levels by each individual job position.)

For each job position, including officers and directors, we want all salary and incentive information including total compensation by each individual job position (see Interrogatory 16 and 17 (a) - (f) and 32 and 97 (a)-(i)) before the amounts are allocated to FPL. We want the information for each of the 368 job positions, which as I understand includes FPL and FPL Group job positions. We do not want the numbers aggregated.

You have previously provided the FPL allocated amounts for each job position, which is responsive to staff's interrogatories 16(g) and 17(g) and 32(j) and 97(j).

We will accept the aggregated information for Adjusted Jursidicitional Other O&M Expenses on MFR Schedule C-1 as long as supporting work papers and assumptions are provided with those responses. This will satisfy our requests for 16(h) and 17 (h) and 32(k) and 97(k).

In consideration of your concerns regarding employee privacy, staff is revising its request and would be satisfied with receiving the individual compensation information by each individual job title or position (Again, staff is referring to all employees but only needs the position or title and not the name. Staff does not want an aggregate number by groups of positions).

Finally, staff expressed its concern regarding only receiving 2008 information in response to interrogatory numbers 32 and 97. FPL provided us with per job description compensation for 2008. FPL also provided us with escalation factors as a fair estimate of the increases for 2009, 2010, and 2011. To completely answer staff's interrogatories, we request that FPL apply those escalation factors per employee and provide us with the excel spreadsheet. We did review the information you provided in response to SFHHA's interrogatory #298 and find that it is not sufficient for staff's purposes.

Please understand that providing this information to staff will answer our interrogatories but does not mean that staff concurs with any of FPL's positions and numbers provided in those interrogatories.

Staff is prepared to file a Motion to Compel FPL's responses to the interrogatories today. If you respond to this email by 3pm, today, indicating that you will provide the information as requested within a reasonable amount of time, staff will not file its motion to compel.

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

EXHIBIT D

Staff's recommendation on issues 4 and 4A for the August 18, 2009 Agenda Conference

with exhibits

State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: August 6, 2009

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (Gervasi, Bennett, Fleming) pel LCB KEF
Division of Regulatory Compliance (Salak) DM
Division of Economic Regulation (Slemkewicz) JS

RE: Docket No. 080677-EI – Petition for increase in rates by Florida Power & Light Company.
Docket No. 090079-EI – Petition for increase in rates by Progress Energy Florida, Inc.

AGENDA: 08/18/09 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: McMurrian (080677-EI)
Skop (090079-EI)

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\080677.RCM.DOC

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Case Background

Staff has sought discovery concerning executive compensation in the Florida Power & Light Company (FPL) and Progress Energy Florida (PEF) rate cases, ultimately seeking certain compensation information for executives whose total compensation exceeds $165,000. Both utilities filed requests for confidential treatment for certain information they provided in response to the discovery. Both utilities also asked for their requests to be heard by the full Commission.

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On May 1, 2009, in Docket No. 090079-EI, PEF timely filed its Second Request for Confidential Classification of certain information produced in response to Staff's Second Request for Production of Documents (PODs) and of certain dollar amounts provided in response to Interrogatory No. 1 from Staff's First Set of Interrogatories (Nos. 1-2). On July 21, 2009, also in Docket No. 090079-EI, PEF filed its Fifth Request for Confidential Classification for Portions of PEF's Response to Staff's Tenth Set of Interrogatories (Nos. 123-126) and PEF's Request for Consideration by Full Commission. And on July 24, 2009, in the same docket, PEF filed its Sixth Request for Confidential Classification for Portions of its Response to Staff's Eighteenth Set of Interrogatories (Nos. 197-198) and Request for Consideration by Full Commission. PEF's Confidentiality Justification Matrices are attached to this recommendation as Attachment A.

On July 21, 2009, in Docket No. 080677-EI, FPL timely filed a Request for Confidential Classification of Staff's Third Set of Interrogatories No. 16 and Staff's Fourth Set of Interrogatories No. 32 and Request for Determination by Full Commission. On July 27, 2009, FPL filed its Revised Request for Confidential Classification of Staff's Third Set of Interrogatories No. 16, Staff's Fourth Set of Interrogatories No. 32, and Staff's Eighth Set of Interrogatories No. 97 and Request for Determination by Full Commission. FPL's Confidentiality Justification Matrices are attached to this recommendation as Attachment B.

By these filings, PEF and FPL request that certain employee salary information be afforded confidential classification pursuant to section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.). Section 366.093, F.S., sets out exceptions from Chapter 119, F.S. (the Public Records Act), for certain proprietary confidential business information filed with the Commission, and states, in relevant part, that

> [p]roprietary confidential business information includes, but is not limited to:
>
> ***
>
> (e) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.
>
> (f) Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities.

Pursuant to Rule 25-22.006(10), F.A.C., if the Commission denies a request for confidential classification, the material at issue is kept confidential until the time for filing an appeal has expired, and the utility or other person may request continued confidential treatment until juridical review is complete.

This recommendation addresses PEF and FPL's requests for confidentiality. The Commission has jurisdiction pursuant to section 366.093, F.S.

Discussion of Issues

Issue 1: Should PEF and FPL's Requests for Determination by Full Commission be granted?

Recommendation: Yes, PEF and FPL's Requests for Determination by Full Commission should be granted. PEF did not request a full Commission ruling on its Second Request for Confidential Classification pertaining to certain salary information provided in response to Interrogatory No. 1 from Staff's First Set of Interrogatories (Nos. 1-2). The full Commission should also consider that request, which is addressed within Issue 2 of this recommendation. (Gervasi)

Staff Analysis: PEF requests that the full Commission consider its Fifth and Sixth Requests for Confidential Classification concurrently with the consideration of similar requests for protection of similar information. PEF states that there are different prehearing officers assigned to the PEF and FPL rate cases. PEF states that these circumstances give rise to the possibility of differing rulings on identical issues, and that because such rulings are subject to review by the full Commission under a deferential reconsideration standard, it is possible that different results might apply even after reconsideration by the full Commission. PEF requests that the requests at issue be considered by the full Commission because of the similarity of the issues, and to promote administrative efficiency and consistency of results, and states that it will participate at the agenda conference on this item pursuant to Rule 25-22.0021(2), F.A.C.

FPL also seeks the determination of the full Commission on its Request for Confidential Classification because of the need for consistency in regulatory determinations on similar issues and because of the harm to customers and to its business operations which FPL states would result from the disclosure of the information.

Because of the similarity of the issues and to promote administrative efficiency and consistency of results, staff recommends that PEF and FPL's Requests for Determination by Full Commission should be granted. PEF did not request a full Commission ruling on its Second Request for Confidential Classification pertaining to certain salary information provided in response to Interrogatory No. 1 from Staff's First Set of Interrogatories (Nos. 1-2). Nevertheless, for the same reasons, staff recommends that the full Commission should also consider that request, which is addressed within Issue 2 of this recommendation.

Issue 2: Should the portion of PEF's Second Request for Confidential Classification pertaining to the information provided in response to Interrogatory No. 1 from Staff's First Set of Interrogatories (Nos. 1-2) (contained within, but not comprising all of DN 04092-09), PEF's Fifth Request for Confidential Classification for Portions of its Response to Interrogatory Nos. 123-124 from Staff's Tenth Set of Interrogatories (Nos. 123-126) (DN 07388-09), and PEF's Sixth Request for Confidential Classification for Portions of its Response to Staff's Eighteenth Set of Interrogatories (Nos. 197-198) (DN 07595-09) be granted?

Recommendation: No, the portion of PEF's Second Request for Confidential Classification pertaining to the information provided in response to Interrogatory No. 1 from Staff's First Set of Interrogatories (Nos. 1-2) (contained within, but not comprising all of DN 04092-09), PEF's Fifth Request for Confidential Classification for Portions of its Response to Interrogatory Nos. 123-124 from Staff's Tenth Set of Interrogatories (Nos. 123-126) (DN 07388-09), and PEF's Sixth Request for Confidential Classification for Portions of its Response to Staff's Eighteenth Set of Interrogatories (Nos. 197-198) (DN 07595-09) should be denied. PEF should be required to provide in a publicly available manner, spreadsheets which, at a minimum, match the compensation information at issue to the specific job titles previously provided. (Gervasi, Salak, Slemkewicz)

Staff Analysis:

Second Request for Confidential Classification

By its Second Request for Confidential Classification, PEF requests confidential classification of certain information produced in response to Staff's Second Request for Production of Documents (PODs) and of the dollar amounts provided in response to Interrogatory No. 1 from Staff's First Set of Interrogatories (Nos. 1-2). Because the information produced by PEF in response to Staff's Second Request for PODs does not contain employee salary information, that portion of PEF's Second Request for Confidential Classification (contained within, but not comprising all of DN 04092-09) is not addressed herein and will be ruled upon separate and apart from the ruling arising from this recommendation. The information provided in response to Interrogatory No. 1 from Staff's First Set of Interrogatories (Nos. 1-2) (also contained within, but not comprising all of DN 04092-09) includes executive compensation data, which PEF states contains confidential information, the disclosure of which could seriously impair its competitive business interests. That information is the subject of this issue.

According to PEF, the disclosure of the amount of salary, bonuses, and overall compensation that it is willing to pay its executives would have an adverse impact on its ability to contract with and retain qualified individuals, by allowing other companies an advantage in negotiating with such employees. PEF states that at no time has it publicly disclosed the confidential information or documents at issue, and that it has treated and continues to treat this information as confidential. PEF argues that this information fits the statutory definition of proprietary confidential business information under subsection 366.093(3)(e), F.S.,[1] and Rule 25-22.006, F.A.C., and requests that the redacted portions of Interrogatory No. 1 from Staff's First

[1] See pages 33-34 of Attachment C to PEF's Second Request for Confidential Classification, Confidentiality Justification Matrix.

Set of Interrogatories (Nos. 1-2) be classified as confidential. Subsection 366.093(3)(e), F.S., provides that proprietary confidential business information includes "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information." Rule 25-22.006, F.A.C., sets forth the Commission's procedures for the filing and handling of confidential information.

In an Affidavit attached to its Request, Mr. Masceo DesChamps, Director of Compensation and Benefits, Progress Energy Service Company, states that if disclosed to the public or to other utilities, this information could provide firms with which PEF competes for qualified employees with a competitive advantage in acquiring and retaining such employees, and could also give prospective employees an advantage in negotiating compensation packages, leading to increases in the overall amount of compensation paid to employees. He further states that this overall increase in the amount paid in compensation could adversely impact rates paid by PEF's ratepayers, or make the Company a less attractive investment to potential investors.

Fifth Request for Confidential Classification

By its Fifth Request for Confidential Classification, PEF requests confidential classification of certain numerical information contained within its Response to Staff Interrogatory Nos. 123 and 124 from Staff's Tenth Set of Interrogatories (Nos. 123-126) (DN 07388-09). PEF's Response to Interrogatory Nos. 123 and 124 contains names, job titles, and compensation information, including base salaries, bonuses, and other compensation for all employees of Progress Energy, Inc. and PEF whose total compensation exceeds $200,000. PEF does not claim confidentiality for the names and job titles of these employees or for the total compensation paid to them as a group. PEF does claim confidentiality to the extent the information discloses the specific compensation paid to specific employees.

PEF points out that subsection 366.093(3), F.S., provides, in pertinent part, that:

> [p]roprietary confidential business information means information . . . which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public.

PEF further points out that under subsection 366.093(3), F.S., proprietary confidential business information includes, but is not limited to, six specific categories of information. PEF states that the two specific categories pertinent to the analysis of its claim of confidentiality are subsections 366.093(3)(e) and (f), F.S. Subsection 366.093(3)(e), quoted above, addresses information related to competitive interests. Subsection 366.093(3)(f), F.S., provides that proprietary confidential business information also includes "[e]mployee personnel information unrelated to compensation, duties, qualifications or responsibilities." PEF argues that because protection under subsection 366.093(3), F.S., is not limited to information that falls into one of the six categories enumerated in subsections (3)(a) to (f), protection is available to any information that meets the general definition in that subsection.

PEF argues that the fact that information disclosing the compensation of specific employees does not qualify for protection under subsection 366.093(3)(f), F.S., does not make it ineligible for protection under the general language of subsection 366.093(3), F.S., and particularly under subsection 366.093(3)(e), F.S. PEF states that the Affidavit of Mr. DesChamps attached to its Request shows that the information for which PEF claims confidentiality meets each of the requirements of subsection 366.093(3), F.S., in that the information is controlled by PEF, is treated by PEF as private, the disclosure of the information would cause harm to both PEF and ultimately its ratepayers, and the information has not been publicly disclosed. PEF further states that the Affidavit also shows that the information meets the requirements of subsection 366.093(3)(e), F.S., in that it relates to PEF's competitive interests and disclosure of the information would impair PEF's competitive business interests.

PEF argues that the public disclosure of the detailed information on salary and other compensation on an employee-specific basis harms the Company and its ratepayers in at least three ways. First, PEF competes for employees with other utilities and businesses both inside and outside Florida. These competitors could use the compensation information to improve their recruitment from PEF of experienced employees. The public disclosure of such information would lead to increased employee hiring and training costs resulting from increased employee turnover, or to a need to increase compensation to prevent such turnover. The end result would be an increase in the Company's costs that could adversely impact its business operations and increase rates. Second, public disclosure of the information would make it available to prospective employees, giving them an advantage in negotiating compensation packages, leading to increases in the overall amount of compensation paid to employees. This would adversely impact the Company's business operations and increase rates. Third, public disclosure of such information would make it available to current employees. If PEF's employees were to learn the compensation of their colleagues, there would be a detrimental effect on its current employees that could lead to increased employee turnover, increased recruitment and training costs, increased labor costs, and lower employee morale and productivity.

PEF argues that the Commission precedent on the protection of detailed compensation information is mixed and that such information has been protected in several Commission orders. In granting such protection, the Commission has stated that disclosure "would hamper the Company's ability to negotiate compensation with new executives and other management personnel" and "would also enable competing employees to meet or beat the compensation paid and offered to be paid by the Company to its executives and other managers, or [result in] the payment of increased compensation for the purpose of retaining their services, either of which would cause harm to the Company and its ratepayers."[2] And in the annual fuel docket, the Commission similarly granted confidential classification to the names and positions of Florida Power Company's power marketing personnel and factors considered in their compensation, pursuant to subsection 366.093(3)(e), F.S.[3] PEF argues that the information at issue in its current Request is even more sensitive, since it contains detailed information on the compensation of specific employees, not merely the factors considered in their compensation.

[2] Order No. PSC-02-1755-CFO-GU at 5, issued December 12, 2002, in Docket No. 020384-GU, In Re: Petition for rate increase by Peoples Gas System.
[3] Order No. PSC-01-2528-CFO-EI at 2, 5, issued December 28, 2001, in Docket No. 010001-EI, In Re: Fuel and purchased power cost recovery clause.

PEF further argues that even when denying confidential classification to portions of a witness's testimony related to "compensation levels and compensation plans" that Gulf Power Company considered to be confidential, the Commission was cognizant of the sensitive nature of the type of information at issue, and only denied the request because the information did not "reveal any specifics of compensation plans or compensation levels that would cause irreparable harm to Gulf's competitive plans. Further, the information [was] given in total dollar amounts and percentages and [did] not reveal individual employees' names, levels, incentive compensation, or bonuses which would be competitively sensitive or confidential in nature."[4]

PEF recognizes that there are also Commission orders that deny confidential classification to compensation information, but argues that those orders should be rejected. PEF points to Order No. PSC-07-0579-CFO-WS at 3,[5] in which the Commission ruled that subsection 367.156(3)(f), F.S., specifically excludes employee personnel information related to compensation from the statutory definition of proprietary business information, and that the information therefore must be treated as a public record pursuant to section 119.01, F.S.[6] PEF argues that the conclusion in that order, and in the orders denying confidentiality cited therein, is incorrect. PEF argues that subsection (3)(f) of the applicable statutes enables a utility to affirmatively protect employee personnel information unrelated to compensation, duties, qualifications, or responsibilities without the necessity for demonstrating that the information relates to competitive interests under subsection (3)(e). According to PEF, because of the exclusion in subsection (3)(f), the company bears the burden to make a higher showing of competitive impact in order to obtain protection for personnel information related to compensation, but nothing in the language or structure of the statute precludes such a showing. PEF argues that the general language of subsection (3) notes that proprietary confidential business information "is not limited to" the types of information enumerated in the following paragraphs. PEF argues that if the Legislature had wanted to explicitly provide that such compensation information would always be a matter of public record, it could have worded the statute in such a way to make that clear. According to PEF, as the statute is worded, the requesting utility can still prove that the compensation information harms its competitive business interests under subsection 366.093(3)(e) or otherwise harms its ratepayers or business operations under the general language of subsection 366.093(3).

[4] Order No. PSC-02-0235-CFO-EI at 2, issued February 25, 2002, in Docket No. 010949-EI, In Re: Request for rate increase by Gulf Power Company.
[5] Issued July 13, 2007, in Docket No. 060368-WS, In Re: Application for increase in water and wastewater rates by Aqua Utilities, Florida, Inc.
[6] PEF notes that this order involved a water and wastewater company, and hence the confidentiality provisions of Chapter 367, rather than Chapter 366. PEF further notes that except for their applicability to different types of utilities, the sections are identical in all material respects.

Sixth Request for Confidential Classification

By its Sixth Request for Confidential Classification, PEF requests confidential classification of certain numerical information contained within its Response to Staff's Eighteenth Set of Interrogatories (Nos. 197-198) (DN 07595-09). PEF's Response to Interrogatory Nos. 197 and 198 contains names, job titles, and compensation information, including base salaries, bonus, and other compensation for all employees of Progress Energy, Inc. and PEF whose total compensation exceeds $165,000. PEF does not claim confidentiality for the names and job titles of these employees or for the total compensation paid to them as a group. PEF does claim confidentiality to the extent the information discloses the specific compensation paid to specific employees.

PEF's arguments for the confidential classification of this information are the same arguments that it raised in its Fifth Request for Confidential Classification, which are summarized above.

Analysis and Recommendation

When a statute is clear and unambiguous, the courts will not look behind its plain language for legislative intent or resort to rules of statutory construction to ascertain intent.[7] Subsection 366.093(3), F.S., clearly and unambiguously defines what constitutes proprietary confidential business information. Pursuant to this subsection, proprietary confidential business information is information that is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that disclosure would cause harm to the ratepayers or to the person or company's business operations, and it must not have been disclosed except under certain circumstances as defined therein. The statute further provides, in subsection 366.093(3)(a)-(f), that proprietary confidential business information includes, but is not limited to, six specific types of information. Subsection 366.093(3)(f) plainly states that proprietary confidential business information includes "[e]mployee personnel information unrelated to compensation, duties, qualifications, or responsibilities."

Therefore, pursuant to the clear and unambiguous language of the statute, employee personnel information that is unrelated to compensation, duties, qualifications, or responsibilities meets the definition of proprietary confidential business information so long as it is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that disclosure would cause harm to the ratepayers or to the person or company's business operations, and it has not been disclosed except under the circumstances as defined therein. Conversely, employee personnel information that is related to compensation, duties, qualifications, or responsibilities is expressly excluded from the definition of proprietary confidential business information. The information at issue pertains to employee compensation. Therefore, it is unnecessary for the Commission to determine whether disclosure of the information would cause harm to PEF's ratepayers or to its business operations, regardless of the fact that PEF argues that it would cause such harm.

[7] Daniels v. FDOH, 898 So. 2d 61, 64 (Fla. 2005).

By Order No. PSC-07-0579-CFO-WS at 3, the Commission found that it "has repeatedly, with very few exceptions, [including those cases cited by PEF] denied confidential classification for information relating to salaries, compensation, duties, qualifications, or responsibilities."[8] Also by Order No. PSC-07-0579-CFO-WS at 3, the Commission ruled that "[b]ecause the salary information at issue is employee personnel information related to compensation, and the legislature in section 367.156(3)(f) specifically excluded that category of information from the statutory definition of proprietary business information, the information must be treated as public record pursuant to section 119.01, Florida Statutes."

PEF argues that, because the general language of subsection 366.093(3) states that proprietary confidential business information "is not limited to" the types of information enumerated in the following paragraphs, the utility may prove that the compensation information harms its competitive business interests under subsection 366.093(3)(e) or otherwise harms its ratepayers or business operations under the general language of subsection 366.093(3). PEF is incorrect. The language of 366.093(3)(f) clearly and unambiguously excludes the information at issue from the definition of proprietary confidential business information. Even assuming, for the sake of argument, that the statute were ambiguous such that the rules of statutory construction should apply, there is a well-established rule of statutory construction instructing that when two statutory provisions are in conflict, the specific statute controls over the general statute.[9] Under this rule of statutory construction, if the Commission were to determine that the general language of subsection 366.093(3) conflicted with the specific language of subsection 366.093(3)(f), the specific language of subsection 366.093(3)(f) would control over the general language of subsection 366.093(3). Therefore, PEF's argument would fail even if the rules of statutory construction were to apply in this instance.

PEF is also incorrect that, because of the exclusion in subsection (3)(f), the company bears the burden to make a higher showing of competitive impact in order to obtain protection for personnel information related to compensation, and that nothing in the language or structure of the statute precludes such a showing. Nothing in the language or structure of the statute permits such a showing. PEF is reading language into the statute that does not exist. Courts lack the power to construe an unambiguous statute in a way that would extend or modify its express terms or its reasonable and obvious implications, as to do so would be an abrogation of legislative power. [10]

PEF further argues that, if the Legislature had wanted to explicitly provide that such compensation information would always be a matter of public record, it could have worded the statute in such a way to make that clear. That is precisely what the Legislature did by enacting subsection 366.093(3)(f).

For the foregoing reasons, staff recommends that the portion of PEF's Second Request for Confidential Classification pertaining to certain information provided in response to Interrogatory No. 1 from Staff's First Set of Interrogatories (Nos. 1-2) (contained within, but not

[8] See Order No. PSC-07-0579-CFO-WS at 3, fn 2, for a string of citations to Commission orders denying confidential classification for such information.
[9] State Farm Mut. Auto. Ins. Co. v. Nichols, 932 So. 2d 1067, 1073 (Fla. 2006).
[10] University of Florida, Bd. Of Trustees v. Sanal, 837 So. 2d 512, 516 (Fla. 1st DCA 2003).

comprising all of DN 04092-09), PEF's Fifth Request for Confidential Classification for Portions of its Response to Interrogatory Nos. 123-124 from Staff's Tenth Set of Interrogatories (Nos. 123-126) (DN 07388-09), and PEF's Sixth Request for Confidential Classification for Portions of its Response to Staff's Eighteenth Set of Interrogatories (Nos. 197-198) (DN 07595-09) should be denied. PEF should be required to provide in a publicly available manner, spreadsheets which, at a minimum, match the compensation information at issue to the specific job titles previously provided.

Issue 3: Should FPL's Revised Request for Confidential Classification of Staff's Third Set of Interrogatories No. 16, Staff's Fourth Set of Interrogatories No. 32, and Staff's Eighth Set of Interrogatories No. 97 (DN 07400-09 and DN 07694-09) be granted?

Recommendation: No, FPL's Revised Request for Confidential Classification of Staff's Third Set of Interrogatories No. 16, Staff's Fourth Set of Interrogatories No. 32, and Staff's Eighth Set of Interrogatories No. 97 (DN 07400-09 and DN 07694-09) should be denied. FPL should be required to provide in a publicly available manner, spreadsheets which, at a minimum, match the compensation information at issue to the specific job titles previously provided. (Gervasi, Salak, Slemkewicz)

Staff Analysis:

Request for Confidential Classification

By its Request, FPL seeks confidential classification of certain employee compensation information which it claims is competitively sensitive and private information produced in response to Interrogatory No. 16 from Staff's Third Set of Interrogatories (Nos. 9-19), Interrogatory No. 32 from Staff's Fourth Set of Interrogatories (Nos. 20-35), and Interrogatory No. 97 from Staff's Eighth Set of Interrogatories (Nos. 96-97) (DN 07400-09 and DN 07694-09). In support of its request, FPL argues that the Legislature has determined that certain categories of information listed in subsections 366.093(3)(a) through (f), F.S., are automatically entitled to confidential treatment. FPL argues that the statute is equally clear that any information that meets the criteria of the statute as set forth in subsection 366.093(3) is entitled to be protected. That criteria includes that the information is owned or controlled by the company, is intended to be and is treated by the person or company as private, would cause harm to the ratepayers or the person or company's business operations, and has not been disclosed unless disclosed pursuant to some order or agreement that further protects the information from public disclosure. FPL argues that the information subject to this Request meets these criteria and should be afforded confidential protection.

According to FPL, subsection 366.093(3)(f), F.S., entitles automatic protection to personnel information unrelated to compensation and nothing in that subsection precludes a determination that information related to compensation should be afforded confidential treatment if the relevant criteria are met, particularly given the competitively sensitive nature of the information and the harm to customers and the company's operations which would be a direct result of the disclosure.

FPL cites to a number of Commission orders in which the Commission has granted confidential classification to competitively sensitive compensation information from public disclosure under subsection 366.093(3)(e), F.S.[11] FPL argues that the Commission, while having full access to as much individual compensation information as it deems appropriate to fulfill its regulatory functions, has thus consistently agreed that individual compensation information should not be (nor need be) publicly disclosed. FPL argues that the same principles should be upheld and applied in this instance. According to FPL, to do otherwise would be to disregard a

[11] See FPL's Request for Confidential Classification at 3-4.

longstanding fundamental respect for privacy that the Commission's actions in the past have maintained. FPL cites to Order No. PSC-02-0235-CFO-EI[12] as an example of where the Commission has recognized the competitively sensitive nature of certain types of compensation information in the past. By that Order, in denying confidential treatment over summary-level compensation information, the Commission stated that the information that was the subject of that request did not reveal "any specifics of compensation plans or compensation levels that would cause irreparable harm to [the utility's] competitive plans." The Commission further stated that "the information is given in total dollar amounts and percentages and does not reveal individual employees' names, levels, incentive compensation, or bonuses which would be competitively sensitive or confidential in nature."

FPL states that it has provided, in a publicly available manner, a variety of information related to employee compensation. Consistent with the requirements of the Securities Exchange Commission, FPL publicly discloses specific compensation information for its top officers. In this proceeding, FPL has provided data related to employees with salaries over $165,000 as requested. FPL provided summary-level or aggregated data in a publicly available manner, and has made the detail-level information, including names and positions, available to the Commission and Staff. FPL states that it is requesting protection only for information whose public disclosure would cause the Company and its customers irreparable harm.

FPL has filed as Exhibit D to its Request a copy of an Affidavit of Ms. Kathleen Slattery, attesting to the detrimental impacts one would expect to see as a result of the public disclosure of this compensation information. FPL states that it operates within a highly competitive market for talented employees. Disclosure of compensation and incentive compensation information would enable competing employers to meet, or beat, the compensation offered by FPL. This would result in the loss of highly skilled and trained employees to competitors and the inability to attract new talent, or the need to increase the level of compensation and incentives already paid in order to retain these employees and attract new talent. Overall costs and performance will be affected by such disclosure as the Company is forced to pay to retain, or pay to replace and train new employees. FPL states that for these same reasons, compensation information not otherwise required to be publicly disclosed by Securities and Exchange Commission rules is held to be confidential by any major company in the United States. According to FPL, such competitively sensitive information is entitled to protection pursuant to subsection 366.093(3)(e), F.S.

FPL further argues that confidential treatment for salary information linked with employee names is also necessary to protect the individual employees' rights to privacy. In Florida, a citizen's right to privacy is independently protected by Art. V, § 23 of the state constitution. To protect the privacy interests of its employees who are not subject to the mandatory disclosure requirements of the Securities and Exchange Commission, FPL will continue to request confidential treatment for individual employees' salaries linked to their names and titles. FPL maintains this information as confidential and it has not been disclosed.

FPL requests that the Commission determine that the information linking particular employees to their compensation information is entitled to protection pursuant to subsection

[12] Issued February 25, 2002, in Docket No. 010949-EI, In Re: Request for rate increase by Gulf Power Company.

366.093(3)(e), F.S., or alternatively, that this information should be protected as confidential pursuant to the Commission's general authority granted by subsection 366.093(3), F.S.

Analysis and Recommendation

When a statute is clear and unambiguous, the courts will not look behind its plain language for legislative intent or resort to rules of statutory construction to ascertain intent.[13] Subsection 366.093(3), F.S., clearly and unambiguously defines what constitutes proprietary confidential business information. Pursuant to this subsection, proprietary confidential business information is information that is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that disclosure would cause harm to the ratepayers or to the person or company's business operations, and it must not have been disclosed except under certain circumstances as defined therein. The statute further provides, in subsection 366.093(3)(a)-(f), that proprietary confidential business information includes, but is not limited to, six specific types of information. Subsection 366.093(3)(f) plainly states that proprietary confidential business information includes "[e]mployee personnel information unrelated to compensation, duties, qualifications, or responsibilities."

Therefore, pursuant to the clear and unambiguous language of the statute, employee personnel information that is unrelated to compensation, duties, qualifications, or responsibilities meets the definition of proprietary confidential business information so long as it is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that disclosure would cause harm to the ratepayers or to the person or company's business operations, and it has not been disclosed except under the circumstances as defined therein. Conversely, employee personnel information that is related to compensation, duties, qualifications, or responsibilities is expressly excluded from the definition of proprietary confidential business information. The information at issue pertains to employee compensation. Therefore, it is unnecessary for the Commission to determine whether disclosure of the information would cause harm to FPL's ratepayers or to its business operations, regardless of the fact that FPL argues that it would cause such harm.

By Order No. PSC-07-0579-CFO-WS at 3, the Commission found that it "has repeatedly, with very few exceptions, [including those cases cited by FPL] denied confidential classification for information relating to salaries, compensation, duties, qualifications, or responsibilities."[14] Also by Order No. PSC-07-0579-CFO-WS at 3, the Commission ruled that "[b]ecause the salary information at issue is employee personnel information related to compensation, and the legislature in section 367.156(3)(f) specifically excluded that category of information from the statutory definition of proprietary business information, the information must be treated as public record pursuant to section 119.01, Florida Statutes."

FPL argues that the Commission should determine that the information linking particular employees to their compensation information is entitled to protection pursuant to subsection 366.093(3)(e), F.S., or alternatively, that this information should be protected as confidential

[13] Daniels v. FDOH, 898 So. 2d 61, 64 (Fla. 2005).
[14] See Order No. PSC-07-0579-CFO-WS at 3, fn 2, for a string of citations to Commission orders denying confidential classification for such information.

pursuant to the Commission's general authority granted by subsection 366.093(3), F.S. However, the language of 366.093(3)(f) clearly and unambiguously excludes the information at issue from the definition of proprietary confidential business information. Even assuming, for the sake of argument, that the statute were ambiguous such that the rules of statutory construction should apply, there is a well-established rule of statutory construction instructing that when two statutory provisions are in conflict, the specific statute controls over the general statute.[15] Under this rule of statutory construction, if the Commission were to determine that the general language of subsection 366.093(3) conflicted with the specific language of subsection 366.093(3)(f), the specific language of subsection 366.093(3)(f) would control over the general language of subsection 366.093(3). Therefore, FPL's argument would fail even if the rules of statutory construction were to apply in this instance.

FPL argues that subsection 366.093(3)(f), F.S., entitles automatic protection to personnel information unrelated to compensation and nothing in that subsection precludes a determination that information related to compensation should be afforded confidential treatment if the relevant criteria are met. FPL is incorrect. Subsection 366.093(3)(f) clearly and unambiguously excludes such information from the definition of proprietary confidential business information. Courts lack the power to construe an unambiguous statute in a way that would extend or modify its express terms or its reasonable and obvious implications, as to do so would be an abrogation of legislative power. [16]

For the foregoing reasons, staff recommends that FPL's Revised Request for Confidential Classification of Staff's Third Set of Interrogatories No. 16, Staff's Fourth Set of Interrogatories No. 32, and Staff's Eighth Set of Interrogatories No. 97 (DN 07400-09 and DN 07694-09) should be denied. FPL should be required to provide in a publicly available manner, spreadsheets which, at a minimum, match the compensation information at issue to the specific job titles previously provided.

[15] State Farm Mut. Auto. Ins. Co. v. Nichols, 932 So. 2d 1067, 1073 (Fla. 2006).
[16] University of Florida, Bd. Of Trustees v. Sanal, 837 So. 2d 512, 516 (Fla. 1st DCA 2003).

Issue 4: Should these dockets be closed?

Recommendation: No, these dockets should remain open to process PEF and FPL's pending rate cases. (Gervasi)

Staff Analysis: These dockets should remain open to process PEF and FPL's pending rate cases.

PROGRESS ENERGY FLORIDA
In re: Nuclear Power Plant Cost Recovery Clause
Docket 080009
Second Request for Confidential Classification
Confidentiality Justification Matrix

DOCUMENT/RESPONSES	PAGE/LINE	JUSTIFICATION
		contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.
Response to Staff's First Set of Interrogatories No. 1 Document bearing bates number 09RC-OPCROG1-39b-00007	All dollar amounts in lines 4 through 8, 12 and 13	§366.093(3)(e), F.S. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.
Response to Staff's First Set of Interrogatories No. 1 Document bearing bates number 09RC-OPCROG1-39b-00008	All dollar amounts in lines 4 through 7, 11, 12, 14 and 15	§366.093(3)(e), F.S. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.
Response to Staff's First Set of Interrogatories No. 1 Document bearing bates number 09RC-OPCROG1-39b-00009	All dollar amounts in line 1 through 4, 9,11 and 12	§366.093(3)(e), F.S. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.
Response to Staff's First Set	All dollar amounts in	§366.093(3)(e), F.S.

DOCUMENT/RESPONSES	PAGE/LINE	JUSTIFICATION
of Interrogatories No. 1 Document bearing bates number 09RC-OPCROG1-39b-000010	lines 1 through 11	The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.
Response to Staff's First Set of Interrogatories No. 1 Document bearing bates number 09RC-OPCROG1-39b-000011	All dollar amounts in lines 1 through 10	§366.093(3)(e), F.S. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.

ATTACHMENT C

PROGRESS ENERGY FLORIDA
In re: Petition for Increase in Rates By Progress Energy Florida, Inc.
Docket No. 090079-EI
PEF's Fifth Request for Confidential Classification as to Staff's Tenth Set of Interrogatories
Confidentiality Justification Matrix

DOCUMENT/RESPONSES	PAGE/LINE	JUSTIFICATION
Response to Staff's 10th Set of Interrogatories Nos. 123 & 124 Document bearing bates number 09RP-STAFFROG10-123-000010	All numerical information within the table	§366.093(3), Fla. Stat. Proprietary confidential business information means information... which is [i] owned or controlled by the person or company, [ii] is intended to be and is treated by the person or company as private [iii] in that disclosure of the information would cause harm to the ratepayers or to the person's or company's business operations, and [iv] has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public. §366.093(3)(e), Fla. Stat. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.
Response to Staff's 10th Set of Interrogatories Nos. 123 & 124 Document bearing bates	All numerical information within the table	§366.093(3), Fla. Stat. Proprietary confidential business information means information... which is [i]

PROGRESS ENERGY FLORIDA

Attachment A

In re: Petition for Increase in Rates by Progress Energy Florida, Inc.
Docket 090079-EI
PEF's Fifth Request for Confidential Classification as to Staff's Tenth Set of Interrogatories
Confidentiality Justification Matrix

DOCUMENT/RESPONSES	PAGE/LINE	JUSTIFICATION
number 09RP-STAFFROG10-123-000011		owned or controlled by the person or company, [ii] is intended to be and is treated by the person or company as private [iii] in that disclosure of the information would cause harm to the ratepayers or to the person's or company's business operations, and [iv] has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public. §366.093(3)(e), Fla. Stat. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.
Response to Staff's 10th Set of Interrogatories Nos. 123 & 124 Document bearing bates number 09RP-STAFFROG10-123-000012	All numerical information within the table	§366.093(3), Fla. Stat. Proprietary confidential business information means information... which is [i] owned or controlled by the person or company, [ii] is intended to be and is treated by the person or company as private [iii] in that disclosure of the information would cause harm to the ratepayers or to

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PROGRESS ENERGY FLORIDA
In re: Petition for Increase in Rates by Progress Energy Florida, Inc.
Docket 090079-EI
PEF's Fifth Request for Confidential Classification as to Staff's Tenth Set of Interrogatories
Confidentiality Justification Matrix

DOCUMENT/RESPONSES	PAGE/LINE	JUSTIFICATION
		the person's or company's business operations, and [iv] has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public. §366.093(3)(e), Fla. Stat. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.
Response to Staff's 10th Set of Interrogatories Nos. 123 & 124 Document bearing bates number 09RP-STAFFROG10-123-000013	All numerical information within the table	§366.093(3), Fla. Stat. Proprietary confidential business information means information... which is [i] owned or controlled by the person or company, [ii] is intended to be and is treated by the person or company as private [iii] in that disclosure of the information would cause harm to the ratepayers or to the person's or company's business operations, and [iv] has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that

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PROGRESS ENERGY FLORIDA
In re: Petition for Increase in Rates by Progress Energy Florida, Inc.
Docket 090079-EI
PEF's Fifth Request for Confidential Classification as to Staff's Tenth Set of Interrogatories
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DOCUMENT/RESPONSES	PAGE/LINE	JUSTIFICATION
		provides that the information will not be released to the public. §366.093(3)(e), Fla. Stat. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.
Response to Staff's 10th Set of Interrogatories Nos. 123 & 124 Document bearing bates number 09RP-STAFFROG10-123-000014	All numerical information within the table	§366.093(3), Fla. Stat. Proprietary confidential business information means information... which is [i] owned or controlled by the person or company, [ii] is intended to be and is treated by the person or company as private [iii] in that disclosure of the information would cause harm to the ratepayers or to the person's or company's business operations, and [iv] has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public. §366.093(3)(e), Fla. Stat. The document in question contains confidential information relating to

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PROGRESS ENERGY FLORIDA
In re: Petition for Increase in Rates by Progress Energy Florida, Inc.
Docket 090079-EI
PEF's Fifth Request for Confidential Classification as to Staff's Tenth Set of Interrogatories
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DOCUMENT/RESPONSES	PAGE/LINE	JUSTIFICATION
		competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.
Response to Staff's 10th Set of Interrogatories Nos. 123 & 124 Document bearing bates number 09RP-STAFFROG10-123-000015	All numerical information within the table	§366.093(3), Fla. Stat. Proprietary confidential business information means information... which is [i] owned or controlled by the person or company, [ii] is intended to be and is treated by the person or company as private [iii] in that disclosure of the information would cause harm to the ratepayers or to the person's or company's business operations, and [iv] has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public. §366.093(3)(e), Fla. Stat. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.
Response to Staff's 10th Set of Interrogatories Nos. 123 &	All numerical information within the table	§366.093(3), Fla. Stat. Proprietary confidential

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In re: Petition for Increase in Rates by Progress Energy Florida, Inc.
Docket 090079-EI
PEF's Fifth Request for Confidential Classification as to Staff's Tenth Set of Interrogatories
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DOCUMENT/RESPONSES	PAGE/LINE	JUSTIFICATION
124 Document bearing bates number 09RP-STAFFROG10-123-000016		business information means information... which is [i] owned or controlled by the person or company, [ii] is intended to be and is treated by the person or company as private [iii] in that disclosure of the information would cause harm to the ratepayers or to the person's or company's business operations, and [iv] has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public. §366.093(3)(e), Fla. Stat. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.
Response to Staff's 10th Set of Interrogatories Nos. 123 & 124 Document bearing bates number 09RP-STAFFROG10-123-000017	All numerical information within the table	§366.093(3), Fla. Stat. Proprietary confidential business information means information... which is [i] owned or controlled by the person or company, [ii] is intended to be and is treated by the person or company as private [iii] in that disclosure of the

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DOCUMENT/RESPONSES	PAGE/LINE	JUSTIFICATION
		information would cause harm to the ratepayers or to the person's or company's business operations, and [iv] has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public. §366.093(3)(e), Fla. Stat. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.
Response to Staff's 10th Set of Interrogatories Nos. 123 & 124 Document bearing bates number 09RP-STAFFROG10-123-000018	All numerical information within the table	§366.093(3), Fla. Stat. Proprietary confidential business information means information... which is [i] owned or controlled by the person or company, [ii] is intended to be and is treated by the person or company as private [iii] in that disclosure of the information would cause harm to the ratepayers or to the person's or company's business operations, and [iv] has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or

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DOCUMENT/RESPONSES	PAGE/LINE	JUSTIFICATION
		administrative body, or private agreement that provides that the information will not be released to the public. §366.093(3)(e), Fla. Stat. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.

ATTACHMENT C

PROGRESS ENERGY FLORIDA
In re: Petition for Increase in Rates By Progress Energy Florida, Inc.
Docket No. 090079-EI
PEF's Sixth Request for Confidential Classification as to Staff's Eighteenth Set of Interrogatories
Confidentiality Justification Matrix

DOCUMENT/RESPONSES	PAGE/LINE	JUSTIFICATION
Response to Staff's 18th Set of Interrogatories No. 197 Document bearing Bates number 09RP-STAFFROG18-197-000014 - 09RP-STAFFROG18-197-000016	All numerical information within the table on pages 000014 and 000015; all numerical information in the table on 000016, except for the "SVC Total" and "Grand Total" Lines	§366.093(3), Fla. Stat. Proprietary confidential business information means information... which is [i] owned or controlled by the person or company, [ii] is intended to be and is treated by the person or company as private [iii] in that disclosure of the information would cause harm to the ratepayers or to the person's or company's business operations, and [iv] has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public. §366.093(3)(e), Fla. Stat. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.
Response to Staff's 18th Set of Interrogatories Nos. 197 Document bearing bates number 09RP-STAFFROG18-	All numerical information within the table on pages 000018 and 000019; all numerical information in	§366.093(3), Fla. Stat. Proprietary confidential business information means information... which is [i]

PROGRESS ENERGY FLORIDA
In re: Petition for Increase in Rates by Progress Energy Florida, Inc.
Docket 090079-EI
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DOCUMENT/RESPONSES	PAGE/LINE	JUSTIFICATION
197-000018 - 09RP-STAFFROG18-197-000020	the table on 000020, except for the "SVC Total" and "Grand Total" Lines	owned or controlled by the person or company, [ii] is intended to be and is treated by the person or company as private [iii] in that disclosure of the information would cause harm to the ratepayers or to the person's or company's business operations, and [iv] has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public. §366.093(3)(e), Fla. Stat. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.
Response to Staff's 18th Set of Interrogatories Nos. 197 Document bearing bates number 09RP-STAFFROG18-197-000022 - 09RP-STAFFROG18-197-000024	All numerical information within the table on pages 000022 and 000023; all numerical information in the table on 000024, except for the "SVC Total" and "Grand Total" Lines	§366.093(3), Fla. Stat. Proprietary confidential business information means information... which is [i] owned or controlled by the person or company, [ii] is intended to be and is treated by the person or company as private [iii] in that disclosure of the information would cause harm to the ratepayers or to

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PROGRESS ENERGY FLORIDA
In re: Petition for Increase in Rates by Progress Energy Florida, Inc.
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DOCUMENT/RESPONSES	PAGE/LINE	JUSTIFICATION
		the person's or company's business operations, and [iv] has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public. §366.093(3)(e), Fla. Stat. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.

Exhibit C
Docket No. 080677-EI
FPL Response to Staff's Third Interrogatories, No. 16

Page 1	Base salary net of AMF	Col. a, Lines 3, 5-22, 24-27, 29-44	(3) and (3)(e)	Kathleen Slattery
Page 1	Stock awards net of AMF	Col. b, Lines 3, 5-22, 24-27, 29-44	(3) and (3)(e)	Kathleen Slattery
Page 1	Option awards net of AMF	Col. c, Lines 3, 5-22, 24-27, 29-44	(3) and (3)(e)	Kathleen Slattery
Page 1	Non-equity incentive comp, net of AMF	Col. d, Lines 3, 5-22, 24-27, 29-44	(3) and (3)(e)	Kathleen Slattery
Page 1	All other – net of AMF	Col. e, Lines 3, 5-22, 24-27, 29-44	(3) and (3)(e)	Kathleen Slattery
Page 1	Total compensation – net of AMF	Col. f, Lines 3, 5-22, 24-27, 29-44	(3) and (3)(e)	Kathleen Slattery
Page 1	Allocated to FPL, net of AMF	Col. g, Lines 3, 5-22, 24-27, 29-44	(3) and (3)(e)	Kathleen Slattery
Page 2	Base salary net of AMF	Col. a, Lines 3, 5-22, 24-27, 29-42	(3) and (3)(e)	Kathleen Slattery
Page 2	Stock awards net of AMF	Col. b, Lines 3, 5-22, 24-27, 29-42	(3) and (3)(e)	Kathleen Slattery
Page 2	Option awards	Col. c,	(3) and	Kathleen Slattery

	net of AMF	Lines 3, 5-22, 24-27, 29-42	(3)(e)	
Page 2	Non-equity incentive comp, net of AMF	Col. d, Lines 3, 5-22, 24-27, 29-42	(3) and (3)(e)	Kathleen Slattery
Page 2	All other – net of AMF	Col. e, Lines 3, 5-22, 24-27, 29-42	(3) and (3)(e)	Kathleen Slattery
Page 2	Total compensation – net of AMF	Col. f, Lines 3, 5-22, 24-27, 29-42	(3) and (3)(e)	Kathleen Slattery
Page 2	Allocated to FPL, net of AMF	Col. g, Lines 3, 5-22, 24-27, 29-44	(3) and (3)(e)	Kathleen Slattery
Page 3	Base salary net of AMF	Col. a, Lines 3, 5-22, 24-27, 29-42	(3) and (3)(e)	Kathleen Slattery
Page 3	Stock awards net of AMF	Col. b, Lines 3, 5-22, 24-27, 29-42	(3) and (3)(e)	Kathleen Slattery
Page 3	Option awards net of AMF	Col. c, Lines 3, 5-22, 24-27, 29-42	(3) and (3)(e)	Kathleen Slattery
Page 3	Non-equity incentive comp, net of AMF	Col. d, Lines 3, 5-22, 24-27, 29-42	(3) and (3)(e)	Kathleen Slattery
Page 3	All other – net of AMF	Col. e, Lines 3, 5-22, 24-27, 29-42	(3) and (3)(e)	Kathleen Slattery
Page 3	Total compensation – net of AMF	Col. f, Lines 3, 5-22, 24-27, 29-44	(3) and (3)(e)	Kathleen Slattery
Page 3	Allocated to FPL, net of AMF	Col. g, Lines 3, 5-22, 24-27,	(3) and (3)(e)	Kathleen Slattery

		29-42		
Page 4	Base salary net of AMF	Col. a, Lines 3, 5-22, 24-27, 29-42	(3) and (3)(e)	Kathleen Slattery
Page 4	Stock awards net of AMF	Col. b, Lines 3, 5-22, 24-27, 29-42	(3) and (3)(e)	Kathleen Slattery
Page 4	Option awards net of AMF	Col. c, Lines 3, 5-22, 24-27, 29-42	(3) and (3)(e)	Kathleen Slattery
Page 4	Non-equity incentive comp, net of AMF	Col. d, Lines 3, 5-22, 24-27, 29-42	(3) and (3)(e)	Kathleen Slattery
Page 4	All other – net of AMF	Col. e, Lines 3, 5-22, 24-27, 29-42	(3) and (3)(e)	Kathleen Slattery
Page 4	Total compensation – net of AMF	Col. f, Lines 3, 5-22, 24-27, 29-42	(3) and (3)(e)	Kathleen Slattery
Page 4	Allocated to FPL, net of AMF	Col. g, Lines 3, 5-22, 24-27, 29-42	(3) and (3)(e)	Kathleen Slattery

Docket No. 080677-EI
FPL Response to Staff's Fourth Interrogatories, No. 32

Page 1	Base Salary	Col. b, Lines 1-50	(3) and (3)(e)	Kathleen Slattery
Page 1	Overtime	Col. c, Lines 1-50	(3) and (3)(e)	Kathleen Slattery
Page 1	Bonus	Col. d, Lines 1-50	(3) and (3)(e)	Kathleen Slattery
Page 1	Stock Awards	Col. e,	(3) and	Kathleen Slattery

		Lines 1-50	(3)(e)	
Page 1	Option Awards	Col. f, Lines 1-50	(3) and (3)(e)	Kathleen Slattery
Page 1	Non-equity Incentive Comp	Col. g, Lines 1-50	(3) and (3)(e)	Kathleen Slattery
Page 1	All Other	Col. h, Lines 1-50	(3) and (3)(e)	Kathleen Slattery
Page 1	Total Compensation	Col. i, Lines 1-50	(3) and (3)(e)	Kathleen Slattery
Page 1	Net allocation	Col. j, Lines 1-50	(3) and (3)(e)	Kathleen Slattery
Page 2	Base Salary	Col. b, Lines 51-99	(3) and (3)(e)	Kathleen Slattery
Page 2	Overtime	Col. c, Lines 51-99	(3) and (3)(e)	Kathleen Slattery
Page 2	Bonus	Col. d, Lines 51-99	(3) and (3)(e)	Kathleen Slattery
Page 2	Stock Awards	Col. e, Lines 51-99	(3) and (3)(e)	Kathleen Slattery
Page 2	Option Awards	Col. f, Lines 51-99	(3) and (3)(e)	Kathleen Slattery
Page 2	Non-equity Incentive Comp	Col. g, Lines 51-99	(3) and (3)(e)	Kathleen Slattery
Page 2	All Other	Col. h, Lines 51-99	(3) and (3)(e)	Kathleen Slattery
Page 2	Total Compensation	Col. i, Lines 51-99	(3) and (3)(e)	Kathleen Slattery
Page 2	Net allocation	Col. j, Lines 51-99	(3) and (3)(e)	Kathleen Slattery
Page 3	Base Salary	Col. b, Lines 100-148	(3) and (3)(e)	Kathleen Slattery
Page 3	Overtime	Col. c, Lines 100-148	(3) and (3)(e)	Kathleen Slattery
Page 3	Bonus	Col. d, Lines 100-148	(3) and (3)(e)	Kathleen Slattery
Page 3	Stock Awards	Col. e, Lines 100-148	(3) and (3)(e)	Kathleen Slattery
Page 3	Option Awards	Col. f, Lines 100-148	(3) and (3)(e)	Kathleen Slattery
Page 3	Non-equity	Col. g,	(3) and	Kathleen Slattery

	Incentive Comp	Lines 100-148	(3)(e)	
Page 3	All Other	Col. h, Lines 100-148	(3) and (3)(e)	Kathleen Slattery
Page 3	Total Compensation	Col. i, Lines 100-148	(3) and (3)(e)	Kathleen Slattery
Page 3	Net allocation	Col. j, Lines 100-148	(3) and (3)(e)	Kathleen Slattery
Page 4	Base Salary	Col. b, Lines 149-171	(3) and (3)(e)	Kathleen Slattery
Page 4	Overtime	Col. c, Lines 149-171	(3) and (3)(e)	Kathleen Slattery
Page 4	Bonus	Col. d, Lines 149-171	(3) and (3)(e)	Kathleen Slattery
Page 4	Stock Awards	Col. e, Lines 149-171	(3) and (3)(e)	Kathleen Slattery
Page 4	Option Awards	Col. f, Lines 149-171	(3) and (3)(e)	Kathleen Slattery
Page 4	Non-equity Incentive Comp	Col. g, Lines 149-171	(3) and (3)(e)	Kathleen Slattery
Page 4	All Other	Col. h, Lines 149-171	(3) and (3)(e)	Kathleen Slattery
Page 4	Total Compensation	Col. i, Lines 149-171	(3) and (3)(e)	Kathleen Slattery
Page 4	Net allocation	Col. j, Lines 149-171	(3) and (3)(e)	Kathleen Slattery

Exhibit C
Docket No. 080677-EI
FPL Response to Staff's Eighth Interrogatories, No. 97

Page No.	Description	Column and Line No.	Applicable subsection of § 366.093, Fla. Stat.	Affiant
Page 1	Base Salary	Col. b, Lines 1-44	(3) and (3)(e)	Kathleen Slattery
Page 1	Overtime	Col. c, Lines 1-44	(3) and (3)(e)	Kathleen Slattery
Page 1	Bonus	Col. d, Lines 1-44	(3) and (3)(e)	Kathleen Slattery
Page 1	Stock Awards	Col. e, Lines 1-44	(3) and (3)(e)	Kathleen Slattery
Page 1	Option Awards	Col. f, Lines 1-44	(3) and (3)(e)	Kathleen Slattery
Page 1	Non-equity Incentive Comp	Col. g, Lines 1-44	(3) and (3)(e)	Kathleen Slattery
Page 1	All Other	Col. h, Lines 1-44	(3) and (3)(e)	Kathleen Slattery
Page 1	Total Compensation	Col. i, Lines 1-44	(3) and (3)(e)	Kathleen Slattery
Page 1	Net allocation	Col. j, Lines 1-44	(3) and (3)(e)	Kathleen Slattery
Page 2	Base Salary	Col. b, Lines 45-90	(3) and (3)(e)	Kathleen Slattery
Page 2	Overtime	Col. c, Lines 45-90	(3) and (3)(e)	Kathleen Slattery
Page 2	Bonus	Col. d, Lines 45-90	(3) and (3)(e)	Kathleen Slattery
Page 2	Stock Awards	Col. e, Lines 45-90	(3) and (3)(e)	Kathleen Slattery
Page 2	Option Awards	Col. f, Lines 45-90	(3) and (3)(e)	Kathleen Slattery
Page 2	Non-equity Incentive Comp	Col. g, Lines 45-90	(3) and (3)(e)	Kathleen Slattery
Page 2	All Other	Col. h, Lines 45-90	(3) and (3)(e)	Kathleen Slattery
Page 2	Total Compensation	Col. i, Lines 45-90	(3) and (3)(e)	Kathleen Slattery
Page 2	Net allocation	Col. j, Lines 45-90	(3) and (3)(e)	Kathleen Slattery

Page 3	Base Salary	Col. b, Lines 91-136	(3) and (3)(e)	Kathleen Slattery
Page 3	Overtime	Col. c, Lines 91-136	(3) and (3)(e)	Kathleen Slattery
Page 3	Bonus	Col. d, Lines 91-136	(3) and (3)(e)	Kathleen Slattery
Page 3	Stock Awards	Col. e, Lines 91-136	(3) and (3)(e)	Kathleen Slattery
Page 3	Option Awards	Col. f, Lines 91-136	(3) and (3)(e)	Kathleen Slattery
Page 3	Non-equity Incentive Comp	Col. g, Lines 91-136	(3) and (3)(e)	Kathleen Slattery
Page 3	All Other	Col. h, Lines 91-136	(3) and (3)(e)	Kathleen Slattery
Page 3	Total Compensation	Col. i, Lines 91-136	(3) and (3)(e)	Kathleen Slattery
Page 3	Net allocation	Col. j, Lines 91-136	(3) and (3)(e)	Kathleen Slattery
Page 4	Base Salary	Col. b, Lines 137-158	(3) and (3)(e)	Kathleen Slattery
Page 4	Overtime	Col. c, Lines 137-158	(3) and (3)(e)	Kathleen Slattery
Page 4	Bonus	Col. d, Lines 137-158	(3) and (3)(e)	Kathleen Slattery
Page 4	Stock Awards	Col. e, Lines 137-158	(3) and (3)(e)	Kathleen Slattery
Page 4	Option Awards	Col. f, Lines 137-158	(3) and (3)(e)	Kathleen Slattery
Page 4	Non-equity Incentive Comp	Col. g, Lines 137-158	(3) and (3)(e)	Kathleen Slattery
Page 4	All Other	Col. h,	(3) and	Kathleen Slattery

		Lines 137-158	(3)(e)	
Page 4	Total Compensation	Col. i, Lines 137-158	(3) and (3)(e)	Kathleen Slattery
Page 4	Net allocation	Col. j, Lines 137-158	(3) and (3)(e)	Kathleen Slattery

State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: August 11, 2009

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (Gervasi, Bennett, Fleming)
Division of Regulatory Compliance (Salak)
Division of Economic Regulation (Slemkewicz)

RE: Docket No. 080677-EI – Petition for increase in rates by Florida Power & Light Company.

Docket No. 090079-EI – Petition for increase in rates by Progress Energy Florida, Inc.

AGENDA: 08/18/09 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: McMurrian (080677-EI)
Skop (090079-EI)

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: This item should be taken up immediately after Item 4.

FILE NAME AND LOCATION: S:\PSC\GCL\WP\080677.RCM.DOC

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Case Background

Staff has sought discovery concerning executive compensation in the Florida Power & Light Company (FPL) and Progress Energy Florida (PEF) rate cases, ultimately seeking compensation information for executives whose total compensation exceeds $165,000. On August 6, 2009, in both rate case dockets, staff filed a Motion for Order Compelling Responses to Interrogatories (Motions to Compel), requesting the Commission to compel PEF to fully respond to the discovery requests within seven days, FPL to fully respond to the discovery

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FPSC-COMMISSION CLERK

requests within two days, and requesting that the companies file their responses to the Motions no later than noon on Monday, August 10, 2009. On August 7, 2009, FPL filed its and its employee intervenors' Response and Memorandum in Opposition to Staff's Motion to Compel, and filed its and its employee intervenors' Supplemental Response in Opposition to Staff's Motion to Compel on August 10, 2009. PEF filed its and its employee intervenors' Response to Motion to Compel, Motion for Protective Order, and Conditional Motion for Stay on August 10, 2009.

This recommendation addresses staff's Motions to Compel and FPL and PEF's responsive filings thereto. At issue are Interrogatory Nos. 16-17 from Staff's Third Set of Interrogatories to FPL, Interrogatory No. 32 from Staff's Fourth Set of Interrogatories to FPL, Interrogatory No. 97 from Staff's Eighth Set of Interrogatories to FPL, Interrogatory Nos. 123-126 from Staff's Tenth Set of Interrogatories to PEF, and Interrogatory Nos. 197-198 from Staff's Eighteenth Set of Interrogatories to PEF.

Staff Interrogatory Nos. 16, 32, and 97 to FPL and Staff Interrogatory Nos. 123-124 and 197-198 to PEF are also the subject of the staff recommendation filed August 6, 2009, in both dockets, addressing the companies' requests for confidential classification for certain information contained within their responses to those interrogatories. In its Motions to Compel, staff states that the requests for confidentiality and Motions to Compel are integrally related and requests that they be considered at the same agenda conference.

The Commission has jurisdiction pursuant to sections 120.569 and 120.57, Florida Statutes (F.S.), and Rule 28-106.211, Florida Administrative Code (F.A.C.).

Discussion of Issues

Issue 1: Should Staff's Motion for Order Compelling FPL to Respond to Interrogatory Nos. 16-17, 32 and 97 be granted?

Recommendation: Yes, Staff's Motion for Order Compelling Responses to Interrogatories should be granted. FPL should be directed to fully and completely respond to the interrogatories as revised by staff in Attachment B of its Motion within two days of the issuance date of the order arising from this recommendation. (Gervasi, Salak, Slemkewicz)

Staff Analysis:

Motion to Compel

Staff served its Third Set of Interrogatories (Nos. 9-19) upon FPL on May 22, 2009. FPL served its responses and "General Objections" to those interrogatories on June 11, 2009, and made no specific objections to Interrogatory Nos. 16-17. By Interrogatory Nos. 16-17, staff requested that FPL provide, for each officer of FPL Group (Interrogatory No. 16) and FPL (Interrogatory No. 17), the name and title of the officer and the actual or projected compensation amounts for 2008, 2009, and 2010 for the following:

a) Base Salary
b) Stock Awards
c) Option Awards
d) Non-Equity Incentive Plan Compensation
e) All Other Compensation
f) Total Compensation
g) Amount of Total Compensation Allocation to FLORIDA POWER & LIGHT COMPANY
h) Amount of Total Compensation Included in Adjusted Jurisdictional Other O&M Expenses on MFR Schedule C-1, Pages 1, 2, and 3.

Staff states that FPL's responses to these interrogatories were evasive or incomplete as follows:

1. The responses provided for a) through f) are incomplete because the name and title for each officer are not matched with the dollar amounts provided, except for 5 officers. Staff needs this information to evaluate the appropriateness of the employee compensation to be included in base rates;

2. The responses provided for a) through f) are incomplete because compensation amounts provided for a) through f) above were developed by applying an "affiliation allocation rate" and represent the net "expense to FPL for each individual." The amounts for a) through e) should be gross amounts before any allocations. The total of a) through e) should be provided as the response to f). The responses to g) should then show the amounts allocated to FPL. Staff needs this information to evaluate the appropriateness of the employee compensation and its

allocation between FPL Group and FPL for purposes of including such amounts in base rates; and

3. FPL did not respond to h). The responses to h) should identify the amount included in "Adjusted Jurisdictional Other O&M Expenses" shown on MFR Schedule C-1, pages 1 – 3. It would be acceptable for FPL to provide a reasonable estimate and an explanation of how the estimate was developed. Staff needs this information to evaluate FPL's request for inclusion of portions of employee compensation in base rates.

Staff served its Fourth Set of Interrogatories (Nos. 20-35) upon FPL on May 29, 2009. FPL served its responses and "General Objections" to those interrogatories on June 18, 2009, and made no specific objections to Interrogatory No. 32. By Interrogatory No. 32, staff requested that FPL provide the following information for each employee of FPL whose total compensation is $200,000 or greater:

a. Name/Title
b. Base Salary (the actual or projected compensation amounts for 2008, 2009, 2010 and 2011)
c. Overtime Pay (the actual or projected compensation amounts for 2008, 2009, 2010 and 2011)
d. Bonuses (the actual or projected compensation amounts for 2008, 2009, 2010 and 2011)
e. Stock Awards (the actual or projected compensation amounts for 2008, 2009, 2010 and 2011)
f. Option Awards (the actual or projected compensation amounts for 2008, 2009, 2010 and 2011)
g. Non-Equity Incentive Plan Compensation (the actual or projected compensation amounts for 2008, 2009, 2010 and 2011)
h. All Other Compensation (the actual or projected compensation amounts for 2008, 2009, 2010 and 2011)
i. Total Compensation (the actual or projected compensation amounts for 2008, 2009, 2010 and 2011)
j. Amount of Total Compensation Allocated to Florida Power & Light Company (the actual or projected compensation amounts for 2008, 2009, 2010 and 2011)
k. Amount of Total Compensation Included in Adjusted Jurisdictional Other O&M Expenses on MFR Schedule C-1, Pages 1, 2 and 3 (the actual or projected compensation amounts for 2008, 2009, 2010 and 2011).

Staff states that FPL's responses to Interrogatory No. 32 were evasive or incomplete as follows:

1. The name and title a) for each employee are not matched with the dollar amounts provided for b) and k). Staff needs this information to evaluate the appropriateness of the employee compensation to be included in base rates;

2. The responses provided for b) through i) are incomplete because compensation amounts provided for b) through i) were developed by applying an "affiliation allocation rate" and represent the net "expense to FPL for each individual." The amounts for b) through h) should be gross amounts before any allocations. The total of b) through h) should be provided as the response to i). The response to j) should then show the amounts allocated to FPL. Staff needs this information to evaluate the appropriateness of the employee compensation and its allocation between FPL Group and FPL for purposes of inclusion in base rates;

3. FPL originally did not respond to k). The response necessary should have identified the amount included in "Adjusted Jurisdictional Other O&M Expenses" shown on MFR Schedule C-1, pages 1 – 3. In discussions with FPL, staff concurred that it would be acceptable for FPL to provide a reasonable estimate and an explanation of how the estimate was developed. FPL provided a supplemental response on August 5, 2009, which gave staff a reasonable estimate. Staff needs an explanation of how the estimate was developed; and

4. FPL only provided responses to Interrogatory No. 32 for the year 2008. In its response to the Interrogatory, FPL stated:

> With respect to the requested estimates for 2009 through 2011, FPL does not budget total compensation or its components at the individual employee level. Each FPL business unit budgets for the base salary, overtime, non-equity incentive plan compensation and certain other earnings of its employees, which are aggregated. FPL also maintains a separate corporate budget location where stock awards and option awards are budgeted, also on an aggregate basis. Therefore, forecasting each component of total compensation for each employee listed on attached 2008 schedule for 2009, 2010 and 2011 cannot be done with precision. A fair estimate of 2009, 2010 and 2011 expenses would be to escalate the 2008 numbers in Attachment No. 1 by the MFR C-35 year-over-year increases of gross average payroll per employee for 2009, 2010 and 2011 of 2.64%, 3.41%, and 0.87% respectively.
>
> With respect to the estimates for 2009 through 2011 compensation for officers provided by the Company in FPL's response to Staff's third Set of Interrogatories No. 16, such estimates were possible to perform because all officers are budgeted in one centralized location rather than by each respective business unit. Furthermore, in the centralized budget for officers, "base salary," "non-equity plan compensation," and some "other" compensation expenses are budgeted by individual. As to the "stock awards" and "options," FPL used the estimated grants that would be awarded to each executive each year. This combination of salary, non-equity incentives, equity and other compensation estimates give a fair view of the amount of compensation each executive may receive in 2009, 2010 and 2011. However, the same individual budget data does not exist in the same format for all employees below officer level.

Staff states that FPL has only provided complete responses to staff for FPL's 2008 historical year. FPL has presented its rate case for a projected year of 2010 and a subsequent

projected year of 2011. Included in FPL's base rates is employee compensation. Employee compensation is an issue in the proceeding and intervenors have provided testimony questioning employee compensation. Staff states that it needs the requested information to evaluate FPL's proposed rate increase.

Staff served its Eighth Set of Interrogatories (Nos. 96-97) upon FPL on June 25, 2009. FPL served its responses and "General Objections" to them on July 15, 2009, and made no specific objection to Interrogatory No. 97. By Interrogatory No. 97, staff requested that FPL provide the actual or projected compensation amounts for each employee of FPL during 2008, 2009, 2010 and 2011, whose total annual compensation is $165,000 or greater but less than $200,000 for the following:

a. Name/Title
b. Base Salary
c. Overtime Pay
d. Bonuses
e. Stock Awards
f. Option Awards
g. Non-Equity Incentive Plan Compensation
h. All Other Compensation
i. Total Compensation
j. Amount of Total Compensation Allocated to Florida Power & Light Company
k. Amount of Total Compensation Included in Adjusted Jurisdictional Other O&M Expenses on MFR Schedule C-1, Pages 1, 2 and 3.

Staff states that FPL's response was evasive or incomplete as follows:

1. The name and title a) for each employee are not matched with the dollar amounts provided for b) and k). Staff needs this information to evaluate the appropriateness of the employee compensation to be included in base rates;

2. The responses provided for b) through j) are incomplete because compensation amounts provided for b) through i) were developed by applying an "affiliation allocation rate" and represent the net "expense to FPL for each individual." The amounts for b) through h) should be gross amounts before any allocations. The total of b) through h) should be provided as the response to i). The response to j) should then identify the amounts allocated to FPL. Staff needs this information to evaluate the appropriateness of the employee compensation and its allocation between FPL Group and FPL;

3. FPL did not provide a response to k) in its first set of responses. After discussion with staff, FPL provided a supplemental response which adequately addressed staff's question raised by 97(k). It was acceptable for FPL to provide a reasonable estimate. Staff needs FPL to include an explanation of how the estimate was developed; and

4. FPL only provided responses to Interrogatory 97 for the year 2008. In its response to the Interrogatory, FPL stated:

> With respect to the requested estimates for 2009 through 2011, FPL does not budget total compensation or its components at the individual employee level. Each FPL business unit budgets for the base salary, overtime, non-equity incentive plan compensation and certain other earnings of its employees, which are aggregated. FPL also maintains a separate corporate budget location where stock awards and option awards are budgeted, also on an aggregate basis. Therefore, forecasting each component of total compensation for each employee listed on Attachment No. 1 cannot be done with precision. A fair estimate of 2009, 2010 and 2011 expenses would be to escalate the 2008 numbers in Attachment No. 1 by the MFR CC-35 year-over-year increases of gross average payroll per employee for 2009, 2010 and 2011 of 2.64%, 3.41%, and 0.87% respectively.

Staff argues that it needs the 2009, 2010, and 2011 information to evaluate FPL's proposed inclusion of employee compensation in base rates. FPL has presented its rate case for a projected year of 2010 and a subsequent projected year of 2011. Included in FPL's base rates is employee compensation. Employee compensation is an issue in the proceeding and intervenors have provided testimony questioning employee compensation. Staff states that it needs the requested information to evaluate FPL's proposed rate increase. The Commission reviews expenses for reasonableness. Compensation is a major component of FPL's operating expenses which may be recoverable from ratepayers and, therefore, is a significant component of base rates. In order to determine if the portion of an employee's compensation allocated to FPL is reasonable, the Commission needs to know if the total compensation for that employee is reasonable. Staff states that it is currently unable to determine the reasonableness of compensation allocations between FPL and FPL Group. The purpose of obtaining this information is to show the revenue effect on rates. Ultimately, this information impacts the revenue requirement which translates into rates and charges.

In its responses to Interrogatories Nos. 16-17, 32, and 97, FPL states:

> Once all of the expenses for 2008 through 2011 were developed, an affiliate allocation rate was then applied to more accurately reflect the amount of expense to FPL for each individual. Please refer to Attachment No. 1 of FPL's response . . . for more details. Attachment No. 1 is confidential and will be made available by FPL for inspection and review.

Upon Staff's request, FPL filed an unredacted version of Attachment No. 1 with a request for confidential classification. Staff states that it has reviewed this document and it does not provide the information necessary to respond to Interrogatories Nos. 16-17, 32, and 97.

Staff further states that in addition to Attachment 1, FPL counsel informed staff that a "key" exists which would allow staff to be able to match each employee with their compensation amounts. FPL indicated that the "key" would not provide other information responsive to staff's interrogatories, such as unallocated compensation amounts. Thus, even if the "key" is provided to staff, FPL's response will still not fully comply with staff's discovery requests. Staff has asked the utility to provide this "key." FPL takes the position that it will not file the "key" with

the Commission, but has allowed staff to view it at FPL's offices. Staff argues that FPL's position is unsupportable and that FPL is required to provide complete responses to the interrogatories at issue pursuant to Rule 1.280, Florida Rules of Civil Procedure, and Rule 28-106.206, F.A.C.

Staff has notified FPL of its failure to respond and conferred in good faith with FPL in an effort to secure the requested discovery without Commission action. As Attachment B to the Motion, staff attached an e-mail dated August 6, 2009, that staff sent to FPL and all parties, and FPL's response thereto, also dated August 6, 2009. By way of that e-mail, staff indicated what information staff needs to have from FPL to satisfy its interrogatory requests, as follows:

1. For responses to Interrogatory Nos. 16 and 17, staff needs the individual job positions, total compensation levels by job position, including individual job positions and each component that comprises total compensation levels, as well as total compensation levels by each individual job position;

2. For each job position, including officers and directors, staff needs all salary and incentive information including total compensation by each individual job position before the amounts are allocated to FPL. Staff needs the information for each of the 368 job positions, including FPL and FPL Group job positions. Staff does not want the numbers to be aggregated.

Also by way of that e-mail, staff indicated that FPL had already provided the FPL-allocated amounts for each job position, which is responsive to Interrogatory Nos. 16 g) and 17 g) and 32 j) and 97 j). Staff indicated that it will accept the aggregated information for Adjusted Jurisdictional Other O&M Expenses on MFR Schedule C-1 as long as supporting workpapers and assumptions are provided with those responses, and that this will satisfy staff's requests under Interrogatory Nos. 16 h) and 17 h) and 32 k) and 97 k).

Moreover, by way of that e-mail, in consideration of FPL's concerns regarding employee privacy, staff revised its request and stated that it would be satisfied with receiving the individual compensation information by each individual job title or position, and not the names of the employees. However, staff does not want an aggregate number by groups of positions.

Finally, staff expressed its concern regarding only receiving 2008 information in response to Interrogatory Nos. 32 and 97. FPL provided staff with "per job description compensation" for 2008. FPL also provided escalation factors as a fair estimate of the increases for 2009, 2010, and 2011. To completely answer staff's interrogatories, staff requested that FPL apply those escalation factors per employee and provide staff with the excel spreadsheet.

In its response to the e-mail, FPL indicated it would provide certain supplemental responses to the discovery questions at issue, but stated it has the same employee privacy concerns and concerns about driving up compensation costs with providing specific or generic job titles as it does with providing individual names.

In the Motion, staff states that while FPL did file a supplemental response to Interrogatory Nos. 32 k) and 97 k), and indicated it was willing to provide responses to Interrogatory Nos. 32 and 97 for the years 2009 through 2011, it did not indicate it would file

complete responses. Staff states that it must have complete responses to all interrogatories except Interrogatory Nos. 32 k) and 97 k), which have been provided.

Staff requests that the Commission enter an order compelling FPL to respond within two days to each interrogatory and each subpart with answers that are specifically responsive and that are individually and clearly labeled to identify to which interrogatory and specific subpart the answer is responsive.

FPL's Response

On August 7, 2009, FPL filed its and its Employee Intervenors' Response and Memorandum in Opposition to Staff's Motion to Compel (Response). The 15 FPL employees named in the Response state they are acting in their individual capacities. FPL and its employee intervenors (collectively referred to herein as FPL) state that compelled disclosure of employee-identifiable compensation would violate the employee intervenors' fundamental rights of privacy as guaranteed by Article I, Section 23 of the Florida Constitution, is unnecessary to the performance of any authorized Commission function and is therefore irrelevant and outside the jurisdiction and powers of the Commission, and would violate FPL's long-standing policy of maintaining confidentiality of such information. FPL argues that disclosure of this information would have an adverse impact upon employee morale, drive up compensation costs paid to employees, and open the door to competitors in the electric industry to poach FPL's highly skilled employees, thereby increasing recruitment, training and compensation costs and resulting rates for FPL's customers.

FPL cites to Von Eiff v. Azicri[1] and a string of other Florida Supreme Court cases in arguing that the Florida constitution is broader in scope than its federal counterpart with respect to privacy rights. FPL argues that the burden rests with the government to justify an intrusion on privacy by meeting a two-part test. The agency must demonstrate that the challenged regulation or requirement serves a compelling governmental interest and that it is seeking to accomplish such interest through the use of the least intrusive means. An individual's personal financial information is entitled to protection by Article I, Section 23.[2] Disclosure of such information when not justified can cause irreparable injury.[3]

FPL states that it has already provided the Commission with detailed information that discloses total compensation paid, and compensation paid to particular employment positions without personal identifying information. FPL also has provided access to line item (name and title) compensation information for the individual employees subject to staff's Motion to Compel on a confidential basis. And FPL publicly discloses compensation paid to named top-level corporate officers. The only thing it has not publicly disclosed is information that would enable a person to determine the identity of an employee receiving a particular amount of compensation or to compare specific compensation against the compensation of others, including other employees' as well as competitors' compensation. FPL argues that in order to meet its heavy burden, the Commission would be required to demonstrate that such information is essential to

[1] 720 So. 2d 510, 514 (Fla. 1998).
[2] Mogul v. Mogul, 730 So. 2d 1287 (Fla. 5th DCA 1999).
[3] Spry v. Prof'l Employer Plans, 985 So. 2d 1187 (Fla. 1st DCA 2008).

meet a compelling interest of the Commission in the fulfillment of its lawful duties and that such interest cannot be served by a less intrusive means, including the disclosures already made. FPL argues that given the limitation of the Commission's interest to its ratemaking power, such a demonstration cannot be made. According to FPL, staff and the Commission have made no demonstration that compelling FPL to provide employee-specific, identifying information is the least intrusive means of fulfilling its ratemaking duties and they cannot do so. FPL states it has provided responses to staff's discovery using the least intrusive means by making the employee-specific information available to staff for review at their convenience.

FPL further argues that the amount of compensation received by a particular identifiable employee is irrelevant to the Commission's exercise of its ratemaking authority and beyond the scope of the Commission's power to compel production of information. FPL refers the Commission to the orders it cited to in its Request for Confidential Classification filed July 27, 2009, in which the Commission provided confidential treatment for employee-specific compensation information. FPL states that it has never before been compelled to produce employee-specific information in order to enable the Commission to fulfill its ratemaking responsibilities.

FPL recognizes that it is not bound by the Florida constitutional privacy provision, but states that it desires to respect the privacy rights of its employees and to support their assertion of their constitutional guaranty.[4] FPL argues that the same privacy concerns and concerns about driving up compensation costs exist by filing specific employee-identifiable titles or even generic titles. Many job titles are held by only one or two people, so it is the equivalent of providing specific names from a privacy perspective.

FPL states that it pays its employees competitive market rates, and they, in return, deliver industry-leading performance that benefits its customers. According to testimony submitted by Concentric Energy Advisors, a consulting firm retained by FPL to conduct research comparing the performance of electric utilities, FPL consistently ranks as one of the best utilities in the country for providing reliable electric service while keeping costs under control. FPL argues that granting the Motion to Compel would increase costs and severely compromise FPL's ability to achieve efficiencies in the recruitment, training and retention of skilled employees to the detriment of FPL, its employees whose privacy rights are at stake, and its customers.

Finally, FPL argues that it has agreed to provide information requested by staff in the Motion to Compel. FPL has agreed to provide a supplemental response that supplies a more detailed explanation of how its estimate of the aggregated information for Adjusted Jurisdictional Other O&M Expenses on MFR Schedule C-1 was developed. FPL has also agreed to provide an excel spreadsheet applying escalation factors to compensation per employee for 2009, 2010 and 2011. Finally, with respect to staff's request for gross amounts before allocations on an individual employee basis for each compensation category, FPL has agreed to supply staff information that it believes will meet staff's needs. FPL believes that with the provision of this

[4] FPL attaches as Exhibit 1 to its Response the Affidavit of Mr. James Poppell, Executive Vice President of Human Resources for FPL Group, Inc., attesting that public disclosure of the compensation information at issue would cause harm to FPL's business operations, which would be detrimental to both FPL and to its ratepayers, and that FPL safeguards such information from disclosure to protect the individual privacy interests of its employees.

information in addition to information previously provided, the Commission will have all the information it needs to fulfill its ratemaking responsibilities.

FPL's Supplemental Response

In their Supplemental Response, FPL and its employee intervenors provide a letter from H. Antonio Cuba, Director of Regulatory Accounting, asserting that from a ratemaking perspective, it is abundantly clear that the Commission has more than enough information to evaluate the appropriateness of FPL's compensation-related costs.

Mr. Cuba provides examples of compensation-related cost information that FPL has provided through the discovery process, including, among other things, its response to Staff Interrogatory No. 97, in which FPL provides in a publicly available format average total compensation by role with average adjusted jurisdictional amounts and also includes job descriptions for each role. In addition, FPL has made available to staff, on a confidential basis, line by line compensation information for each individual. Mr. Cuba asserts that these average salary amounts by description can be compared to industry and other market references to determine the reasonableness of these amounts. Mr. Cuba states that in the past, the Commission has used benchmarks and comparisons to market information to evaluate the appropriateness of FPL's projected salary levels.

Mr. Cuba further states that in FPL's response to the Office of Public Counsel's (OPC) Interrogatory No. 32, FPL provides name, title and job description of each shared executive whose costs are directly charged to FPL for the years 2006-2010. FPL also provides aggregate total gross shared executive costs, aggregate amount allocated to affiliates and aggregate amount remaining at the utility. Additionally, FPL's response to OPC's Interrogatory No. 35 provides aggregate total gross amount of 2006-2009 year to date shared executive pay and number of shared executives with high, low and average amounts for each year. Mr. Cuba asserts that from these responses, total executive compensation can be evaluated when coupled with all the other information that the company has provided related to compensation.

Attached to the Supplemental Response, as Attachment 1, is a list and brief description of discovery requests and FPL's responses thereto regarding compensation information. This list is attached to this recommendation as Attachment A.

Analysis and Recommendation

Rule 1.280(b)(1), Florida Rules of Civil Procedure, states:

> Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action, whether it relates to a claim or defense of the party seeking discovery or the claim or defense of any other party. . . . It is not ground for objection that the information sought will be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

FPL argues that the Article I, Section 23 of the Florida Constitution prevents the Commission from requiring FPL to produce the compensation information at issue, and that the information is unnecessary to the performance of any authorized Commission function and is therefore irrelevant and outside the jurisdiction and powers of the Commission. Staff disagrees.

With respect to whether Article I, Section 23 of the Florida Constitution prevents the Commission from requiring FPL to produce the compensation information at issue, FPL may decline to provide the information on that basis with the result being that such compensation costs may be excluded from its base rates. If FPL continues to request the inclusion of these costs in the rate case, then the Commission should grant Staff's Motion to Compel the responses to the discovery requests pertaining to them so that the Commission may fully evaluate that request.

Article I, Section 23 of the Florida Constitution provides, in pertinent part, that "every natural person has the right to be let alone and free from governmental intrusion into his private life." FPL recognizes that this provision does not apply to FPL. FPL is not a "natural person," but a business entity. FPL argues that this constitutional right to privacy does apply to its employee-intervenors acting in their individual capacities. FPL's concern about the disclosure of employee-identifiable compensation would likely disappear if the Commission had the ability to afford such information confidential treatment, thereby protecting it from public disclosure. However, section 366.093(3)(f), F.S., instructs otherwise. Section 366.093(3)(f), F.S., provides that "[e]mployee personnel information unrelated to compensation, duties, qualifications, or responsibilities" falls within the definition of proprietary confidential business information. Conversely, pursuant to that section, employee personnel information that is related to compensation, duties, qualifications, or responsibilities is not proprietary confidential business information.

FPL's argument that the compelled disclosure of employee-identifiable compensation violates its employee-intervenors' fundamental rights of privacy under Article I, Section 23 amounts to an argument that section 366.093(3)(f), F.S., is unconstitutional. The Von Eiff v. Azicri case, which FPL cites to in its Response, makes this point all the more clear. At issue in that case was whether a particular statutory provision was facially unconstitutional because it impermissibly infringed on privacy rights protected by Article I, Section 23.[5] The Court held that when analyzing a statute that infringes on the fundamental right of privacy, the applicable standard of review requires that the statute survive the highest level of scrutiny; i.e., the compelling state interest standard.[6] As an administrative agency, however, the Commission has only those powers delegated to it by statute.[7] The Commission is not the proper forum in which to challenge the facial constitutionality of a statute.[8] Therefore, the Commission should decline to address this constitutional question.

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[5] Von Eiff v. Azicri, 720 So. 2d at 510.
[6] Id. at 514.
[7] DER v. Falls Chase Special Taxing Dist., 424 So. 2d 787, 793 (Fla. 1st DCA), review denied, 436 So. 2d 98 (Fla. 1983).
[8] Key Haven Associated Enters., Inc. v. Board of Trs. of the Internal Improvement Trust Fund, 427 So. 2d 153, 157 (Fla. 1982) (citation omitted). See also Communications Workers of America, Local 3170 v. City of Gainesville, 697 So. 2d 167, 170 (Fla. 1st DCA 1997) (finding that "[t]he Administrative Procedure Act does not purport to

FPL's reliance on Mogul v. Mogul for the proposition that an individual's personal financial information is entitled to protection by Article I, Section 23, is misplaced. In that case, the Court quashed the discovery order under review because there was no basis to conclude that the personal financial information sought was relevant.[9] Similarly, in the Spry case, the Court found that "the Florida Supreme Court has recognized that 'the disclosure of personal financial information [via discovery] may cause irreparable harm to a person forced to disclose it, in a case in which the information is not relevant.'"[10] With respect to whether the employee compensation information at issue is relevant in this case, FPL has requested the inclusion of such compensation information in its base rates, and this is therefore an issue in the rate case. Staff disagrees that FPL has provided more than enough compensation information for the Commission to evaluate the reasonableness of FPL's request. As stated in staff's Motion, compensation is a major component of FPL's operating expenses and is therefore a significant component of base rates. In order to determine if the portion of an employee's compensation allocated to FPL is reasonable, the Commission needs to know if the total compensation for that employee is reasonable. With the information provided thus far, staff is unable to determine the reasonableness of compensation allocations between FPL and FPL Group. Ultimately, this information impacts the revenue requirement, which translates into rates and charges. The information is therefore clearly relevant, and would become irrelevant only if FPL were to withdraw its request for inclusion of these costs in rates.

With respect to whether the Commission has the jurisdiction and power to require FPL to produce the employee compensation information, Section 366.04(1), F.S., confers upon the Commission the authority "to regulate and supervise each public utility with respect to its rates and service." And section 366.041(1), F.S., authorizes the Commission, in fixing just, reasonable, and compensatory rates, to give consideration to, among other things, the cost of providing service. Employee compensation is one such cost of service.

Furthermore, providing information to the Commission through discovery does not automatically open the records to the public. The Commission has statutory[11] and rule[12] provisions that maintain the confidentiality of documents upon request until a decision on the confidentiality has been determined by the Commission. Section 366.093(2), F.S., provides in part:

> Any records provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the commission and the office of the Public Counsel and any other party subject to the public records law as confidential and shall be exempt from s. 119.07(1), pending a formal ruling on such request by the commission or the return of the records to the person providing the records. Any record which has been determined to be proprietary confidential business information and is not entered

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confer authority on administrative law judges or other executive branch officers to invalidate statutes on constitutional or any other grounds.")

[9] 730 So. 2d at 1290.

[10] 985 So. 2d at 1188 (citation omitted).

[11] Section 366.093, F.S.

[12] Rule 25-22.006, F.A.C.

> into the official record of the proceeding must be returned to the person providing the record within 60 days after the final order, unless the final order is appealed. If the final order is appealed, any such record must be returned within 30 days after the decision on appeal.

The privacy concerns are inapplicable to the production of this information because the Commission has procedures in place to keep the information confidential until determined otherwise.

Rule 28-106.211, F.A.C., grants broad authority to "issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case." Based upon this authority, staff recommends that Staff's Motion for Order Compelling Responses to Interrogatories should be granted. The Commission has consistently recognized that discovery is proper and may be compelled if it is not privileged and is, or likely will lead to, relevant and admissible evidence. FPL should be directed to fully and completely respond to the interrogatories as revised by staff in Attachment B of its Motion within two days of the issuance date of the order arising from this recommendation.

Issue 2: Should Staff's Motion for Order Compelling PEF to Respond to Interrogatory Nos. 123-126 and 197-198 be granted?

Recommendation: Yes. PEF should be required to provide its full and complete responses to Interrogatory Nos. 123-126 and 197-198 within seven days from the issuance date of the order arising from this recommendation, and PEF and its employee intervenors' Motion for Protective Order and Conditional Motion for Stay should be denied. (Gervasi, Salak, Slemkewicz)

Staff Analysis:

Motion to Compel

Staff served its Tenth Set of Interrogatories (Nos. 123-126) upon PEF on May 28, 2009. PEF did not file any objections to those interrogatories and served its responses to them on June 25, 2009. By Interrogatory Nos. 123 and 124, staff requested that PEF provide the following information for each employee of Progress Energy, Inc., (Interrogatory No. 123) and PEF (Interrogatory No. 124) whose total compensation during 2008, 2009, and 2010, is $200,000 or greater:

a. Name/Title
b. Base Salary
c. Overtime
d. Bonuses
e. Stock Awards
f. Option Awards
g. Non-Equity Incentive Plan Compensation
h. All Other Compensation
i. Total Compensation
j. Amount of Total Compensation Allocated to Progress Energy Florida, Inc.
k. Amount of Total Compensation Included in Adjusted Jurisdictional Other O&M Expenses on MFR Schedule C-1, Pages 1, 2 and 3

By Interrogatory Nos. 125 and 126, staff requested that PEF provide the following information for each director of Progress Energy, Inc., (Interrogatory No. 125) and PEF (Interrogatory No. 126) whose total compensation during 2008, 2009, and 2010, is $200,000 or greater:

a. Name/Title
b. Principal Business Affiliation
c. Base Compensation
d. Travel
e. All Other Compensation
f. Total Compensation
g. Amount of Total Compensation Allocated to Progress Energy Florida, Inc.
h. Amount of Total Compensation Included in Adjusted Jurisdictional Other O&M Expenses on MFR Schedule C-1, Pages 1, 2 and 3.

Staff states that PEF's responses to Interrogatory Nos. 123, 124, 125, and 126 were evasive or incomplete as follows:

1. The responses to Interrogatory Nos. 123 a), 124 a), 125 a), and 126 a) (Name/Title for each officer and director) need to be matched by line number with the compensation dollar amounts provided in the responses to Interrogatory Nos. 123 a) through k), 124 a) through k), 125 a) through h), and 126 a) through h). Although they appear to be matched by line number, the Name/Title responses and the compensation dollar amount responses are on different pages, and there is no statement that these Names/Titles and dollar amounts do match.

2. The responses to Interrogatory Nos. 123 k), 124 k), 125 h), and 126 h) do not identify the compensation amount included in "Adjusted Jurisdictional Other O&M Expenses" on MFR Schedule C-1, Pages 1, 2, and 3. It would be acceptable for PEF to provide all worksheets showing how the total included in O&M expense was calculated along with the assumptions made and an explanation of how the assumptions were developed.

Staff served its Eighteenth Set of Interrogatories (Nos. 197-198) upon PEF on June 24, 2009. PEF did not file any objections to those interrogatories and served its responses to them on July 24, 2009. By those interrogatories, staff requested that PEF provide the actual or projected compensation amounts for each employee of Progress Energy, Inc. (Interrogatory No. 197) and PEF (Interrogatory No. 198) during 2008, 2009, and 2010, whose total annual compensation is $165,000 or greater but less than $200,000:

a. Name/Title
b. Base Salary
c. Overtime Pay
d. Bonuses
e. Stock Awards
f. Option Awards
g. Non-Equity Incentive Plan Compensation
h. All Other Compensation
i. Total Compensation
j. Amount of Total Compensation Allocated to Progress Energy Florida, Inc.
k. Amount of Total Compensation Included in Adjusted Jurisdictional Other O&M Expenses on MFR Schedule C-1, Pages 1, 2 and 3.

Staff states that PEF's responses to Interrogatory Nos. 197 and 198 were evasive or incomplete as follows:

1. The responses to Interrogatory Nos. 197 a) and 198 a) (Name/Title for each employee) are not matched with the responses to Interrogatory Nos. 197 b) through k) and 198 b) through k) concerning compensation amounts; and

2. PEF did not respond fully to Interrogatory Nos. 197 k) and 198 k). The responses to these interrogatories should identify the compensation amount included in "Adjusted Jurisdictional Other O&M Expenses" on MFR Schedule C-1, pages 1 – 3. It would be acceptable for PEF to provide all worksheets showing how the total included in O&M expense

was calculated along with the assumptions made and an explanation of how the assumptions were developed.

Staff argues that it requires complete responses to these interrogatories as part of staff's analysis in this docket. The Commission reviews all expenses for reasonableness. Compensation is a major component of PEF's operating expenses which may be recoverable from ratepayers and therefore is a significant component of base rates. In order to determine if the portion of an employee's compensation allocated to PEF is reasonable, the Commission needs to know if the total compensation for that employee is reasonable. Staff states that it is unable to determine the reasonableness of compensation allocations between PEF and its corporate affiliates. The purpose of requiring this information is to show the revenue effect on rates. Ultimately, this information impacts the revenue requirement which translates into rates and charges.

Staff states that counsel for PEF has informed staff that it does not intend to provide the information staff requires in order to make its interrogatory responses complete. Counsel for PEF has also informed Staff that a "key" exists that would allow Staff to "match" the Name/Title responses with compensation amounts, but that PEF will not provide this key in response to the interrogatory requests. Staff argues that PEF's position is unsupportable and that PEF is required to provide complete responses to the interrogatories at issue pursuant to Rule 1.280, Florida Rules of Civil Procedure, and Rule 28-106.206, F.A.C. Staff further states that it has notified PEF of its failure to respond and conferred in good faith with PEF in an effort to secure the requested discovery without Commission action, but to no avail.

Staff requests the Commission to enter an order compelling PEF to respond within seven days to each interrogatory and each subpart with answers that are specifically responsive and that are individually and clearly labeled to identify to which interrogatory and specific subpart the answer is responsive.

PEF's Response

On August 10, 2009, PEF filed its and its employee intervenors' (collectively referred to herein as "PEF") Response to Motion to Compel, Motion for Protective Order, and Conditional Motion for Stay. PEF states that by way of the Motion to Compel, staff seeks to compel PEF to supplement its response to Interrogatory Nos. 123-126 and 197-198 so as to link previously provided names and job titles of PEF or affiliate company personnel who earn in excess of $165,000 per year to the confidential spreadsheets that provide the details of individual compensation. PEF further states that it and its employee intervenors file their Motion for Protective Order to protect such supplemental information from discovery. PEF further requests that in the event the Commission enters an order denying the Motion for Protective Order or granting staff's Motion to Compel, the Commission stay such order pending judicial review provided that PEF and/or its employee intervenors timely file for such review.

In its Response to the Motion to Compel, PEF states that it has provided a non-confidential list of names and a detailed job title for each individual in the requested classes. PEF also provided, subject to a claim of confidentiality, a spreadsheet containing the requested compensation details for each of those individuals. PEF states that it did not link the names/job titles to specific line items in the compensation spreadsheet in order to preserve the privacy

interests of its employees and the business interests of the company. PEF argues that its responses to the interrogatories were complete as filed since they contain every item of information requested, and that compelled disclosure of information identifying employee-specific compensation information is not relevant to the Commission performing its ratemaking responsibilities and is beyond the Commission's authority and jurisdiction.

According to PEF, its Motion for Protective Order shows that the level of detail requested by staff constitutes a trade secret or other confidential commercial information which should be protected from discovery. Further, PEF argues that the information implicates the privacy rights of PEF's individual employees, including the PEF employee intervenors, under Article 1, Section 23 of the Florida Constitution. PEF argues that the Commission must weigh the impact on such privacy rights in resolving the underlying discovery dispute.

PEF states that in the Motion, staff indicates its willingness to accept certain specified worksheets in lieu of the originally requested information concerning employee-by-employee "Amount of Total Compensation Included in Adjusted Jurisdictional Other O&M Expenses." PEF is working to prepare worksheets that provide the alternative information in a form acceptable to staff, and states that this portion of the Motion to Compel is therefore moot.

Motion for Protective Order

In this Motion, PEF argues that in its Motion to Compel, staff fails to demonstrate that employee-specific compensation information is relevant to the Commission's discharge of its responsibility to determine and fix fair, just and reasonable rates pursuant to section 366.06(1), F.S. PEF agrees that overall compensation information is relevant to the rate proceeding. However, PEF argues that it has already provided the relevant compensation information in its existing responses to the interrogatories, in prefiled testimony and exhibits, and in responses to discovery by the OPC. The interrogatory responses provide names and job titles of each PEF or Progress Energy, Inc. employee earning $165,000 or more and a spreadsheet which discloses, on a confidential basis, the detailed make-up of that compensation for individual employees, the total compensation paid to such employees as a group, and the portion of the total compensation allocated to PEF. The prefiled testimony of PEF witness Masceo S. DesChamps describes PEF's compensation philosophy and the reasonableness of its approach to compensation, which targets its compensation levels to be at the 50th percentile of its peer utilities. PEF's responses to numerous discovery requests by OPC include information on payroll by cost center, total payroll and fringe benefits, bonuses and incentive compensation, budgeted salary increases, increases in overtime, and other compensation matters.

PEF argues that the reasonableness of compensation paid by PEF is also subject to analysis using the Commission's benchmark test, which compares growth in PEF's O&M expenses (including compensation) to the compound rate of customer growth and inflation since its last rate proceeding. PEF argues that the information already provided is more than sufficient to enable the Commission to discharge its regulatory responsibility to set fair, just and reasonable rates.

According to PEF, employee-specific compensation information is not relevant to the subject matter of the case, as evidenced by the fact that the Commission has successfully set

rates in numerous cases over the past decades without the need for such employee-specific information. PEF argues that even if the Commission were to determine that the information sought by the Motion to Compel were relevant, PEF is entitled to protection for such information under Rule 1.280(c), Florida Rules of Civil Procedure. The introductory language in Rule 1.280(b) provides that discovery can be limited by order of the court, including a protective order under Rule 1.280(c)(7), to protect a trade secret or other confidential commercial information from being disclosed, or to be disclosed only in a designated way. PEF requests that the Commission enter a protective order that the information not be produced in any way other than the current list of names/job titles and the separate (confidential) spreadsheet of detailed compensation information.

PEF further argues that in accordance with Alterra Healthcare Corp. v. Estate of Shelley,[13] in considering whether the level of employee-specific detail sought by staff is relevant, the Commission is required to weigh the privacy rights of the individual employees against the need for the discovery. Moreover, in Rasmussen v. South Fla. Blood Service, a case involving the privacy rights of blood donors, the Florida Supreme Court stated that "there can be no doubt that the Florida amendment [Article 1, Section 23] was intended to protect the right to determine whether or not sensitive information about oneself will be disclosed to others."[14] In that case, the Court stated that the discovery rules "confer broad discretion on the trial court to limit or prohibit discovery in order to 'protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.'"[15]

PEF argues that since Rasmussen, courts have held that personal financial information is within the scope of the constitutional right of privacy, and that when confronted with a discovery dispute concerning disclosure of such information, a court should weigh the privacy rights of the affected individuals in ruling on the relevancy of the requested materials. PEF cites to Woodward v. Berkery,[16] in which the court quashed an order compelling discovery of singer Tom Jones' detailed personal financial information when relevant higher level information had already been provided. In doing so, the court stated that "[a]lthough there is no catalogue in our constitutional provision as to those matters encompassed by the term *privacy,* it seems apparent to us that personal finances are among those private matters kept secret by most people."[17] PEF argues that its employees have a right to expect that their detailed compensation information will remain private.

PEF states that on information and belief, a reporter has already made a public records request for compensation information provided by FPL under a request for confidential classification. PEF argues that media exposure of this type of private information would not only violate the privacy rights of its employees, including its employee intervenors, it would also adversely affect its business interests, as described in its Fifth and Sixth Requests for Confidential Classification.

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[13] 827 So. 2d 936 (Fla. 2002).
[14] 500 So. 2d 533, 536 (Fla. 1987).
[15] Id. at 535.
[16] 714 So. 2d 1027 (Fla. 4th DCA 1997).
[17] Id. At 1035.

Finally, PEF argues that the second sentence of Article 1, Section 23, which states that "[t]his section shall not be construed to limit the public's right of access to public records and meetings as provided by law," is not involved in this discovery dispute because the standard to prevent or restrict discovery of irrelevant, trade secret or other confidential information under Rule 1.280(c), Florida Rules of Civil Procedure, is separate and distinct from the standard for determining whether such information is exempt from public disclosure under section 366.093, F.S., once it has become a public record. If PEF justifies the entry of a protective order, then the information is never produced, never enters the Commission's possession, and never becomes a public record to which the public may have a right to access.

According to PEF, the Commission should exercise its authority under the discovery rules to prevent information that is not required for the full discharge of its regulatory responsibilities from becoming a public record in the first instance. PEF requests that the Commission enter an order protecting it from associating employee names/titles with their detailed compensation information on the grounds that such information is not relevant, would unnecessarily invade the privacy rights of its employees, and constitutes trade secret or other confidential commercial information that should be protected from disclosure.

Conditional Motion for Stay Pending Judicial Review

In the event the Commission denies its Motion for Protective Order or grants staff's Motion to Compel, PEF requests that the Commission stay its order pending judicial review pursuant to Rule 25-22.061, F.A.C., provided that PEF and/or its employee intervenors timely file for such review. PEF argues that unless a stay is granted, it could be required to produce a link between the names/titles of its employees and the detailed compensation information prior to obtaining judicial review of the discovery order. According to PEF, this would constitute irreparable harm under Rule 25-22.061(2)(b), F.A.C., because, once produced, the information would become a public record, a status that could not be undone even if the appellate court ultimately agreed that production should not have been compelled.

Analysis and Recommendation

Rule 1.280(b)(1), Florida Rules of Civil Procedure, states:

> Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action, whether it relates to a claim or defense of the party seeking discovery or the claim or defense of any other party. . . . It is not ground for objection that the information sought will be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

PEF argues that Article I, Section 23 of the Florida Constitution prevents the Commission from requiring it to produce the compensation information at issue, and that the information is unnecessary to the performance of any authorized Commission function and is therefore irrelevant and outside the jurisdiction and powers of the Commission.

PEF argues that it has provided more than enough compensation information for the Commission to evaluate the reasonableness of its request. Staff disagrees. As stated in staff's Motion, compensation is a major component of PEF's operating expenses and is therefore a significant component of base rates. In order to determine if the portion of an employee's compensation allocated to PEF is reasonable, the Commission needs to know if the total compensation for that employee is reasonable. With the information provided thus far, staff is unable to determine the reasonableness of compensation allocations between PEF and Progress Energy, Inc. Ultimately, this information impacts the revenue requirement, which translates into rates and charges. The information is therefore clearly relevant, and would become irrelevant only if PEF were to withdraw its request for inclusion of these costs in rates.

PEF argues that the Commission is required to weigh the privacy rights of the individual employees against the need for the discovery in determining the relevancy of the requested materials. PEF is incorrect. At issue in the Alterra opinion cited by PEF on this point was whether a private employer had standing to challenge a discovery request based exclusively upon the privacy interest of its employees in their personnel files.[18] The Court answered that question in the negative, and in so doing, recognized that nonpublic employees may have a privacy interest in certain information contained in their personnel files, which they may assert as intervenors in the litigation.[19] The Court found that, "in the appropriate case, the trial court should fully consider the employees' alleged privacy interest -- in the context of determining the relevancy of any discovery request which implicates it -- regardless of whether the subject employees have intervened or not."[20]

This is not an appropriate case in which to engage in this type of consideration. First, the employee compensation information at issue is clearly relevant here. PEF has requested the inclusion of the employee compensation information at issue in its base rates, and this is therefore an issue in the rate case. Second, section 366.093, F.S., clearly excludes employee compensation information from the definition of proprietary confidential business information. Section 366.093(3)(f), F.S., provides that "[e]mployee personnel information unrelated to compensation, duties, qualifications, or responsibilities" falls within the definition of proprietary confidential business information. Conversely, pursuant to that section, employee personnel information that is related to compensation, duties, qualifications, or responsibilities is not proprietary confidential business information. Therefore, PEF's employees do not have a basis upon which to expect that their detailed compensation information will be protected from disclosure under a public records request made at the Commission.

Nor may the Commission ignore section 366.093, F.S., simply because Rule 1.280(c), Florida Rules of Civil Procedure, confers broad discretion on the trial court to limit or prohibit discovery in order to "protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." Pursuant to Rule 25-22.006(6)(a), F.A.C.,

> In any formal proceeding before the Commission, any utility or other person may request a protective order protecting proprietary confidential business information

[18] Alterra HealthCare Corp v. Estate of Shelley, 827 So. 2d 936 at 940, 947.
[19] Id. At 947.
[20] Id.

> from discovery. Upon a showing by a utility or other person and a finding by the Commission that the material is entitled to protection, the Commission shall enter a protective order limiting discovery in the manner provided for in Rule 1.280, Florida Rules of Civil Procedure. The protective order shall specify how the confidential information is to be handled during the course of the proceeding and prescribe measures for protecting the information from disclosure outside the proceeding.

(Emphasis added). Because the material at issue is not proprietary confidential business information, it is not protected under this rule. Nevertheless, providing information to the Commission through discovery does not automatically open the records to the public. The Commission has statutory and rule provisions that maintain the confidentiality of documents upon request until a decision on the confidentiality has been determined by the Commission. Section 366.093(2), F.S., provides in part:

> Any records provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the commission and the office of the Public Counsel and any other party subject to the public records law as confidential and shall be exempt from s. 119.07(1), pending a formal ruling on such request by the commission or the return of the records to the person providing the records. Any record which has been determined to be proprietary confidential business information and is not entered into the official record of the proceeding must be returned to the person providing the record within 60 days after the final order, unless the final order is appealed. If the final order is appealed, any such record must be returned within 30 days after the decision on appeal.

Thus, the privacy concerns are inapplicable to the production of this information because the Commission has procedures in place to keep the information confidential until determined otherwise.

PEF's argument that the compelled disclosure of employee-identifiable compensation violates its employee-intervenors' right to privacy under Article I, Section 23 amounts to an argument that section 366.093(3)(f), F.S., is unconstitutional. As an administrative agency, however, the Commission has only those powers delegated to it by statute.[21] The Commission is not the proper forum in which to challenge the facial constitutionality of a statute.[22] Therefore, the Commission should decline to address this constitutional question.

With respect to PEF's Conditional Motion for Stay Pending Judicial Review, because no order yet exists, this Motion is premature. PEF may request a stay under Rule 25-22.061,

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[21] DER v. Falls Chase Special Taxing Dist., 424 So. 2d 787, 793 (Fla. 1st DCA), review denied, 436 So. 2d 98 (Fla. 1983).

[22] Key Haven Associated Enters., Inc. v. Board of Trs. of the Internal Improvement Trust Fund, 427 So. 2d 153, 157 (Fla. 1982) (citation omitted). See also Communications Workers of America, Local 3170 v. City of Gainesville, 697 So. 2d 167, 170 (Fla. 1st DCA 1997) (finding that "[t]he Administrative Procedure Act does not purport to confer authority on administrative law judges or other executive branch officers to invalidate statutes on constitutional or any other grounds.")

F.A.C., as it deems appropriate, after an order is issued. PEF's argument that unless a stay is granted, it could be required to produce the information at issue prior to obtaining judicial review is flawed. Pursuant to Rule 25-22.006(10), F.A.C.,

> [w]hen the Commission denies a request for confidential classification, the material will be kept confidential until the time for filing an appeal has expired. The utility or other person may request continued confidential treatment until judicial review is complete. . . . The material will thereafter receive confidential treatment through completion of judicial review.

Staff notes that on August 10, 2009, PEF filed supplemental information regarding the allocation of employee compensation costs to jurisdictional O&M. Staff has reviewed this information and finds it to be responsive to Interrogatory Nos. 123 k), 124 k), 125 h), 126 h), 197 k) and 198 k). However, PEF remains deficient with respect to the matching of total compensation levels with position titles.

Rule 28-106.211, F.A.C., grants broad authority to "issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case." The Commission has consistently recognized that discovery is proper and may be compelled if it is not privileged and is, or likely will lead to, relevant and admissible evidence. PEF should be required to provide its full and complete responses to Interrogatory Nos. 123-126 and 197-198 within seven days from the issuance date of the order arising from this recommendation, and PEF and its employee intervenors' Motion for Protective Order and Conditional Motion for Stay should be denied.

Issue 3: Should these dockets be closed?

Recommendation: No, these dockets should remain open in order to process FPL and PEF's pending rate cases. (Gervasi)

Staff Analysis: These dockets should remain open in order to process FPL and PEF's pending rate cases.

Attachment 1

HR Discovery Responses on Compensation

Party & Request Number	Public Response	Confidential Response	Key Made Available
OPC 1st Int. 32	Provided name, title and job description of each shared executive whose costs are directly charged to FPL for the years 2006-2010; Table with 2006-2010 aggregate total gross shared executive costs, aggregate amount allocated to affiliates and aggregate amount remaining at the utility	For 2006 - 2010 Shared Officers provided gross payout and budgeted totals for base, incentive, and restricted stock awards	
OPC 1st Int. 33	Provided aggregate total gross amount of executive and non-executive incentive pay for 2006-2010 (executive), 2008-2010 (non-executive)		
OPC 1st Int. 35	Provided aggregate total gross amount of 2006-2009 YTD shared executive pay & number of shared executives with high, low and average amount for each year; 2006-2009 BOD compensation	Provided total gross amount of compensation paid to shared executives in 2006, 2007, 2008, and 2009 YTD	
OPC 1st Int. 40	Provided aggregate annual incentive awards paid to eligible		

Attachment 1

Party & Request Number	Public Response	Confidential Response	Key Made Available
	FPL exempt employees (excluding executives) for 2006-2011		
OPC 2nd Int. 114	Provided breakdown of MFR C-35 gross payroll by component and by employee category, 2006 - 2011		
OPC 2nd Int. 125	Categorized gross payroll and benefits totals from C-35 by FERC Account or Functional group for 2010 and 2011		
OPC 2nd Int. 126	Provided O&M and capital split of gross payroll for 2006 to 2011		
OPC 4th Int. 222	Provided allocation of payroll by cost of service functions for 2008-2011 with amounts allocated to operating expenses vs. capital items and other allocations		
OPC 7th Int. 332	Provided aggregate total annual incentive award paid and number of executives per salary grouping for 2006-2008		
OPC 7th Int. 338	Provided aggregate projected total annual incentive award and		

Attachment 1

Party & Request Number	Public Response	Confidential Response	Key Made Available
	estimated number of employees per grouping for 2009-2011		
OPC 2nd POD 26		Miscellaneous one-off doc's with names and salary information; Executive names, personnel #'s; Miscellaneous executive sign-on and relocation agreement payments; Executives document with base salary and incentive calculation, also cap/O&M split; Executive--2009 budget projections -- shows base salary, merit budget projection = 4%; Executive SERP payment calculations--shows base and bonus amounts	
OPC 2nd POD 53		Provided base salary, incentive amount, employee name and personnel # for all FPL employees (non-executive) for 2006-2009; Provided copies of all retention agreements for FPL--name, personnel #, amount of award; Market Reference Point file: name, personnel #, job title, annual salary, MRP	

Attachment 1

Party & Request Number	Public Response	Confidential Response	Key Made Available
		for all FPL employees (non-executive); Various project incentive payouts included name, base salary, incentive amount	
AG 1st Int. 17	Provided breakdown of gross payroll by FERC function and by each pay component, 2009 - 2011		
AG 1st Int. 20	Provided detailed, comprehensive breakdown of all aspects of payroll—OT, incentive, equity; included capital/O&M split and functional breakdown.		
AG's 2nd Int. 65	Table with 2007-2011 aggregate total gross shared executive costs, aggregate amount allocated to affiliates and aggregate amount remaining at the utility. Provides names and titles in alphabetical order – does not tie to confidential document	2007 - 2011 Shared Officers: provided gross payout totals for base, incentive, and restricted stock awards	Key that provides names and titles that match compensation amounts on confidential file
AG 2nd Int. 76	Provided complete breakdown of gross payroll, 2009 – 2011, by each component; breakdown of amounts allocated to capital, O&M, other.		
Staff 3rd Int. 16 & 17	Provided names and titles of all FPL Group	Provided the 2008-2011 total	Key that provides names and titles that

Attachment 1

Party & Request Number	Public Response	Confidential Response	Key Made Available
	& FPL officers with the 2008-2011 total compensation (net of AMF) in alphabetical order – does not tie to confidential document	compensation net of AMF for all officers of FPL Group & FPL	match compensation amounts on confidential file
Staff 4th Int. 32	Provided the name and title of each FPL employee whose total compensation is $200,000 or greater in alphabetical order – does not tie to confidential document	Provided the amount of 2008 total compensation net of allocations in random order with no names and titles	Key that provides names and titles that match compensation amounts on confidential file
Staff 8th Int. 97	Provided 2008 average total compensation by role	Provided the amount of 2008 total compensation net of allocations for FPL employees whose total compensation is $165K - $199K in random order with no names and titles	Key that provides names and titles that match compensation amounts on confidential file
Staff 8th Int. 97 - Supplemental	Provided 2008 average total compensation by role with average adjusted jurisdictional amounts		
SFHHA 10th Int. 292	Provided capital and O&M breakdown for Test Year Gross Payroll on C-35		
SFHHA 10th Int. 293	Provided O&M and capital split for incentive awards included in Gross payroll on C-35 (EAC 820) for 2009, 2010,		

Attachment 1

Party & Request Number	Public Response	Confidential Response	Key Made Available
	and 2011		
SFHHA 10th Int. 297	Provided base vs. clause recoverable amounts for both O&M and Capital amounts included on line 3 (gross payroll) of MFR C-35 for years 2006 to 2010; also provided capital vs. O&M split for all benefits lines items on C-35 for 2006 to 2010		
SFHHA 10th Int. 298	Provided break down of gross payroll from C-35 by O&M/Cap ex/Other and by Business Unit for 2006 to 2010;		
SFHHA 10th Int. 299	Provided breakdown of gross payroll from C-35 by monthly cash flow and by Business Unit for 2006 to 2010; also provided monthly cash flow of all benefits line items for 2006 to 2010		
Staff Audit Question #11: Schedule C-30 1. Provide this information for the historical year 2008. a. Include the detail of the transactions for each company in order to select a sample. 2. Provide the	1. Schedule C-30 detail of transactions for sampling (one month provided). 2.Explanation/ calculation for the 2010 projections 3. Calculation of the Massachusetts Formula for 2008 and 2010		

Attachment 1

Party & Request Number	Public Response	Confidential Response	Key Made Available
explanations / calculations for the 2010 projections. 3. Provide the calculation of the Massachusetts Formula for 2008 and 2010.			
Audit Question #15: 1) Provide the cost pool for the affiliate management fee for 2008. Include the BASA's used and those reviewed and determined to be excluded. 2) Provide the calculation of the management fee using the BASA's times the rate allocated. 3) For the Specific Drivers, provide the calculation and supporting documentation. (i.e. number of workstations, number of transactions, number of FTE's, finance square footage and capacity, etc.) 4) Provide all rent charged to and from the affiliated and any market studies done to establish the rates.		Responsive documents provided	
Staff Audit Question #23:Question: 1. Provide the calculation and detail for the 2008 Power Generation Division		Responsive documents provided	

Attachment 1

Party & Request Number	Public Response	Confidential Response	Key Made Available
Service fee. Also provide the account detail for where the fee was recorded. 2. Provide the calculation and detail for the 2008 Nuclear Division Service fee. Also provide the account detail for where the fee was recorded. 3. Please explain the reason the forecast for Direct ER's decreased in 2010 over 2008. 4. Provide the calculation and detail for the 2008 EMT Division service fee. Also provide the account detail for where the fee was recorded.			
Staff Audit Question #39: 1. How was the base Payroll for the Power Generation determined? (i.e. Time Study, actual per time sheet?) Provide supporting documentation such as a study. 2. Provide the allocation methodology for the A & G payroll, A&G expenses, and employee expenses for the Power Generation. 3. Provide how the rate for non-		Responsive doouments provided	

Attachment 1

Party & Request Number	Public Response	Confidential Response	Key Made Available
productive time, pension and welfare and taxes and insurance were developed for the Power Generation allocation. 4. Provide the study for the System Cost Pool and the Risk Management cost pool in the EMT allocation. 5. Provide the source for the salary and risk management costs for the EMT allocation. 6. How did you compute the facility usage charge? Show the calculation and source of the rates. 7. Provide a list of all nuclear work orders with the description and the 2008 dollars.			
In addition, FPL provided responses to over 20 Staff audit inquiries requesting additional detail on compensation.		Responsive documents provided	

EXHIBIT E

Vote Sheets from the August 18, 2009 Agenda Conference

FLORIDA PUBLIC SERVICE COMMISSION

VOTE SHEET

August 18, 2009

Docket No. 080677-EI – Petition for increase in rates by Florida Power & Light Company.
Docket No. 090079-EI – Petition for increase in rates by Progress Energy Florida, Inc.

Issue 1: Should PEF and FPL's Requests for Determination by Full Commission be granted?
Recommendation: Yes, PEF and FPL's Requests for Determination by Full Commission should be granted. PEF did not request a full Commission ruling on its Second Request for Confidential Classification pertaining to certain salary information provided in response to Interrogatory No. 1 from Staff's First Set of Interrogatories (Nos. 1-2). The full Commission should also consider that request, which is addressed within Issue 2 of this recommendation.

APPROVED

COMMISSIONERS ASSIGNED: All Commissioners

COMMISSIONERS' SIGNATURES

MAJORITY	DISSENTING
Nancy Argenziano	
Katrina J. McMurrian	
Lisa Edgar	
Nancy Argenziano	
Jim Fay	
Troy Rendell	

REMARKS/DISSENTING COMMENTS: **Commissioner Argenziano participated in the conference by telephone. She will sign the vote sheet upon her return to the office.** Oral modification, DN 08541-09, attached.

(Continued from previous page)

Issue 2: Should the portion of PEF's Second Request for Confidential Classification pertaining to the information provided in response to Interrogatory No. 1 from Staff's First Set of Interrogatories (Nos. 1-2) (contained within, but not comprising all of DN 04092-09), PEF's Fifth Request for Confidential Classification for Portions of its Response to Interrogatory Nos. 123-124 from Staff's Tenth Set of Interrogatories (Nos. 123-126) (DN 07388-09), and PEF's Sixth Request for Confidential Classification for Portions of its Response to Staff's Eighteenth Set of Interrogatories (Nos. 197-198) (DN 07595-09) be granted?
Recommendation: No, the portion of PEF's Second Request for Confidential Classification pertaining to the information provided in response to Interrogatory No. 1 from Staff's First Set of Interrogatories (Nos. 1-2) (contained within, but not comprising all of DN 04092-09), PEF's Fifth Request for Confidential Classification for Portions of its Response to Interrogatory Nos. 123-124 from Staff's Tenth Set of Interrogatories (Nos. 123-126) (DN 07388-09), and PEF's Sixth Request for Confidential Classification for Portions of its Response to Staff's Eighteenth Set of Interrogatories (Nos. 197-198) (DN 07595-09) should be denied. PEF should be required to provide in a publicly available manner, spreadsheets which, at a minimum, match the compensation information at issue to the specific job titles previously provided.

APPROVED

Issue 3: Should FPL's Revised Request for Confidential Classification of Staff's Third Set of Interrogatories No. 16, Staff's Fourth Set of Interrogatories No. 32, and Staff's Eighth Set of Interrogatories No. 97 (DN 07400-09 and DN 07694-09) be granted?
Recommendation: No, FPL's Revised Request for Confidential Classification of Staff's Third Set of Interrogatories No. 16, Staff's Fourth Set of Interrogatories No. 32, and Staff's Eighth Set of Interrogatories No. 97 (DN 07400-09 and DN 07694-09) should be denied. FPL should be required to provide in a publicly available manner, spreadsheets which, at a minimum, match the compensation information at issue to the specific job titles previously provided.

APPROVED

Issue 4: Should these dockets be closed?
Recommendation: No, these dockets should remain open to process PEF and FPL's pending rate cases.

APPROVED

Ann Cole

From: Mary Bane

Sent: Monday, August 17, 2009 3:23 PM

To: Rosanne Gervasi

Cc: Betty Ashby; Booter Imhof; Mary Anne Helton; Samantha Cibula; Jennifer Brubaker; Tim Devlin; Beth Salak; Marshall Willis; Betty Ashby; Chuck Hill; William C. Garner; Roberta Bass; Kay Posey; Larry Harris; Bill McNulty; Ann Cole

Subject: Re: request to make oral modification to Item 4 on tomorrow's agenda

Approved.

Sent from my BlackBerry Wireless Handheld

From: Rosanne Gervasi
To: Mary Bane
Cc: Betty Ashby; Booter Imhof; Mary Anne Helton; Samantha Cibula; Jennifer Brubaker; Tim Devlin; Beth Salak; Marshall Willis
Sent: Mon Aug 17 15:20:13 2009
Subject: request to make oral modification to Item 4 on tomorrow's agenda

On August 13, 2009, FPL filed a revised request for confidentiality of its employee compensation information. Therefore, this is to request to make the following oral modification at agenda tomorrow with respect to Item 4:

We have an oral modification to the recommendation, with respect to Issue 3, for FPL. On August 13, 2009, FPL filed its Second Revised Request for Confidential Classification, which FPL indicates is intended to replace and supersede its previously filed requests for confidentiality that are the subject of this recommendation. By this new filing, FPL seeks to protect employee compensation information that the company included in supplemental responses to staff interrogatory nos. 16, 17, 32, and 97. FPL's arguments for maintaining the confidentiality of this employee compensation information are the same arguments that it made in its previous requests for confidentiality, and are laid out in issue 3. Staff recommends that FPL's 2nd revised request for confidential classification be denied for the reasons set forth in the recommendation.

FLORIDA PUBLIC SERVICE COMMISSION

VOTE SHEET

August 18, 2009

Docket No. 080677-EI – Petition for increase in rates by Florida Power & Light Company.
Docket No. 090079-EI – Petition for increase in rates by Progress Energy Florida, Inc.

Issue 1: Should Staff's Motion for Order Compelling FPL to Respond to Interrogatory Nos. 16-17, 32 and 97 be granted?
Recommendation: Yes, Staff's Motion for Order Compelling Responses to Interrogatories should be granted. FPL should be directed to fully and completely respond to the interrogatories as revised by staff in Attachment B of its Motion within two days of the issuance date of the order arising from this recommendation.

APPROVED

Issue 2: Should Staff's Motion for Order Compelling PEF to Respond to Interrogatory Nos. 123-126 and 197-198 be granted?
Recommendation: Yes. PEF should be required to provide its full and complete responses to Interrogatory Nos. 123-126 and 197-198 within seven days from the issuance date of the order arising from this recommendation, and PEF and its employee intervenors' Motion for Protective Order and Conditional Motion for Stay should be denied.

APPROVED

COMMISSIONERS ASSIGNED: All Commissioners

COMMISSIONERS' SIGNATURES

MAJORITY	DISSENTING

REMARKS/DISSENTING COMMENTS: Commissioner Argenziano participated in the conference by telephone. She will sign the vote sheet upon her return to the office.

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Issue 3: Should these dockets be closed?
Recommendation: No, these dockets should remain open in order to process FPL and PEF's pending rate cases.

APPROVED

STATE OF FLORIDA

OFFICE OF COMMISSION CLERK
ANN COLE
COMMISSION CLERK
(850) 413-6770

Public Service Commission

ACKNOWLEDGEMENT

DATE: August 20, 2009

TO: **Jessica Cano, Florida Power & Light Co.; Marsha Rule [Rutledge Law Firm]**

FROM: **Ruth Nettles, Office of Commission Clerk**

RE: **Acknowledgement of Receipt of Confidential Filing**

This will acknowledge receipt of a CONFIDENTIAL DOCUMENT filed in Docket Number 080677/090130 **or, if filed in an undocketed matter, concerning** Requested Compensation Information and request for continued confidential treatment of previously provided Compensation Information pending Appeal, **and filed on behalf of** Florida Power & Light Company. **The document will be maintained in locked storage.**

If you have any questions regarding this document, please contact Marguerite Lockard, Deputy Clerk, at (850) 413-6770.