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September 17, 2009

VIA HAND DELIVERY

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

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COMMISSION
CLERK

Re: Docket No. 080677-EI and Docket No. 090130-EI

Dear Ms. Cole:

Enclosed for filing on behalf of Florida Power & Light Company ("FPL") are an original and seven (7) copies of its Request for Confidential Classification. The original includes Exhibit A through D. The seven (7) copies include Exhibit C and Exhibit D only.

Incorporated by reference as "Exhibit A" are the highlighted confidential attachments to FPL's Notice of Intent to Request Confidential Classification filed on August 27, 2009. Exhibit B is an edited version of Exhibit A, in which the information FPL asserts is confidential has been redacted. Exhibit C consists of FPL's justification table for its Request for Confidential Classification. Exhibit D contains the affidavit of Kathleen Slattery in support of FPL's Request for Confidential Classification. Also included in this filing is a compact disc containing FPL's Request for Confidential Classification only in Microsoft Word format.

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

Sincerely,

Nanci RedSmith
for Jessica A. Cano

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1+CD
Enclosures
cc: Parties of Record (w/out enc.)
1

**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: September 17, 2009

**FLORIDA POWER & LIGHT COMPANY'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION**

NOW, BEFORE THIS COMMISSION, through undersigned counsel, comes Florida Power & Light Company ("FPL") and, 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 August 27, 2009, FPL filed a Notice of Intent to Request Confidential Classification for two documents created by the Staff of the Florida Public Service Commission ("Staff") from confidential compensation information previously provided, titled "Bonus as a Percent of Base Salary" and "Overtime as a Percent of Base Salary." This filing is intended to request confidential classification of the confidential attachments to that August 27, 2009 filing.

2. Attached hereto and made a part hereof are the following exhibits:

a) FPL incorporates by reference the documents attached to its Notice of Intent to Request Confidential Classification identified above, on which the confidential information was highlighted, as Exhibit A.

b) Exhibit B consists of edited versions of the hard copy documents with the confidential information redacted.

c) Exhibit C is a table containing a line-by-line and page-by-page

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

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.

d) Exhibit D is 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.

3. For the purpose of completeness, FPL is restating its bases for confidential classification of this sensitive compensation information. 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.

4. 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.

5. 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.

6. 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).

7. Thus, the Commission, while having full access to as much individual compensation information as it deems appropriate to fulfill its 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 its customers. Moreover, such an action would disregard a longstanding fundamental respect for privacy that the Commission's actions in the past have maintained.

8. 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.

9. 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 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.

10. 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 Interrogatory No. 97 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.

11. 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.

12. 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 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.

13. The Commission should determine that this 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.

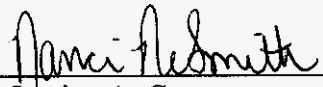
14. To the extent the Commission's decision in Order No. 09-0568-CFO-EI, denying confidential classification of similar compensation information, is interpreted to also apply to the information provided subsequent to that decision, FPL requests continued confidential handling

of this information pending final disposition by the Commission, including disposition of any motion for reconsideration, and until judicial review is complete, consistent with Rule 25-22.006(10), Fla. Admin. Code.

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.

Respectfully submitted this 17th day of September 2009,

R. Wade Litchfield, Vice President of
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Bryan S. Anderson, Managing Attorney
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Telephone: (561) 304-5226
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By: 
for Jessica A. Cano
Florida Bar No. 0037372

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States Mail this 17th day of September, 2009, to the following:

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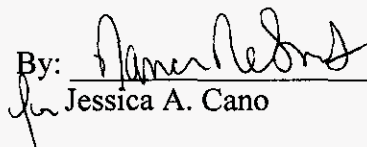
By: 
for Jessica A. Cano

EXHIBIT C

EXHIBIT C
Docket No. 080677-EI
September 17, 2009

Documents created by Commission staff titled "Bonus as a Percent of Base Salary" and "Overtime as a Percent of Base Salary." Part 1 of 2

Page No.	Description	Column and Line No.	Applicable subsection of § 366.093, Fla. Stat	Affiant
Pages 1-8	Job title	Col. B Lines 2-420	(3) and (3)(e)	Kathleen Slattery
Pages 1-8	Group/FPL	Col. C Lines 2-420	(3) and (3)(e)	Kathleen Slattery
Pages 1-8	Group Officer	Col. D Lines 2-420	(3) and (3)(e)	Kathleen Slattery
Pages 1-8	FPL Officer	Col. E Lines 2-420	(3) and (3)(e)	Kathleen Slattery
Pages 1-8	b. Base Salary	Col. F Lines 2-420	(3) and (3)(e)	Kathleen Slattery
Pages 1-8	c. Overtime	Col. G Lines 2-420	(3) and (3)(e)	Kathleen Slattery
Pages 1-8	d. Bonus	Col. H Lines 2-420	(3) and (3)(e)	Kathleen Slattery
Pages 1-8	e. Stock Awards	Col. I Lines 2-420	(3) and (3)(e)	Kathleen Slattery
Pages 1-8	f. Option Awards	Col. J Lines 2-420	(3) and (3)(e)	Kathleen Slattery
Pages 1-8	g. Non-equity Incentive Comp	Col. K Lines 2-420	(3) and (3)(e)	Kathleen Slattery
Pages 1-8	h. All Other	Col. L Lines 2-420	(3) and (3)(e)	Kathleen Slattery
Pages 1-8	i. Total Compensation	Col. M Lines 2-420	(3) and (3)(e)	Kathleen Slattery
Pages 1-8	j. Net Allocation	Col. N Lines 2-420	(3) and (3)(e)	Kathleen Slattery
Pages 1-8	k. Adjusted Jurisdictional Other O&M	Col. O Lines 2-420	(3) and (3)(e)	Kathleen Slattery
Pages 1-8	Bonus as a % of Salary	Col. P Lines 2-420	(3) and (3)(e)	Kathleen Slattery

Documents created by Commission staff titled "Bonus as a Percent of Base Salary" and "Overtime as a Percent of Base Salary." Part 2 of 2

Page No.	Description	Column and Line No.	Applicable subsection of § 366.093, Fla. Stat	Affiant
Pages 1-8	Job title	Col. B Lines 2-420	(3) and (3)(e)	Kathleen Slattery
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Pages 1-8	c. Overtime	Col. G Lines 2-420	(3) and (3)(e)	Kathleen Slattery
Pages 1-8	d. Bonus	Col. H Lines 2-420	(3) and (3)(e)	Kathleen Slattery
Pages 1-8	e. Stock Awards	Col. I Lines 2-420	(3) and (3)(e)	Kathleen Slattery
Pages 1-8	f. Option Awards	Col. J Lines 2-420	(3) and (3)(e)	Kathleen Slattery
Pages 1-8	g. Non-equity Incentive Comp	Col. K Lines 2-420	(3) and (3)(e)	Kathleen Slattery
Pages 1-8	h. All Other	Col. L Lines 2-420	(3) and (3)(e)	Kathleen Slattery
Pages 1-8	i. Total Compensation	Col. M Lines 2-420	(3) and (3)(e)	Kathleen Slattery
Pages 1-8	j. Net Allocation	Col. N Lines 2-420	(3) and (3)(e)	Kathleen Slattery
Pages 1-8	k. Adjusted Jurisdictional Other O&M	Col. O Lines 2-420	(3) and (3)(e)	Kathleen Slattery
Pages 1-8	Overtime as a % of Salary	Col. P Lines 2-420	(3) and (3)(e)	Kathleen Slattery

EXHIBIT D

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

STATE OF FLORIDA)
LEON)
~~PALM BEACH~~ COUNTY)

AFFIDAVIT OF KATHLEEN SLATTERY

BEFORE ME, the undersigned authority, personally appeared Kathleen Slattery who, being first duly sworn, deposes and says:

1. My name is Kathleen Slattery. I am currently employed by FPL as Director Executive Services and Business Planning. My business address is 700 Universe Boulevard, Juno Beach, Florida 33408. I have personal knowledge of the matters stated in this affidavit.

2. The FPL documents at issue are owned and controlled by FPL and contain proprietary confidential business information consisting of competitively sensitive employee compensation details and records.

3. This information is used by FPL in the conduct of its business operations. FPL considers this information as commercially valuable and maintaining the confidentiality of same provides an advantage or an opportunity to obtain an advantage over those not in possession of such information.

4. FPL operates within a highly competitive market for skilled and trained executive employees. Public disclosure of employee compensation details and records would cause harm to FPL's business operations by providing competing employers with access to specific information useful in hiring away these skilled and trained executives. Any resulting loss of talented employees, many of whom have gained significant experience with FPL and have received significant training and instruction from FPL would damage FPL's business and cause FPL to lose the substantial investment it has in its workforce.

5. Additionally, public disclosure of this information would cause damage to FPL's business operations by impeding FPL's ability to attract new talent on a cost effective basis, and to retain current employees at existing salary levels.

6. The resulting damage to the quality of service and the cost of service would be detrimental to both FPL and to its ratepaying customers by reducing the level of workforce talent available to perform the necessary corporate functions, by increasing the cost of such workforce talent, or both.

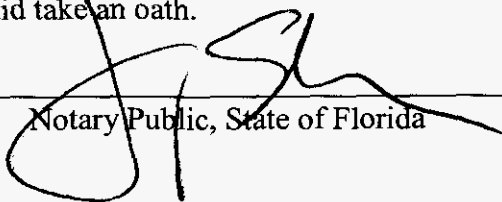
7. FPL controls access to and maintains the confidentiality of this information both as to the public and within the FPL corporate structure. The information has not been and is not made available to the public. Moreover, within the corporate structure, FPL has policies and procedures in place preventing the disclosure of this information to anyone other than specifically authorized personnel who have access to same for limited business purposes.

8. Finally, compensation information regarding specific individual employees is private as to each respective employee and FPL safeguards such information from disclosure to protect the individual privacy interests of those employees. Any public disclosure of such individual compensation information would violate the employee's right to privacy and the reasonable expectation that such information would not be the subject of public disclosure.

9. Affiant says nothing further.


Kathleen Slattery

SWORN TO AND SUBSCRIBED before me this 16th day of September, 2009, by Kathleen Slattery who is personally known to me or who has produced _____ (type of identification) as identification and who did take an oath.


Notary Public, State of Florida

My Commission Expires:

