

**Diamond Williams**

110009-EI

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**Subject:** Electronic Filing - Docket # 110009-EI  
**Attachments:** FPL's Comments on Mr. Kundalkar's Motion to Quash.pdf

**Electronic Filing**

a. Person responsible for this electronic filing:

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b. Docket No. 110009-EI

IN RE: Nuclear Power Plant Cost Recovery Clause

c. The documents are being filed on behalf of Florida Power & Light Company.

d. There are a total of six (6) pages.

e. The document attached for electronic filing is:

Florida Power & Light Company's Comments on Mr. Kundalkar's Motion to Quash Subpoena and Notices of Deposition

*See attached file(s): FPL'S Comments on Mr. Kundalkar's Motion to Quash.pdf*

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DOCUMENT NUMBER-DATE  
 03060 MAY-3 =  
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5/3/2011

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Nuclear Power Plant                    )  
Cost Recovery Clause                            )

Docket No. 110009-EI  
Filed: May 3, 2011

**FLORIDA POWER & LIGHT COMPANY'S COMMENTS  
ON MR. KUNDALKAR'S MOTION TO QUASH SUBPEONA  
AND NOTICES OF DEPOSITION**

Florida Power & Light Company ("FPL"), hereby respectfully provides the following comments on the April 12, 2011 Motion to Quash the subpoena for the deposition testimony of retired, former FPL Vice President Rajiv S. Kundalkar, issued by the Office of Public Counsel ("OPC"). FPL had not intended to weigh in on this dispute between OPC and Mr. Kundalkar. However, it is increasingly apparent that this dispute could become an unnecessary distraction to the timely resolution of the issues in this docket. FPL has an interest in avoiding a protracted debate over the legal prerequisites to enforcing such a subpoena, the relative policy considerations involved, and whether Mr. Kundalkar's testimony is necessary. To this end, FPL offers the following information and observations.

1. FPL has no concern with any testimony Mr. Kundalkar may give by deposition and would expect that any such testimony would support the information provided by FPL witnesses Armando Olivera (Chief Executive Officer of FPL), Art Stall, and Terry Jones in this docket. Specifically, FPL expects that it would demonstrate there was no proper basis for a revision to the non-binding cost estimate for the Extended Power Uprate ("EPU") project in the September 2009 time frame. Mr. Kundalkar participated in a conference call with Commission Audit Staff on July 12, 2010 to discuss the 2009 cost estimate and conveyed this message at that time. However, FPL emphasizes to the Commission that it is Mr. Kundalkar's decision – not FPL's – as to whether he will voluntarily agree to participate in a deposition as demanded by OPC.

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FPSC-COMMISSION CLEAR

2. FPL notes that the assertion that FPL should have revised its estimate of the EPU project costs in testimony before the Commission in September 2009 – an assertion with which FPL takes strong exception – was made by FPL’s independent consultant, John Reed of Concentric Energy Advisors, Inc. That opinion was expressed by Mr. Reed in a report completed and provided to staff and to OPC in June 2010, in his oral testimony provided in August 2010, and again in his pre-filed testimony submitted in March 2011. But despite that opinion, Mr. Reed also concluded that *there were no imprudently incurred costs incurred in connection with the project*. Thus, even if reasonable minds could differ as to whether the Company, through Mr. Kundalkar, should have provided the Commission with higher cost projections supplied by the Company’s engineering, procurement, and construction (“EPC”) vendor that the Company intended to, and in fact did, push back on and achieve a reduction of, it is not entirely clear how the fact that FPL did not provide such preliminary, unvetted information to the Commission would be an appropriate issue in the case. But even if the Commission were to decide that the issue is appropriate to answer in this docket, FPL notes that the Commission *already* has Mr. Reed’s testimony on this very question, in opposition to the Company’s position, and Mr. Reed is scheduled as a witness in the case.

3. Turning to the Motion to Quash, FPL notes Mr. Kundalkar’s arguments, unrefuted by OPC, that there are several FPL witnesses who submitted prefiled testimony in this docket that OPC should take discovery from *before* considering whether to attempt to involve a former Company employee in this case. OPC has available to it FPL witnesses Terry Jones, Vice President Nuclear Power Uprates; Art Stall, FPL’s former Chief Nuclear Officer and a consultant to the Company; as well as Mr. Reed, for depositions. Mr. Stall’s March 1, 2011 prefiled testimony, which was also filed with the Commission and served on all parties during

the 2010 Nuclear Cost Recovery Clause (“NCRC”) hearings, directly addresses the issue regarding the 2009 information, and Messrs. Jones and Reed testified on these points at length before the Commission in August 2010. OPC also has the ability to take written discovery in the form of interrogatories and requests for the production of documents to all of the information that the Company had and used in the development and presentation of Mr. Kundalkar’s testimony in 2009. In fact, OPC and Staff have both already taken discovery on this point and additional written discovery directed at the Company is currently pending.

4. An additional point that the Commission should consider is that in early April 2011, FPL offered to OPC to make Armando Olivera, the Chief Executive Officer of FPL, available for deposition to address OPC’s questions regarding the completeness and accuracy of the information provided to the Commission in the 2009 NCRC docket. This offer, which was made prior to the filing of Mr. Olivera’s testimony on May 2, 2011, was intended to allow OPC to conduct reasonable due diligence to satisfy itself as to the integrity of the process and the information that was (and is) provided to the Commission in 2009. To date, OPC has not availed itself of the offer for a deposition of Mr. Olivera.

5. In short, OPC has available to it all materials that formed the basis of the Company’s position in 2009 sponsored by Mr. Kundalkar. OPC also has available to it, multiple witnesses who can testify as to the Company’s review of vendor-supplied data, the need to fully vet and even push back on such data, and the process by which Company estimates are prepared and submitted to the Commission. And OPC has Mr. Reed available as a witness. These witnesses have been available for deposition for months. In light of the fact that OPC has not exhausted the pursuit of information from FPL and its witnesses, FPL agrees with Mr. Kundalkar’s argument that the “necessity” prerequisite for the issuance of a subpoena set forth in

Section 350.123, Florida Statutes, has not been met at this time. Mr. Kundalkar has retired. The Company, its records, and its witnesses remain available in this docket. FPL respectfully suggests that OPC should pursue information from FPL and its witnesses before forcing the Commission to address the significant legal and policy issues presented by Mr. Kundalkar in his Motion to Quash.

Respectfully submitted this 3rd day of May, 2011.

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**CERTIFICATE OF SERVICE  
DOCKET NO. 110009-EI**

I HEREBY CERTIFY that a true and correct copy of FPL's Comments on Mr. Kundalkar's Motion to Quash Subpoena and Notices of Deposition was served electronically this 3rd day of May, 2011 to the following:

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