

OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

Date Printed: May 26, 2009 11:14

PAPER NUMBER: LTR-09-0216 **LOGGING DATE:** 05/19/2009
ACTION OFFICE: OGC

AUTHOR: Thomas Saporito
AFFILIATION: FL
ADDRESSEE: Disciplinary Committee - The Florida Bar
SUBJECT: Complaint of misconduct of Florida Power and Light Company attorneys

ACTION: Appropriate
DISTRIBUTION: Chairman, Comrs, EDO

LETTER DATE: 05/10/2009
ACKNOWLEDGED: No
SPECIAL HANDLING:

NOTES:
FILE LOCATION: ADAMS

DATE DUE: **DATE SIGNED:**

Saporito Energy Consultants, Inc.

Post Office Box 8413, Jupiter, Florida 33468-8413
Voice: (561) 283-0613 Fax: (561) 952-4810
Email: Support@SaporitoEnergyConsultants.com
Website: SaporitoEnergyConsultants.com

10 May, 2009

Disciplinary Committee
The Florida Bar
651 E. Jefferson Street
Tallahassee, FL 32399-2300
850/561-5600
Fax 850/561-5827

In re: Complaint of Misconduct of Florida Power and Light Company Attorneys

To Whom It May Concern:

This serves as an official complaint of misconduct on the part of attorneys associated with the Florida Power and Light Company (FPL) and who are identified as:

R. Wade Litchfield, Esq
Florida Power and Light Company
700 Universe Blvd.
Juno Beach, Florida 66408-0420

John T. Butler, Esq.
Florida Power and Light Company
700 Universe Blvd.
Juno Beach, Florida 66408-0420

Based on information and belief, it appears that the above-named FPL attorneys knowingly and intentionally violated the Cannon Rules of Conduct during their representation of FPL before the Florida Public Service Commission (FPSC) in apparently presenting suborned perjured testimony before the FPSC in an attempt to fraudulently avoid the refund of approximately \$6.1- million dollars to the customers of FPL during a public hearing in Docket No. 080001-EI, Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive.

Notably, in a pleading dated November 24, 2008, Public Counsel representing the customers of FPL filed *Citizens' Brief on Issue 13C* in Docket No. 080001-EI. The following excerpts from the aforementioned brief are delineated below for the consideration of The Florida Bar's Disciplinary Committee accordingly:

"... In sworn testimony, FPL assured the Commission that prior to his being granted unescorted nuclear plant access, the Individual was subject to and successfully completed FPL's rigorous access and fitness for duty

rec'd
5/19

screening processes.' . . . "The sworn testimony described the several steps of the screening process and concluded that '[f]ailure to successfully complete any of these steps will result in the individual being denied unescorted access to FPL's nuclear facilities.' " . . . "The sworn testimony did not even hint that the Vandal's application may have shown any red flags for potential problems. FPL contended that nothing possible could have been foreseen. The Friday before the hearing, however, FPL produced a document that the Utility had received approximately one month earlier. The document included field notes written by the FBI agent investigating the case. The field notes contained information that the agent had found on the vandal's Turkey Point security questionnaire. That questionnaire was completed as part of the vandal's screening process, and has been in the possession of FPL since February, 2006. FPL, however, chose not to present the questionnaire to the Commission."

Id. at 1-2.

"The field notes paint a strikingly different picture of the relevant information about the Vandal, which FPL had in its possession when it granted unescorted nuclear plant access. Florida citizens would be shocked by a juxtaposition of FPL's sworn testimony alongside the FBI agent's field notes (the actual source document – the questionnaire, itself – has never been produced by FPL, so the agent's notes are the closest rendition available)."

"While assuring the Commission that the Individual had been rigorously screened, FPL's sworn testimony never even mentioned that there existed ANYTHING on the questionnaire that could possibly call the Individual's background into question. Instead, FPL cited all of the areas in which the vandal had been screened and had passed. FPL's sworn testimony stated that the screening process required the Individual 'to successfully complete and FBI criminal history verification . . . with no disqualifying criminal background' and 'to successfully complete drug and alcohol screening...' . . . however, the Vandal had been arrested for: 1990 Criminal Recklessness and Criminal Mischief (charges dismissed in 1994); 1990 Driving under the Influence (guilty); 1991 Discharging a fire arm in public (dismissed); 1989 Public Intoxication (Dismissed); 1989 Reckless Driving (Dismissed). Further, the Vandal responded 'yes' to the question 'have you ever used/sold illegal drugs?' and did not answer questions relative to participation in substance/alcohol abuse programs. Finally, FPL's sworn testimony assured the Commission that the Vandal 'passed a rigorous psychological examination consisting of nearly 600 questions, with the responses screened for psychological stability and other characteristics. As required, individuals may be subject to further

psychological review, including interviews by a licensed psychologist.' The FBI field notes, however, indicated that the individual 'failed his psychological test,' but 'received clearance from a physician in order to gain plant access.'

Id. at 2-3.

"... Mr. Jones explained that he never actually looked at the Vandal's questionnaire, but instead based his sworn testimony on assurances from a Mr. Bonthron. ... Mr. Jones has not examined the Vandal's questionnaire to this day, but continues to base his representations to the Commission on representations of the same Mr. Bonthron who apparently led Mr. Jones to believe that there was no reason to disclose to the Commission all of the red flags appearing on the Vandal's security questionnaire.

Id. at 3-4.

"... OPC continues to be troubled by the game of hide-and-seek that FPL played with the findings of the NRC's Augmented Inspection Team (AIT). The report of the AIT was considered in confidential Exhibit No.3; Document No. 06271-08. Its confidential status prevented OPC and other parties from citing excerpts from the AIT report for cross-examination. Nevertheless, FPL witnesses took liberties to make several public representations which purported to characterize the AIT's findings. The actual language of the confidential report, however, directly contradicts the public representations that FPL made about the AIT's findings.

"The Utility's witnesses claimed that the NRC's confidential findings exonerated FPL. In fact, Mr. Jones stated:

"And in addition, the NRC's Augmented Inspection Team found that our access authorization personnel programs, processes, and procedures were in full compliance with the requirements of the NRC, and that our physical security plan was in compliance with the NRC. ..."

"Mr. Jones' claims, however, are directly contradicted by the report itself. ..."

Id. at 13.

"The clear and unambiguous language of the AIT report itself directly contradicts Mr. Jones' claim that the AIT found FPL's programs, processes and procedures 'in full compliance with the NRC.' OPC has been unable to find any other document in the record in which the NRC

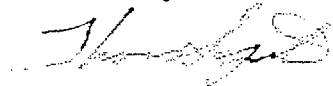
recedes from the statement quoted above. Accordingly, the public representations of FPL are directly contrary to the AIT findings, and it is entirely disingenuous and self serving for FPL to publicly claim that the confidential report exonerates the Utility."

Id. at 14.

As can be seen from the excerpts from the public's counsel's brief, attorneys representing FPL at a public hearing produced witnesses who apparently testified falsely under oath about the circumstances surrounding FPL's granting unescorted access to a contract worker at the FPL Turkey Point Nuclear Plant. Moreover, based on the record evidence developed at that hearing, it appears that the FPL attorneys engaged in "suborned witness testimony" which is a violation of the Cannon Code of Conduct and a violation of the rules of conduct for attorneys who are licensed by the State of Florida to practice law.

Accordingly, the undersigned hereby files charges against the above-named FPL attorneys to the extent that the FPL attorneys apparently promulgated the suborned testimony of FPL witnesses in open court and under oath to testify falsely to enable FPL to fraudulently recover approximately \$6.1 – million dollars from FPL customers. To the extent that there may be criminal intent on the part of the above-named FPL attorneys, The Florida Bar should make a referral to the Florida State Attorney General for investigation of whether there exists a criminal intent element on the part of the above-named FPL attorneys in these circumstances.

Respectfully submitted,



Thomas Saporito
President

A copy of this document was provided to:

J.R. Kelly, Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, Florida 32399-1400

Complaint Against Florida Power and Light Company Attorneys for Misconduct
Page 5 of 5

Hon. Barack Obama
President of the United States
The White House
1600 Pennsylvania Ave., N.W.
Washington, D.C. 20500

Bill Borchard
Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Hubert Bell, Inspector General
~~U.S. Nuclear Regulatory Commission~~
Office of the Inspector General
Mail Stop 05-E13
11555 Rockvill Pike
Rockville, MD 20852

U.S. Department of Justice
Office of Professional Responsibility
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530-0001

Thomas B. Blount, Deputy Director
Division of Policy and Rulemaking
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Hon. Dale Klein, Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Lewis Hay III
Chief Executive Officer
~~Florida Power and Light Company~~
700 Universe Boulevard
Juno Beach, Florida 33408

Office of Attorney General
Bill McCollum, Attorney General
The Capitol - PL01
Tallahassee, Florida 32399-1050

Saporito Energy Consultants
Thomas Saporito, President
Post Office Box 8413
Jupiter, Florida 33468-8413

WEST PALM BCH FL 334

11 MAY 2009 PM 1 T



Hon. Dale Klein, Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

