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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 150185-EI

COMPLAINT BY ERIKA ALVAREZ,
JERRY BUECHLER, AND RICHARD C.
SILVESTRI AGAINST FLORIDA
POWER & LIGHT COMPANY.

_____ /

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
 ITEM NO. 3

COMMISSIONERS
PARTICIPATING: CHAIRMAN ART GRAHAM
 COMMISSIONER LISA POLAK EDGAR
 COMMISSIONER RONALD A. BRISÉ
 COMMISSIONER JULIE I. BROWN
 COMMISSIONER JIMMY PATRONIS

DATE: Tuesday, October 13, 2015

PLACE: Betty Easley Conference Center
 Room 148
 4075 Esplanade Way
 Tallahassee, Florida

REPORTED BY: LINDA BOLES, CRR, RPR
 Official FPSC Reporter
 (850) 413-6734

P R O C E E D I N G S

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2 **CHAIRMAN GRAHAM:** Item No. 8 is a panel, and
3 we will come back to that at the end of the agenda.

4 So let's go back to Item No. 3.

5 **MS. CORBARI:** Good morning, Commissioners.
6 Kelley Corbari, Commission staff. Item 3 concerns a
7 motion to dismiss filed by FPL in Docket 150185-EI,
8 complaint of Jerry Beuchler, Erika Alvarez, and Richard
9 Silvestri against Florida Power & Light for failing to
10 fairly administer its 2015 residential Solar Pilot
11 Rebate Reservation Program.

12 Staff is recommending that the Commission
13 grant FPL's motion to dismiss and dismiss the complaint
14 without prejudice because the complaint fails to
15 demonstrate a cause of action upon which relief may be
16 granted, and that Petitioners be permitted the
17 opportunity to amend their complaint, should they choose
18 to.

19 In addition, staff has an oral modification to
20 the close docket language of Issue 2 of staff's
21 recommendation to include a time frame which Petitioners
22 must file an amended complaint in this docket, should
23 they choose.

24 Staff modification inserts the following
25 language at the end of the second sentence of the

1 recommendation statement: "within 14 days of the
2 issuance of an order dismissing the complaint." Staff's
3 modification also inserts the same language at the end
4 of the first sentence of staff's analysis of Issue 2.

5 Oral argument was not specifically requested
6 by any of the parties; however, Petitioners, Mr. Jerry
7 Beuchler and Mr. Richard Silvestri, have asked to
8 address the Commission today regarding the complaint.

9 Mr. Silvestri is present today on behalf of
10 himself and Ms. Alvarez. Mr. Beuchler is present today
11 by telephone. Jessica Cano, counsel for FPL, is also
12 present today, and staff is available to answer any
13 questions.

14 **CHAIRMAN GRAHAM:** Thank you, staff. Okay.
15 Let's start with the gentleman on the phone.
16 Mr. Beuchler, are you with us?

17 **MR. BEUCHLER:** Yes. Yes, I am.

18 **CHAIRMAN GRAHAM:** You have three minutes for
19 your testimony, please.

20 **MR. BEUCHLER:** Okay. Basically, you know,
21 this is the Sunshine State, and I just finished mowing
22 my lawn with an electric mower, and I'm a retired Miami
23 Beach firefighter. Starting about ten years ago already
24 we responded to -- it wasn't raining, high tide, full
25 moon flood events on Miami Beach. I was in Hallandale

1 the other day. There's signs on certain streets near
2 the ocean that say, "Warning. This street floods during
3 high tide."

4 And I've talked to people, and I know, talking
5 to commissioners (phonetic) in Miami Beach, hundreds of
6 millions have already been spent raising roads, putting
7 in pumps, putting in storm sewer clacker bells. So
8 we're already paying for climate rise. And to ignore,
9 you know, to ignore the possibility of solar roofs --
10 like New Jersey, for example, has over 1.5 gigawatts of
11 solar energy installed. That's over 25,000 rooftop
12 installations. That's enough to power 241,000 homes,
13 and that's New Jersey with a Republican governor, you
14 know. And this is the Public Service Commission. You
15 should be representing the public.

16 We -- this is a totally flawed application
17 process. And the first time -- I'm a former runner, I
18 ran against Olympians in college, and if this were a
19 race, it started seven minutes early the first time, so
20 they did the right thing, they did it again, but the
21 second time -- I ran hurdles also -- there was four
22 stages -- four pages you've got to fill out. Well, when
23 I got to -- tried to go to the second page, you've got
24 to put in some numbers and then you're allowed to go to
25 the second page, it was a wall. It was a half an hour

1 before I got back into the system. By that time it was
2 too late.

3 So the whole application process is totally
4 flawed, it's not made fair, it's not made user-friendly.
5 It could have been a simple lottery where you mail in
6 your package and a number assigned and it's drawn out of
7 a barrel. And, you know, the fact that you allow FPL to
8 stop and discontinue the solar program is disgusting.

9 You know, we are going to be paying more than
10 any other state for the cost of sea level rise. I know
11 with our Governor we can't even say sea level rise, we
12 can't say climate change, but it's real. I just talked
13 to my brother the other day from Minnesota. Last month
14 in Minnesota, St. Paul, it was six degrees warmer than
15 30-year averages for that month. So, you know, the
16 warming occurs more in the upper latitudes, from that
17 latitude up to Alaska, and it can be seen in melting sea
18 ice, and yet we keep our heads in the sand here.

19 **CHAIRMAN GRAHAM:** Sir, you've got 30 seconds
20 left.

21 **MR. BEUHLER:** Say what?

22 **CHAIRMAN GRAHAM:** You have 30 seconds left.

23 **MR. BEUHLER:** Okay. Yeah. I've got some
24 questions for the Commission. I want to know if it's
25 true, some things I've read is that we're being charged

1 500 -- up to five -- half a million -- 500 million a
2 year to partner with a fracking company in Oklahoma at a
3 time when Oklahoma has had over 20 -- 2,100 earthquakes
4 this year, and all the geologists say it's related to
5 the deep well injection of the wastewater from fracking.
6 In the Marcellus Shale, the average fracking well uses
7 over 5 million gallons, you know. So we need to ban
8 fracking here in Florida, but we also need to get on
9 board with clean energy, renewable energy because we are
10 paying the price already, and the price will become too
11 exorbitant for Florida to afford unless we get on board
12 with renewable energy.

13 So, you know, I would encourage the Commission
14 to look at renewable portfolio standards like New Jersey
15 already has. They have a standard that between
16 2.5 percent of their energy has to come from renewable
17 by the year 2020. Where we --

18 **CHAIRMAN GRAHAM:** Mr. Beuchler, your
19 three minutes is over. We thank you for your time, your
20 participation. You can continue listening as we
21 continue the hearing. Thank you.

22 We have one other speaker, Mr. Silvestri.

23 **MR. SILVESTRI:** Silvestri.

24 **CHAIRMAN GRAHAM:** Silvestri.

25 **MR. SILVESTRI:** Yes, sir.

1 **CHAIRMAN GRAHAM:** Sir, if I can get you to go
2 over to the podium back over there, and you can take
3 your paperwork with you.

4 **MR. SILVESTRI:** Pardon me?

5 **CHAIRMAN GRAHAM:** To the podium.

6 **MR. SILVESTRI:** Go to the podium?

7 **CHAIRMAN GRAHAM:** Yes, sir.

8 **MR. SILVESTRI:** You have to excuse me. I was
9 a firefighter also for 26 years, and my hearing is not
10 good.

11 **CHAIRMAN GRAHAM:** That's fine. I do
12 appreciate your service, too.

13 Sir, you will be given three minutes to speak
14 as well.

15 **MR. SILVESTRI:** Mr. Chairman --

16 **CHAIRMAN GRAHAM:** Yes, we can hear you.

17 **MR. SILVESTRI:** -- what was the question?

18 **CHAIRMAN GRAHAM:** No. I said you will be
19 given three minutes to speak as well.

20 **MR. SILVESTRI:** Oh, I understand.

21 **CHAIRMAN GRAHAM:** Okay.

22 **MR. SILVESTRI:** All right. Thank you.

23 Thank you, Mr. Chairman. FPL counsel's motion
24 to dismiss is based on one thing and one thing only: We
25 failed to show a cause of action. On the contrary, we

1 have listed numerous causes of action for which remedy
2 is sought. In one word, the cause of action by FP&L was
3 fraud. If this Commission upholds that motion, then
4 this Commission is party to that fraud.

5 Due to the time allocated me, I'll list one
6 cause of action here now. FP&L opened the solar rebate
7 reservation website on January 14th eight minutes early
8 and then shut off the submit now button four minutes
9 later, but allowed those that had started to continue to
10 submit while everyone else was barred for another
11 four minutes. Then the funds ran out one minute later.
12 That stinks of fraud.

13 Who are the 400-plus applicants who just
14 happened to be hanging around the website eight minutes
15 early? Who are they? What's their connection to FP&L?
16 That stinks of fraud. Yet FP&L refuses to reveal those
17 names, and this Commission allows FP&L to deny our
18 request for that list; therefore, discovery was denied.
19 That denies us due process.

20 In addition, this Commission's investigation
21 into the complaint we filed consisted only of statements
22 by FPL, and this Commission failed to gather further
23 information from us, the pleaders, which once again
24 stinks of fraud. Merriam-Webster dictionary defines
25 fraud as, A, deceit or trickery, specifically

1 intentional perversion of truth in order to induce
2 another to part with something of value or to surrender
3 a legal right, and an act -- it's also number B or item
4 B, an act of deceiving or misrepresenting, a trick.

5 Civil RICO is just beginning to undergo
6 judicial scrutiny. Judges are generally split into two
7 camps: Those who dismiss complaints because of an
8 underlying belief RICO should only apply to gangsters,
9 and those who deny motions to dismiss because the
10 language of RICO is extremely broad. We shall see.

11 The whole purpose of this process is to hide
12 the revelation of fraud, knowing the cost to seek
13 redress from the courts by us. If the courts determine
14 there is a cause of action, and we are certain of that,
15 FP&L will have to pay all court costs and costs -- and
16 find another opening.

17 We could be entitled to triple damages for the
18 cost of solar installation and other monetary damages.
19 You Commissioners could be found as accessories to that
20 fraud and held personally liable since indemnification
21 does not apply to acts of misfeasance or malfeasance
22 regarding fraud. You should have recognized but instead
23 allowed to continue without remedy, and that you have
24 violated the public trust provided in the state
25 constitution.

1 In addition, that court ruling would open the
2 floodgates to hundreds of other citizens who found
3 themselves in our situation but have not come forward
4 prior to that future court ruling. Therefore, we have
5 demonstrated in our complaint, in our supporting
6 documents submitted numerous causes of action, and there
7 is no other choice but you to deny counsel's request for
8 motion to dismiss. I thank you very much to this august
9 body for listening to me.

10 **CHAIRMAN GRAHAM:** Thank you, sir. Thank you
11 for your testimony.

12 **MR. SILVESTRI:** Do I sit down back where I was
13 or do I just go back?

14 **CHAIRMAN GRAHAM:** Back to the back.

15 **MR. SILVESTRI:** Thank you.

16 **CHAIRMAN GRAHAM:** Thank you.

17 Okay. Commissioners? Commissioner Edgar.

18 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.
19 This is FPL's motion, so I would like to hear from them,
20 if we may.

21 **CHAIRMAN GRAHAM:** Are you sure?

22 **COMMISSIONER EDGAR:** I'm sure.

23 **CHAIRMAN GRAHAM:** Florida Power & Light.

24 **MS. CANO:** Good morning, Chairman and
25 Commissioners.

1 FPL has acknowledged that during its two
2 residential PV rebate launches there were technical
3 difficulties with its website. Nonetheless, Petitioners
4 have failed to state a cause of action for which relief
5 could be granted by this Commission. There are no
6 allegations in the complaint of acts or omissions by FPL
7 that would constitute violations of FEECA or the 2014
8 DSM goals order, if proven. Accordingly, FPL's motion
9 to dismiss should be granted consistent with staff's
10 recommendation. Thank you.

11 **CHAIRMAN GRAHAM:** Okay. Commissioners, any
12 questions of staff, any of the private citizens, or FPL?

13 I'll entertain a motion. Commissioner Edgar.

14 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.
15 Due to your kindness, grace, I'm not sure what word to
16 use, I am the Prehearing Officer on this case, so I have
17 been familiar with it for quite a while and had the
18 opportunity prior to the item coming before us to review
19 some of the preliminary requests and information. It's
20 certainly clear from the comments that we've heard from
21 the two customers today, and it was also very clear to
22 me on the preliminary information filed, that their
23 frustration with the process is quite clear, is quite
24 real, and I believe there is some basis for that. FPL
25 has acknowledged that apparently there were some

1 problems. Unfortunately, problems do occur with
2 implementing and processing new programs and the
3 dependence on new technologies. I still have
4 intermittent Internet service at my house, which I find
5 frustrating on an almost daily basis. However, there is
6 nothing that has been submitted to us or in my
7 discussions with staff that seems to go -- that appears
8 to go beyond that fact of technological difficulties and
9 the attempt to remedy them in the best way possible at
10 the time.

11 So with all of that in mind, I would move that
12 we approve the staff recommendation, recognizing that it
13 is without prejudice, and that if the complainants want
14 to continue to pursue this, we certainly would be open
15 to additional information within the time frames
16 included in the item.

17 **COMMISSIONER BROWN:** Second.

18 **CHAIRMAN GRAHAM:** It's been moved and
19 seconded. Any further discussion?

20 I have to chime in here a little. I remember
21 when this happened. I know the newspapers covered it.
22 And it was unfortunate. And I know the company
23 recognized that there was a mistake made, and a week
24 later they attempted to remedy the mistake and offer
25 another \$4 million, I think it was. And there was

1 computer -- a computer glitch there as well. But I have
2 to say -- and I heard somebody give the analogy the
3 other day, there's such limited funds that's there that
4 everybody is trying to get on the computer at the same
5 time and it gets overwhelmed. And it's almost like
6 trying to go to Ticketmaster and trying to get the
7 ticket, and some people get through and some people are
8 able to take advantage of it and some people do not.
9 And I think this is a scenario where even though there
10 were glitches, that this is -- this is something that
11 was out there that's not guaranteed to everybody and
12 it's -- I don't think there's anything that the utility
13 did on purpose to -- for this to happen, and I applaud
14 them for coming back yet the second time for trying to
15 remedy the problem.

16 That being said, we are not closing the door
17 on this issue. This is without prejudice, so the
18 applicants, they can come and file again or do whatever
19 legal ramification they want to go from this point.

20 So that all being said, we have a motion and
21 it's been seconded. And if there's no further
22 discussion, all in favor, say aye.

23 (Vote taken.)

24 Any opposed? By your action, you've approved
25 the staff recommendation on Item No. 3. Thank you very

1 much.

2 (Agenda item concluded.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON) : CERTIFICATE OF REPORTER

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4 I, LINDA BOLES, CRR, RPR, Official Commission
5 Reporter, do hereby certify that the foregoing
6 proceeding was heard at the time and place herein
7 stated.

8 IT IS FURTHER CERTIFIED that I
9 stenographically reported the said proceedings; that the
10 same has been transcribed under my direct supervision;
11 and that this transcript constitutes a true
12 transcription of my notes of said proceedings.

13 I FURTHER CERTIFY that I am not a relative,
14 employee, attorney or counsel of any of the parties, nor
15 am I a relative or employee of any of the parties'
16 attorney or counsel connected with the action, nor am I
17 financially interested in the action.

18 DATED THIS 22nd day of October, 2015.

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