

Marguerite McLean

100312-EI

From: Goorland, Scott [Scott.Goorland@fpl.com]
Sent: Friday, October 29, 2010 3:55 PM
To: Filings@psc.state.fl.us
Subject: Electronic Filing / Docket 100312-EI / FPL's Response to Emergency Notice about 10/26/10 Regular Agenda
Attachments: 10 29 10 FPL Reply to Emergency Notice.pdf

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket No. 100312-EI

In re: Complaint against Florida Power & Light Company for alleged violations of various sections of Florida Administrative Code, Florida Statutes, and FPL tariffs pertaining to billing of charges and collection of charges, fees, and taxes

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

d. There are a total of 4 pages in the attached document.

e. The document attached for electronic filing is Power & Light Company's Response to Petitioner's Emergency Notice About 10/26/10 Regular Agenda

Thank you for your attention and cooperation to this request.

Scott A. Goorland
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10/29/2010

DOCUMENTAL MDP - DATE
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 FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint against Florida Power & Light)
Company for alleged violations of various) Docket No. 100312-EI
sections of Florida Administrative Code, Florida)
Statutes, and FPL tariffs pertaining to billing of) Filed: October 29, 2010
charges and collection of charges, fees, and taxes)

**FLORIDA POWER AND LIGHT COMPANY’S RESPONSE TO PETITIONER’S
EMERGENCY NOTICE ABOUT 10/26/10 REGULAR AGENDA**

Florida Power & Light Company, Inc., (“FPL”) hereby responds to Petitioner’s¹ “Emergency Notice About 10/26/10 Regular Agenda” (the “Emergency Notice”) in this docket, and states:

BACKGROUND

On May 28, 2010, Petitioner filed a complaint alleging that FPL should not collect charges, fees, and taxes through its electric bills (the “Complaint”). On June 28, 2010, FPL filed its Motion to Dismiss Petitioner’s Complaint, based upon the failure of the Complaint to meet the pleading requirements of Florida law, including the failure to state a cause of action for which relief could be granted, as well as vagueness. On September 30, 2010, Staff issued a recommendation that the Complaint be dismissed with prejudice.. The Commission was originally scheduled to consider the Staff recommendation at its October 12, 2010 Agenda Conference. However, on October 6, 2010, Petitioner filed a “Motion to Suspend 10/12/10 Regular Agenda Pending Clarification.” On October 8, FPL filed a response to Petitioner’s October 12 Motion, agreeing to defer this matter to the October 26, 2010 Agenda Conference. In so agreeing, FPL stated that “a deferral should not serve as an opportunity for Petitioner to file any

¹ The Petitioner has requested confidentiality in this docket. FPL has agreed as a courtesy in this docket simply to refer to “Petitioner”, and to redact Petitioner’s name where appropriate.

further substantive comments or a reply to Staff's Recommendation, which is not permitted by the Commission's rules and would be procedurally improper and prejudicial."²

On October 22, 2010, Petitioner filed an "Emergency Notice About 10/26/10 Regular Agenda." As further discussed below, Petitioner's Notice is nothing more than a reply to the Staff Recommendation, attempting to insert substantive comments into the docket after the issuance of the Staff Recommendation.

PETITIONER'S "EMERGENCY NOTICE" IS PROCEDURALLY IMPROPER AND FURSTRATES THE PROCESS AT THE COMMISSION

In addition to being factually and legally incorrect, the Emergency Notice offers improper substantive comments on the Staff Recommendation. Petitioner states, in the second sentence of the Emergency Motion, that "[t]his communication is intended to shed light on flawed elements of Memorandum . . .," referring to the Staff Recommendation. Petitioner inserts legal arguments in support of her position, as well as attacking the "psychological tone" of the Staff Recommendation.³

Rule 28-106.204, Florida Rules of Administrative Procedure, provides that parties may only respond to motions within 7 days of the Motion. Thereafter, pursuant to existing Commission processes, Commission Staff issues a Staff Recommendation on the Motion, which is then decided on by a pre-hearing officer or the Commission. There is no opportunity between

² Separately, on September 2, 2010, FPL filed a Verified Motion to Disqualify Commissioner Skop in all FPL dockets before the Commission. On September 8, 2010, FPL filed a Petition for Writ of Prohibition seeking to prohibit Commissioner Skop from participating in Docket No. 10009-EI. On September 16, 2010, Commissioner Skop issued Order PSC-10-0573-PCO-EI declining recusal. On September 22, 2010, in this docket, FPL filed notification that FPL's September 2, 2010 Verified Motion applies to this docket as well. On September 23, 2010, the Court issued an order expanding FPL's prohibition request to all existing dockets before the Commission. FPL's Petition for Writ of Prohibition remains pending with the Court as of this filing.

³ Petitioner also incorrectly asserts that "FPL reversed its position about involvement by Commissioner Skop," as well as "with no adverse comments by FPL about other issues Petitioner raised, there appears to be agreement that 1. Memorandum fails to meet Standard of Review, and 2. Staff Analysis shows contradictions." Neither of these claims could be further from the truth. FPL's Petition with the First District Court of Appeals remains active, and FPL has never agreed to the statements made by Petitioner.

issuance of the Staff Recommendation and the final ruling for replies to the Staff Recommendation or for comments by any party. Petitioner's comments in effect are an attempt to address the matters of the motion outside the given time frames under the procedural rules.

Furthermore, should the Petitioner (or any other interested person) wish to provide comments, the Commission may permit such comments at the Agenda Conference. That was what the Commission contemplated for the October 12 Agenda Conference before this matter was deferred, and FPL expects that the same opportunity will be provided when the matter is ultimately rescheduled for decision. That opportunity to speak to the Commissioners on a matter is the appropriate means of commenting on a Staff recommendation, not the filing of written comments as the Petitioner has done here. To permit the filing of written comments on the Staff Recommendation would completely frustrate this process. Opposing parties would necessarily want to respond to the comments, with the commenting party perhaps then seeking to reply to those responses. There would be no clear stopping point, at which the Staff and Commissioners could properly take stock of a matter's status in preparation for the Agenda Conference. This would be inefficient and confuse rather than clarify the decision process.


Respectfully submitted this 29th day of October, 2010.

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By: /s/Scott A. Goorland
Scott A. Goorland
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CERTIFICATE OF SERVICE
Docket No. 100312-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic delivery or UPS overnight delivery this 29th day of October, 2010, to the following:

| | |
|--|---|
| <p>Lisa Bennett, Esq. Division of Legal Services Florida Public Service Commission 2540 Shumard Oak Blvd Tallahassee, Florida 32399-0850 <u>LBENNETT@PSC.STATE.FL.US</u></p> | <p>Adam Teitzman, Esq. Lawrence Harris, Esq. Office of Public Counsel c/o The Florida Legislature 111 West Madison Street, Room 812 Tallahassee, Florida 32399 <u>ateitzma@psc.state.fl.us</u> <u>lharris@psc.state.fl.us</u></p> |
| <p>Connie Kummer Division of Economic Regulation 2540 Shumard Oak Blvd Tallahassee, Florida 32399-0850 <u>ckummer@psc.state.fl.us</u></p> |  |

By: /s/Scott A. Goorland
Scott A. Goorland
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*Petitioners name and address redacted per request of the Petitioner in this docket