




Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

DATE: September 2, 2009
TO: Matthew M. Carter II, Chairman
FROM:  Steven J. Stolting, Inspector General
RE: Review of SGA Director's attendance at FPL employee's social function
(OIG #09/10-15)

On August 24th, 2009, you requested that my office review the facts and circumstances of the Director of the Office of Strategic Analysis and Governmental Affairs (SGA), Mr. Ryder Rudd, attending a party held at the home of an executive of Florida Power and Light Company (FPL). It has been alleged that this attendance was improper and could result in acceptance of a prohibited gift from a regulated entity as well as in prohibited communications regarding matters before the Commission. This review was requested to permit the Commission to assess the validity and implications of the allegation and take any further actions warranted.

To assess this situation, we conducted interviews with Mr. Rudd and other Commission managers and staff as necessary, and reviewed Commission documentation and policies relevant to the inquiry. We also made inquiries of other persons where necessary to corroborate information obtained. We reviewed Commission rules and policies governing interaction with regulated companies, including Rule 25-21.050 FAC, generally prohibiting Commission employees from accepting gifts from regulated entities or their representatives, and Rule 25-22.033, FAC, which governs communications between Commission employees and parties with an interest in Commission proceedings. We also reviewed state statutes governing gift restrictions and reporting, and unauthorized compensation, including Sections 112.313(2) and (4), Florida Statutes.

Mr. Rudd, as Director of SGA, has a staff of 28 employees, and has served as Director since his hire at the Commission on September 12, 2007. According to the *Statement of Agency Organization and Operations (August 2009)*, SGA is "responsible for the Commission's long range program planning, including the critical assessment of the evolving utility industries and developing regulatory strategies which provide the greatest benefit to Florida's citizens. SGA analyzes new and emerging program initiatives and coordinates Commission completion of legislatively mandated studies and special projects.....SGA maintains official liaison with the Florida Legislature on all matters affecting the Commission's program areas and serves as a liaison with the Executive Office of the Governor, federal regulatory agencies, and other state agencies."

According to Commission management, SGA staff are also assigned to docketed matters coming before the Commission. These assignments have occurred since an agency reorganization implemented in July 2008. At the time of the party at issue, in May 2009, SGA staff were assigned to assist with two docketed matters which primarily involved petitions by FPL. One concerned FPL's request to construct a natural gas pipeline, and the other involved a request for a general (base) rate increase. Based on Commission documentation and statements by management, SGA staff members were assigned as the lead staff for the pipeline docket, which was initiated on April 7, 2009, and as collateral, or secondary, staff on the rate case, which was initiated on November 17, 2008. Mr. Rudd was not personally assigned to either docket.

According to Mr. Rudd, Mr. Edward Tancer, an executive with FPL, invited him to attend a party to be held May 2, 2009, at Tancer's home in Palm Beach Gardens, Florida. Mr. Rudd said this invitation was conveyed orally and in person. Mr. Rudd said that he did not immediately decide to attend the party, but later elected to attend because he and his wife intended to be in South Florida during that period on vacation. Mr. Rudd stated that he felt that attendance would be beneficial for the Commission's interests, and would allow him to gather information concerning Commission issues.

Mr. Rudd said that he and his wife attended the party, which was billed as a "Kentucky Derby Party." He said he and his wife stayed about one and one-half hours, during which he was introduced to FPL and non-FPL affiliated persons. He said it was a large party, consisting of approximately 300 people. He stated that he was not aware of any other Commission employees being in attendance. Mr. Rudd said that he did not discuss any pending docket matters or regulatory issues with anyone at the party. He said that he spoke generally with some guests about the difficulty of the just-concluded legislative session and the fact that FPL would continue to advocate their position in the Legislature on renewable energy issues. He said that he and his wife consumed food and drink provided at the party.

Mr. Rudd stated that he and his wife left the party and went to dinner at a restaurant and back to their hotel. He stated that the next day, he contacted Mr. Tancer and arranged to meet him to provide a payment of \$50.00 as compensation for food and drink he and his wife consumed at the party the previous day. He said he would have made the payment the day of the party, but the opportunity did not present itself. According to Mr. Rudd, the payment was made in cash, and no receipt or other documentation was created.

Mr. Rudd said that, as the legislative liaison and registered lobbyist for the Commission, he has at times attended social functions or met in social settings to discuss legislative issues with representatives of regulated companies, consumer groups, or other entities. He said he felt that these events were incident to and a part of his duties to obtain information to assist the Commission. He stated that at no time during these events did he accept food, drink, or other gifts from regulated companies or their representatives.

Mr. Rudd said that in hindsight he felt his attendance at the party was not a good decision. He said that this was especially true due to the assignment of regulatory responsibilities over docketed matters involving FPL to his office. He stated that he has had no direct role in the FPL

rate case, although he has had direct involvement in meetings concerning the FPL pipeline docket.

We also spoke with Mr. Edward Tancer, the FPL executive who hosted the party. Mr. Tancer said that he had gotten to know Mr. Rudd through the legislative process, and considered him a friend. He invited Mr. Rudd to a party at his home that was a personal gathering and at his personal expense, and included both FPL and non-FPL attendees. He said that to his recollection, there were no other Commission employees in attendance. He stated that he recalled speaking with Mr. Rudd briefly, but that the party was very large, in excess of 250 guests, and Mr. Rudd did not stay at the party very long. He said that Mr. Rudd contacted him subsequent to the party, and paid him \$50 in cash to cover any expenses for food and drink provided by Mr. Tancer. He said that this amount was more than sufficient for any such expenses. Mr. Tancer stressed that his duties at FPL involved governmental affairs and legislative issues, and that his FPL duties did not involve him in any Commission regulatory issues such as the rate or pipeline dockets. He said any conversations he has had with Mr. Rudd have involved legislative issues such as renewable energy.

Subsequent to initiation of our review, Commission management notified Mr. Rudd that he was removed from any involvement in pending FPL dockets. In addition, for any issues related to those dockets, any SGA staff working on those matters were to report to a different director until further notice.

In our review of Commission rules and policies, we identified no written prohibition on attendance by Commission staff at social functions involving representatives of regulated companies. We also determined that there are no written Commission policies governing reimbursement by a Commission employee to a regulated company for situations when food, drink, or other benefit is accepted by the employee. According to Commission management, if such an instance were to occur, Commission practice is that reimbursement to the company by the Commission employee should be made due to the policy prohibiting acceptance of gifts.

Conclusions: We concluded that Mr. Rudd attended a social function at the home of an FPL executive and accepted food and drink from a representative of an entity regulated by the Commission which was at that time a party to Commission proceedings involving Mr. Rudd or staff supervised by him. We also concluded that communication occurred between Mr. Rudd and representatives of FPL.

We could not conclude whether reimbursement occurred for the food or drink consumed. We also could not conclude regarding the nature of communication which occurred at the party or whether it concerned regulatory or docketed matters.

We concluded that attendance by Mr. Rudd at the party, although not specifically prohibited by law or rule, constituted poor judgment and could create negative perceptions given the pendency of FPL docketed matters for which Mr. Rudd and his staff had responsibility. In addition, it presented circumstances which could result in violations of administrative rules restricting

communication between Commission staff and parties to docketed proceedings and prohibiting acceptance of gifts by Commission staff.

Recommendation: Based on the above facts and conclusions, we **recommend** that Commission management, in consultation with the Office of General Counsel, evaluate the documented conduct in light of Commission law, rules, or policy and take disciplinary or other corrective action as warranted.

cc: Commissioner Lisa Polak Edgar
Commissioner Katrina J. McMurrian
Commissioner Nancy Argenziano
Commissioner Nathan A. Skop
Mary A. Bane
Charles Hill
Booter Imhof