

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: June 25, 2010
TO: Ann Cole, Commission Clerk, Office of Commission Clerk
FROM: Timothy J. Devlin, Executive Director *TJD*
RE: Docket #080677 - Response to Anonymous Letters

Ann,

Please place the attached letters in the above referenced docket file for Florida Power & Light. If you have any questions, please contact me at ext. 36400.

Thank you.

DOCUMENT NUMBER-DATE
05271 JUN 25 2010
FPSC-COMMISSION CLERK

COMMISSIONERS:
NANCY ARGENZIANO, CHAIRMAN
LISA POLAK EDGAR
NATHAN A. SKOP

STATE OF FLORIDA



EXECUTIVE DIRECTOR
TIMOTHY J. DEVLIN
(850) 413-6068

Public Service Commission

June 25, 2010

Dear Chairman Argenziano:

Re: Your June 22, 2010 letter regarding Allegations from "FPL Employees Seeking a Better Company"

I am in receipt of your June 22, 2010, letter and would like to offer the following comments.

The first FPL employee letter that came to my attention was received in December 2009, and related to the ratemaking treatment afforded wind production tax credits earned by a nonregulated affiliate of FPL Group. Since there was a certain level of specificity associated with this allegation, I initiated an investigation. Attached are the results of that investigation.

Afterwards, two additional letters dated January 20, 2010, and February 3, 2010, purportedly from FPL employees to FPL Group Chairman Lew Hay, were received by the Commission. Generally, these letters allege certain mismanagement practices of upper FPL management including FPL's filing of misleading or false information in the recent FPL rate case and conservation dockets. I am also aware of a fourth letter dated August 20, 2009, alleging irregularities with FPL's handling of energy efficiency initiatives.

It is very difficult to investigate general allegations from anonymous sources. After consulting with our General Counsel, Mr. Curt Kiser, it was decided to refer these letters to the Florida Department of Law Enforcement (FDLE) since they would be better able to protect the identities of the anonymous complainants and therefore, would probably be able to conduct a more thorough investigation. We referred these letters to FDLE in February 2010.

On June 15, 2010, we were copied on another letter from "FPL Employees Seeking a Better Company." This addressed many of the same concerns expressed in the earlier letters.

You asked about "procedural safeguards, investigatory tools, and other methods available and/or utilized by the Public Service Commission to address concerns raised in the relevant letters." Generally, the Public Service Commission staff uses several regulatory safeguards to help ensure that information provided in dockets is accurate and can be relied upon by commissioners for decision-making. In most dockets, the Office of Auditing and Performance Analysis is requested to conduct independent audits of certain filed information. Technical staff, in concert with Legal staff, conducts discovery (interrogatories, depositions, production of documents, etc.) in an effort to validate and ensure only reasonable and prudent costs are recoverable from

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ratepayers. In the controversial dockets, there are other parties such as the Office of Public Counsel that conduct additional independent analysis increasing the scrutiny given the information the Commissions uses in making decisions.

The following addresses the four specific issues you identified:

- 1) **The “selective, self-serving and inaccurate information” was provided in dockets and filings.** We conduct our own independent analysis of information provided in dockets and many times include an audit tailored to the specific filing. We follow up on any allegation of improper behavior. The extent of any follow-up is dependent on level of specificity in the allegation. The anonymous letters did not specify what information is inaccurate.
- 2) **That FPL used tax attributes inappropriately.** I believe that FPL properly accounted for the tax attributes. The issue of considering components of the consolidated tax return of nonregulated operations in the calculation of income taxes for ratemaking purposes has been at issue before. The Commission has consistently found that income taxes for ratemaking purposes should be based on regulated operations. To consider gains, losses, tax credits, or other factors from nonregulated operations in the calculation of regulated income taxes would result in cross subsidization between regulated and nonregulated operations. As I mentioned earlier, attached is staff’s analysis of the complaint regarding Production Tax Credits earned by Next Era.
- 3) **That FPL has not disclosed “real numbers” of its “excess generation capacity.”** The evaluation of generation capacity is evaluated in different venues including Need Determination cases for individual generating units and the Commission’s Ten Year Site Plan Review. Because of the downturn in the economy, FPL recently informed us of its plans to temporarily remove some older, less efficient plants from service. Also, the planned new nuclear units have been deferred. Staff believes that FPL has disclosed its “excess” generating capacity and is taking steps to mitigate the costs of its expected temporary surplus. The best place to address questions about disclosure of “Excess Capacity” is at the Ten Year Site Plan workshop scheduled for August 5, 2010.
- 4) **That FPL has two separate budgets, and that the regulatory budget may present misleading picture to regulators.** The evaluation of budgeted information presents different challenges for the Commission than does the evaluation of actual or historic information. The utility has more latitude in developing budgeted information. For instance, unlike historic accounting information, budgeted information is not subject to Generally Accepted Accounting Principles and an independent audit. FPL uses a zero based budget process. It does not surprise me if budgets of certain cost centers are changed by upper management through the review process. This is typical in any organization including ours. Most importantly, staff and interveners use various tools to test the reasonableness of budgeted information including trend analysis. In the FPL rate

Chairman Argenziano

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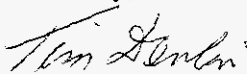
June 25, 2010

case, staff evaluated 5 years of historical O&M data, and the year prior to the projected test year, to test the reasonableness of the projected test year data. This helps ensure that the commissioners have competent, substantial evidence to base their decisions. Also, the last FPL rate case was filed in March 2009. The new rates were put into effect in early 2010 based upon a projected 2010 budget. At the time of filing, FPL would not have even completed its 2010 internal operating budget.

I recommend that we wait for the conclusion on the FDLE investigation before deciding what action, if any, is warranted. I, along with Steve Stolting and Marshall Willis, met with FDLE on June 22, 2010. Based on this meeting, I believe that we should see something from FDLE in the near term future.

If you have any further questions, please let me know.

Sincerely,



Tim Devlin

Attachment

C: Commissioner Edgar
Commissioner Skop
Curt Kiser
Ann Cole



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

DATE: June 23, 2010
TO: Marshall Willis, Director, Division of Economic Regulation
FROM: Natalia Salnova, Regulatory Analyst, Division of Economic Regulation NS
RE: Analysis of Allegations Raised in Anonymous Letter Related to Florida Power & Light Company, NextEra Energy Resources, and FPL Group, Inc.

On January 4, 2010, the Florida Public Service Commission (Commission) received an anonymous letter regarding tax implications for certain Production Tax Credits (PTCs) generated by NextEra Energy Resources, LLC (NextEra). The issue is whether tax benefits related to PTCs generated by a non-regulated affiliated entity, in this case NextEra, and utilized by the parent company (FPL Group, Inc. or FPL Group, now known as NextEra Energy, Inc. or NEE) on a consolidated basis should be recognized in the determination of the income tax expense for a regulated affiliate (Florida Power & Light Company or FPL) for regulatory purposes. Commission staff conducted an investigation and has performed a thorough analysis of the issue. Staff believes that FPL is in compliance with regulatory requirements with respect to FPL Group's treatment of the PTCs.

As stated in the anonymous letter to the Commission, "3 current senior level management employees of Next Era Energy Resources" raised a concern of improper treatment of NextEra's PTCs by FPL. The issue of whether FPL's income tax expense should be computed based on the statutory tax rate applicable to FPL or the effective tax rate for the consolidated entity has been raised previously on at least two occasions. Although it was not identified as a specific issue in the case, the question of whether a regulated company should use the statutory tax rate of the regulated entity or the effective tax rate of the consolidated entity for ratemaking purposes was discussed during the 2006 storm damage cost recovery hearing for FPL. The statutory tax rate for FPL was used for purposes of the storm damage cost recovery proceeding.¹ This same issue was raised again later in 2006 in a lawsuit filed by Extraordinary Title Services, LLC against FPL and FPL Group.² This latter case was dismissed, brought back on appeal, and ultimately dismissed again.

Staff requested FPL produce information regarding this issue through staff Data Requests dated January 12, 2010 and March 4, 2010. Staff reviewed the Company's responses and FPL

¹ Order No. PSC-06-0464-FOF-EI, issued May 30, 2006, in Docket No. 060038-EI, In re: Petition for issuance of a storm recovery financing order, by Florida Power & Light Company.

² Extraordinary Title Services, LLC, v. Florida Power & Light Company and FPL Group, Inc., 1So.3d 400 (Fla. 3rd DCA 2009)

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Group's tax-sharing agreement.³ The tax-sharing agreement, effective January 1, 2003, provides the principles for allocating the consolidated federal income tax liability and combined state tax liability by and among FPL Group. According to FPL's response to the March 4 Data Request, the tax liability recorded by each subsidiary of FPL Group, including FPL, is calculated on a stand alone basis, or the "separate return" method. This treatment is consistent with the tax-sharing agreement. Thus, the tax liability and charges to customers for the tax liability are the same regardless of whether FPL is filing individually or as part of a consolidated tax return. Tax benefits, if any, in excess of those that could be used by a subsidiary on a separate return basis are utilized on the consolidated tax return and recorded by the subsidiary that generated the tax benefits.

The approach used by FPL is consistent with standard cost of service ratemaking principles. Under the cost of service approach to ratemaking, rates charged for regulated services shall not be affected by the results of non-regulated operations. Thus, consumers shall bear the prudent costs of providing regulated services and shall be entitled to the tax benefits derived from regulated operations. As intended by Congress, tax credits are a measure of economic incentive to offset the risks and other economic considerations related to investments in targeted projects. The benefits of PTCs are intended to be utilized by the entity making investments in eligible renewable energy projects. Consistent with the cost of service principle of ratemaking, the PTCs generated by NextEra's investments are attributable to NextEra and accounted for as if the company were a separate legal and economic entity. The same logic applies to Investment Tax Credits (ITCs) generated by FPL's investments in solar energy projects. For the same reasons that it would be inappropriate to apply the benefit of ITCs associated with the solar energy investments made by FPL to NextEra, it would be equally inappropriate to apply the benefit of PTCs generated by the wind-energy investments made by NextEra to FPL.

Generally Accepted Accounting Principles (GAAP) require an allocation of the consolidated amount of current and deferred tax expense for a group that files a consolidated tax return among the members of the group when those members issue separate financial statements. The method adopted shall be systematic, rational, and consistent with the broad accounting for income tax principles established by Subtopic 740-10.⁴ The methods that are inconsistent with the principles of this Subtopic include methods that a) allocate only current taxes payable to a member of a group that has taxable temporary differences, b) allocate deferred taxes using a method that is fundamentally different than the asset and liability method prescribed by this Subtopic, or c) allocate no current or deferred tax expense to a member of the group that has taxable income because the consolidated group has no current or deferred tax expense. (FASB

³ Amended and Restated Income Tax Allocation Agreement, effective as of January 1, 2003, by and among FPL Group, Inc. ("FPL Group" or "Parent"), a Florida corporation, and each Affiliate.

⁴ Allocation of Consolidated Tax Expense to Separate Financial Statements of Members, FASB ASC 740-10-30-27 (Paragraph 740-10-30-27 of the Financial Accounting Standards Board Accounting Standards Codification). The Codification is the single source of authoritative nongovernmental U.S. generally accepted accounting principles (US GAAP) effective for interim and annual periods ending after September 15, 2009. Cross Reference: Accounting for Income Taxes, Statement of Financial Accounting Standards No. 109, paragraph 40 (Financial Accounting Standards Board, 1992)

ASC 740-10-30-28)⁵ The separate return method meets the criteria of Subtopic 740-10 as this method allocates current and deferred taxes to each member of the group as if it were a separate taxpayer and thus is the preferred GAAP and SEC method. Moreover, the Subtopic acknowledges that the sum of the amounts allocated to individual members of the group when the separate return method is used may not equal the consolidated amount. The criteria are satisfied, nevertheless, after standard reconciling adjustments normally present in the preparation of consolidated financial statements are considered.

Deloitte & Touche LLP has audited the consolidated financial statements of FPL Group, Inc. and Subsidiaries and the separate financial statements of FPL as of and for the years ended December 31, 2007, 2008, and 2009. The certified public accounting firm has also audited FPL Group's and FPL's internal control over financial reporting for the aforementioned years. According to the reports issued by the independent auditor, FPL Group's and FPL's audited consolidated statements are presented fairly, in all material respects, and in conformity with accounting principles generally accepted in the United States of America. In addition, in the opinion of Deloitte & Touche, FPL Group and FPL has maintained, in all material respects, effective internal control over financial reporting as of December 31, 2007, 2008, and 2009.

For the reasons discussed above, staff believes that the method of accounting for income tax expense and consolidated financial reporting used by FPL is consistent with Commission practice and is in compliance with GAAP requirements. The benefits associated with the PTCs generated by NextEra's wind energy investments and reflected in the consolidated tax return of FPL Group have been properly excluded from the computation of FPL's income tax expense.

⁵ Allocation of Consolidated Tax Expense to Separate Financial Statements of Members, FASB ASC 740-10-30-28 (Paragraph 740-10-30-28 of the Financial Accounting Standards Board Accounting Standards Codification). Cross Reference: Accounting for Income Taxes, Statement of Financial Accounting Standards No. 109, paragraph 40. (Financial Accounting Standards Board, 1992)

NANCY ARGENZIANO
CHAIRMAN

STATE OF FLORIDA



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Public Service Commission

June 22, 2010

Tim Devlin, Executive Director
Florida Public Service Commission

Re: Addressing Allegations from "FPL Employees Seeking a Better Company"

Dear Mr. Devlin:

I want to ensure that the Florida Public Service Commission is appropriately responding to allegations raised in letters from a self-identified group of FPL employees.

To that end, please reply as to the procedural safeguards, investigatory tools, and other methods available and/or utilized by the Public Service Commission to address concerns raised in the relevant letters. Among other pertinent issues, please specifically address the claims

- that "selective, self-serving and inaccurate information" was provided in dockets and filings;
- that FPL used tax attributes inappropriately;
- that FPL has not disclosed "the real numbers" of its "excess generation capacity";
- that FPL has two separate budgets, and that the regulatory budget may present a misleading picture to regulators.

Please also advise me as what further action may be appropriate; for example, whether the Commission should investigate or seek affidavits from FPL regarding the above.

I hope that you can assure me that the Florida Public Service Commission will continue to take appropriate action in this matter.

Best regards,

A handwritten signature in cursive script, appearing to read "Nancy Argenziano".

Nancy Argenziano
Chairman, Florida Public Service Commission

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