

**Diamond Williams**

**From:** [REDACTED]  
**Sent:** Friday, October 22, 2010 12:00 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** Larry Harris  
**Attachments:** 1026FPSC.docx

**REDACTED**

Attached is "1026FPSC" .doc file.

Efforts by Commission Staff to redact personal information from (internet) files are appreciated.

1. [REDACTED] used primarily for outgoing emails; 2. 100175-TL, 100312-EI, Motion to Suspend, and Emergency Notice about 10/26/10 Regular Agenda; 3. [REDACTED], 4. 6; 5. Petitioner addresses 10/14/10 flawed Memorandum and whether 10/26/10 Regular Agenda proceeds.

**REDACTED**

10/22/2010

DOCUMENT NUMBER-DATE

08810 OCT 22 09

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

COVER SHEET

---

DATE: October 22, 2010

TO: Ann Cole, Clerk  
Office of Commission Clerk

FROM: [REDACTED] *Petitioner*

RE: 10/26/10 Regular Agenda

---

SPECIAL REQUEST: May Office of Commission Clerk stamp upon receipt and immediately distribute the attached Emergency Notice et. al. and Motion to Suspend 10/26/10 Regular Agenda to all Commissioners, Staff authors of 10/14/10 Memorandum and all Parties in Dockets 100175-TL and 100312-EI.

These pleadings are not the same as 10/6 and 10/12 filings.

DOCUMENT NUMBER-DATE

08810 OCT 22 2010

FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

**EMERGENCY NOTICE ABOUT 10/26/10 REGULAR AGENDA**

**Complaint against AT&T et. al**

**Docket 100175-TL**

**Complaint against Florida Power and Light Company et. al**

**Docket 100312-EI**

Petitioner acknowledges 10/20/2010 receipt of October 14, 2010 Revised Staff Recommendations (Memorandum) that is yet uncorrected, and respectfully submits Emergency Notice about 10/26/2010 Regular Agenda. This communication is intended to shed light on flawed elements of Memorandum that Commissioners shall address them all and come to an impartial decision. This pleading and others are not to be perceived as efforts against Staff Recommendations rather they are attempts to work with Staff to erase miscommunication and misunderstanding.

On June 10, 2010 Catherine Beard and Larry Harris notified Petitioner that Commissioners prefer to address at a single hearing a Petitioner's complaints about similar issues; therefore Staff would present Dockets 100175-TL and 100312-EI dockets together at a hearing and make the recommendation that Commissioners decide whether Petitioner's complaints are to be affirmed.

On September 2, 2010 Respondent Florida Power and Light Company (FPL) moved to remove Commissioner Nathan Skop from participation in any FPL docket. On September 22, 2010 FPL specified its motion pertained also to Docket 100312-EI. On October 8, 2010 in its Response to Petitioner's Motion to Suspend 10/12/10 Regular Agenda Pending Clarification of the issues above, FPL reversed its position about involvement by Commissioner Skop with no basis for its sudden decision change. FPL is inaccurate regarding notice to Petitioner. Initial notice Petitioner received on October 4, 2010, about content of Staff's Recommendations and Commissioners' consideration of the Complaints, is not substantial notice.

DOCUMENT NUMBER-DATE

08810 OCT 22 09

FPSC-COMMISSION CLERK

FPL admits it is unaware of the factual inaccuracies in September 30, 2010 Commission Memorandum. Of the many Staff misstatements: Under Staff Analysis, Paragraph 1, page 6 “This Complaint is based upon Petitioner’s belief...”. Under Staff Analysis, Paragraph 1, page 11 “...Petitioner’s complaint is based in her belief ...” In fact Petitioner has repeatedly stated, including during conversation with Ms. Beard and Mr. Harris that Petitioner’s belief is not important rather Petitioner looks to the law.

Additionally the law does not state “Customers should be free from paying the tax obligations of AT&T...” Rather “ AT&T, and not the customer, is responsible ...”

Staff is in error. While Commissioners may choose to decide on the merits determining substantial interests, Petitioner seeks Declaratory Statement according to 120.565, F.S.


With careful reading of Memorandum and Motion to Suspend et. al Petitioner’s assertions and requests are clear. 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.

1. To draft Memorandum Staff chose words that set a psychological tone that would favor AT&T and FPL, i.e. use of positive words with AT&T and FPL to encourage support, and use of negative or neutral words with Petitioner’s arguments to combat them. Examples throughout Memorandum abound and form anchors for Staff analysis and accompanying federal code and statutory references:
  - a. Under Discussion of Issues, page 5, Motion to Dismiss, Staff states “In support thereof, AT&T advances the following arguments”.
  - b. Under Discussion of Issues, page 5, Petitioner’s Response, Staff states “In opposing AT&T’s Motion, Petitioner makes the following arguments”.
  - c. Under Discussion of Issues, page 9, Petitioner’s FPL Complaint, Staff states “Petitioner makes the following assertions”
  - d. Under Discussion of Issues, page 9, Motion to Dismiss, Staff states “FPL timely responded to the Complaint ... In support of its requested relief, FPL
  - e. Under Discussion of Issues, page 10, Petitioner’s Response, Staff states “Petitioner filed a Response in opposition...”

To consider the allegations in the light most favorable to Petitioner, redrafting of Memorandum and restatement of the issues is suggested as follows:

- a. Issue 1: Should AT&T's Motion to Dismiss be denied?
  - b. Issue 2: Should Florida Power and Light Company's Motion to Dismiss be denied?
  - c. Staff would equally remove all negative presumptions about Petitioner statements in the same manner that Staff removed certain observations for Respondents, e. g. Staff omitted that FPL Motion to Dismiss "is extremely similar" and "very closely mirrors" AT&T Motion to Dismiss.
  - d. Staff would elaborate on research it engaged into the substance of Petitioner's allegations, out of concern for circumstances.
2. Staff admits Commission jurisdiction under Sections 364 and 366, F.S. and that Commission lacks jurisdiction to interpret, enforce and otherwise determine federal and state law outside of aforementioned sections F.S. Staff then sets about in numerous paragraphs of Memorandum on pages, 7, 8, 11 & 12, elaborating on staff beliefs and opinions about federal and state law outside of Commission jurisdiction, in a manner least favorable to Petitioner.

Therefore, Petitioner seeks that, given fault with Memorandum, Commissioners order correction of it, that the matter shall be addressed with impartiality.

Oct. 22, 2010 By:  /s/   
*Petitioner*

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

Complaint against  
AT&T dba BellSouth et.al

Docket No. 100175-TL

Complaint against  
Florida Power and Light Company et.al

Docket No. 100312-EI

**PETITIONER'S MOTION TO SUSPEND**  
**10/26/10 REGULAR AGENDA PENDING CLARIFICATION (VIA ORDER)**

Petitioner moves to suspend October 26, 2010 Regular Agenda (Agenda) pending clarification via order about status of Docket No. 100312-EI with regard to Florida Power and Light Company (FPL) September 2, 2010 Verified Motion and FPL September 22, 2010 Notice, and resolution of the issues below.

On October 20, 2010 Commission Staff called Petitioner to notify of Agenda. Petitioner and Larry Harris agree that usually a motion is filed and an order is issued without hearing. This circumstance appears to be special. No Commissioners' order has been issued about Motion to Suspend, a hearing is scheduled and this inaction and action appear to show prejudice; plus Petitioner, a couple, is unable to attend Regular Agenda.

On June 10, 2010 Catherine Beard and Larry Harris via phone call advised Petitioner that Commissioners view Staff recommendations to decide on issues at a hearing.

On October 1, 2010 Petitioner via phone call with Ms. Beard inquired about the status of Docket No. 100312-EI given Florida Power and Light Company (FPL) September 2, 2010 Verified Motion and FPL September 22, 2010 Notice. Commission has issued no order about the matter as it pertains to Docket 100312-EI. Ms. Beard was unable to determine the status of Docket, and no Commission staff has since called or otherwise contacted Petitioner about conclusion of conflict as it relates to this Docket.

On October 4, 2010 Petitioner received copy of September 30, 2010 Staff recommendation and revised October 14, 2010 Memorandum offers no corrections.

08810 OCT 22 2010

FPSC-COMMISSION CLERK

10/26/10 scheduled date of Agenda suggests confusion and seems rash given no resolution to conflict about Docket No. 100312-EI and other dockets about FPL. Plus District Court of Appeals' position is unclear, without its decision about FPL.

Also, October 14, 2010 Memorandum is factually inaccurate, contradictory in its Staff Analysis and fails to meet Standard of Review whereby Commission is required to "assume all of the allegations of the complaint to be true ... and consider the allegations in the light most favorable to the petitioner ..."

It would be impossible for Commissioners to be impartial at a hearing where the flawed Memorandum would be the basis of a decision that is least favorable to Petitioner.

Therefore, Petitioner moves for resolution of issues addressed in this Motion and clarification via Order about FPL and Commission conflict, and confusion in Memorandum

Oct. 22, 2010 By:  /s/ 

*Petitioner*