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October 29, 2010

**- VIA HAND DELIVERY-**

Ann Cole, Director  
Division of Clerk and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

**Re: Docket No. 100077-EI  
Investigation of the appropriateness of the affiliate product offerings to  
Florida Power & Light customers**

Dear Ms. Cole:

This letter is Florida Power & Light Company's ("FPL's") written response to the final audit report dated October 11, 2010 (Audit Control No. 10-207-4-1) (the "Audit Report"), which is the product of an extensive audit of FPL's dealings with its affiliate companies. FPL accepts the invitation to file a response to the Audit Report in order to clarify and address certain aspects of the Audit Report. FPL notes that these FPLES offerings have been in place for a number of years, and these same activities have been previously audited by the Florida Public Service Commission ("FPSC" or "Commission").

**Audit Finding No. 1:**

Audit Finding No. 1 relates to how FPL representatives handle call transfers to FPLES. Staff notes that "[t]he FPL representative does not mention that they will be offered some products or services until after the customer is transferred." As indicated in the Audit Finding, after the FPLES representative provides the customer their FPL confirmation number "the FPLES representative asks if they may provide information on FPLES' move related services." Therefore, before anyone is offered FPLES' move-related services and product offerings, the representative asks the customer for permission to do so.

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Audit Finding No. 1 also indicates that FPLES receives confidential customer information from FPL, such as the customer name, address and phone number. By sharing this information, the FPLES representative is able to provide confirmation of the FPL service order to the customer. This process provides a benefit to FPL, reducing FPL's call handle time and costs associated with the FPL service connection.

FPL takes the privacy of customer information very seriously, and the Company's process ensures appropriate steps are taken to protect confidential information. Each FPLES customer service representative who views the customer information has signed a confidentiality agreement that includes provisions which allow employees to view this type of information on a confidential basis. A copy of this confidentiality agreement was provided to Audit Staff in response to Audit Request No. 5. In addition, FPL and FPLES employees are required to safeguard the confidentiality of customer information in accordance with the Code of Conduct that applies to all NextEra Energy Inc. employees, a copy of which was provided to Audit Staff also in response to Audit Request No. 5. Moreover, as described in detail in response to Audit Request No. 5, FPLES only uses the confidential customer information for purposes of confirming the customer's connect service order. Once the confirmation process is completed, the FPLES representative must obtain the customer's permission before offering FPLES move-related services, as described above. If the customer declines to hear the FPLES offer, the call is completed and all that is retained is a record that the customer declined the offer. If the customer hears the offer and agrees to purchase an FPLES service, upon completion of the sale as authorized by the customer, FPLES retains the customer's information that is necessary to fulfill the customer's specific order. Therefore, FPLES' policy is to retain this customer information only if the call results in a completed sale and, then, only the information that is needed to fulfill the sale is retained and used to complete the transaction. This practice is consistent with FPL's policy stated in confidentiality filings with the Commission of protecting the confidentiality of customer information unless there is customer consent.

**Audit Finding No. 2:**

Audit Finding No. 2 is focused on FPL Services, LLC ("FPL Services" or "FPLS") and the products and services offered by FPLS as they relate to those offered by FPL's non-regulated affiliate, FPLES. As indicated in response to Audit Request No. 56, FPL Services offers performance-contracting services to commercial customers located within FPL's service territory. FPLES markets similar services outside of FPL's service territory. These services are designed to increase the efficiency of the customers' facilities. These services are not services that FPL is required to provide as part of its regulated business, nor are such services essential to the provision of regulated electric service.

FPL would like to correct the statement in the Audit Finding, which indicates that FPL Services is a non-regulated subsidiary of FPL. As indicated in the response to Audit Request No. 56, while the performance-contracting services offered to commercial customers by FPL Services are non-tariffed, FPL Services is nonetheless subject to Commission jurisdiction in that all of the revenues and expenses of FPL Services are treated above-the-line and included in FPL's cost-of-service. Therefore, the statement that FPL Services "is a non-regulated subsidiary" of FPL is incorrect because its services are included for ratemaking and surveillance-reporting purposes. FPLES, on the other hand, is "non-regulated" under the definition contained in 25-6.1351(2)(g) because its revenues and expenses are booked to FPLES and its products and services are not subject to price regulation by the Commission.

In addition, Audit Finding No. 2 concludes that FPL Services' "handouts may be considered marketing material for FPLES since the only difference between the two companies is their service territory." FPL would like to clarify that although the two companies provide similar services, each company has its own marketing materials. As such, FPL's marketing materials are not used by FPLES.

### **Audit Finding No. 3:**

Audit Finding No. 3 states that FPL's costs should be reduced by approximately \$32,400 because FPL did not bill FPLES for the gas bill printing and payment processing costs in 2008 and the first month of 2009. FPL has made an adjustment to correct this error identified by Audit Staff.

### **Other Comments**

In addition to its comments on the individual Audit Findings above, FPL would like to address one statement in the "Objectives and Procedures" section of the Audit Report. On page 3, the Audit Report notes as follows:

Since FPL is supposed to charge FPLES the higher of cost or market, we attempted to find out what rates the FPLES call center charges other vendors for each completed sale so we could compare to what FPLES is paying FPL based on completed sales. FPL does not believe any comparison to market is appropriate and declined to provide these commissions.

FPL would like to clarify why it declined to provide the FPLES commission rates for completed sales that Staff requested for each of the companies that FPLES sells products for.

FPLES compensates FPL for the service FPL provides to FPLES, which is the transferring of the customer connect call to FPLES so that FPLES may offer the customer

move-related products and services. The compensation to FPL is based on FPL's fully allocated costs for 10 seconds of call time. However, the actual call transfer time data tracked by FPL indicates that the average call transfer time ranged from 3.4 to 5.7 seconds during the January to December 2009 time period. This time is less than the 10 seconds of time that is the basis of the current compensation paid by FPLES to FPL.

Compensation to FPL for the call transfer to FPLES is not comparable to the market-based commission rates received by FPLES from third-party vendors for completed sales because the services are not the same. In exchange for the fixed payment and service provided by FPLES to FPL, FPLES has the opportunity for *possible sales* to FPL customers. FPL is compensated for the call transfer regardless of whether a sale is made. On the other hand, commission rates received by FPLES are paid based on *actual completed sales*. If there is no sale, FPLES receives no commission.

The FPL call transfer is more analogous to purchasing a customer list from a non-affiliated third party. FPLES purchases lead information from other service providers, and the prices paid for each lead are less than the fully allocated costs for which FPLES reimburses FPL for each call transferred (lead). A comparison of the call transfer amounts paid to FPL as compared to the market price for purchasing a customer list is attached as an exhibit to this letter.

As described above, the compensation is based on FPL's fully allocated cost and not a market price. This method of compensation is appropriate and consistent with Rule 25-6.1351(3)(b), Florida Administrative Code, the Commission's "Affiliate Transaction Rule." A comparison to market is unnecessary because there is a benefit to regulated operations as a result of FPL providing this service to FPLES. As a result of the call transfer, FPLES confirms the customer's FPL connect service transaction. FPLES provides the customer a confirmation number (or their FPL Bill Account number), which allows the FPL customer to transact in the future with FPL as needed. FPL and its customers benefit from this arrangement because FPL would otherwise bear the costs associated with the additional call time spent confirming the customer's FPL connection. Further, even if one were to apply the higher of cost or market standard, which FPL believes should not apply under the Affiliate Transaction Rule, the transaction would satisfy the standard because the compensation to FPL for the costs of the call transfer is higher than the market price for purchasing a comparable customer lead, as described in Exhibit 1.

### **Conclusion**

FPL requests that the Commission consider the clarifications and corrections in response to the Audit Report that it has identified above as it evaluates whether any additional action is needed in this matter.

Ann Cole  
October 29, 2010  
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Thank you for the opportunity to provide this response.

Sincerely,



John T. Butler, Managing Attorney  
Florida Power & Light Company

Attachments

cc: Lisa Bennett, Senior Attorney, Florida Public Service Commission  
J.R. Kelly, Public Counsel, Office of Public Counsel

## **EXHIBIT 1**

### **FPLES Connect Services** **Market Price Comparison**

There is no correlation between FPLES' commission rates and FPL's call transfer costs. FPL provides FPLES potential lead information and is compensated for this service.

In 2010, FPLES engaged a vendor to generate a customer list identifying prospective Surgeshield customers. While FPLES paid for detailed modeling in addition to the basic lead list, the cost of generating the lead list of 200,000 prospects was \$4,000 or \$20 per 1,000 customers.

In 2009, FPLES compensated FPL the fully allocated costs associated with the call transfers, including loadings related to direct charge overhead rate. This compensation equated to a rate of approximately \$120.00 per 1,000 customers. Therefore, actual compensation received by FPL is higher than the market rate of \$20 per 1,000 customers paid by FPLES for a comparable customer list as described above.

If the PSC wishes to review the documentation supporting this purchase, FPLES can produce the vendor invoice displaying these rates for submission to the FPSC under confidential treatment since the pricing information and contractual terms are competitively sensitive.