

**Marguerite McLean**

100312-EI

**From:** Goorland, Scott [Scott.Goorland@fpl.com]  
**Sent:** Monday, February 14, 2011 4:30 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** Electronic Filing / Docket 100312-EI / FPL's Reply to Petitioner's Request for Reconsideration  
**Attachments:** 2 14 11 FPL Reply to [REDACTED] Request for Reconsideration.pdf

Electronic Filing

a. Person responsible for this electronic filing:

Scott A. Goorland, Esq.  
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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 Reply to Petitioner's Florida Power & Light Company's Response to Petitioner's Request for Reconsideration

Thank you for your attention and cooperation to this request.

Scott A. Goorland  
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 Florida Power & Light Company  
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DOCUMENT NUMBER-DATE

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2/14/2011

**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: February 14, 2010  
charges and collection of charges, fees, and taxes )

**FLORIDA POWER AND LIGHT'S REPLY TO PETITIONER'S REQUEST FOR RECONSIDERATION**

Florida Power & Light Company, Inc., ("FPL") hereby files, pursuant to Rule 25-22.0376, Florida Administrative Code, this Reply to Petitioner's<sup>1</sup> Request for Reconsideration in this docket. For the reasons set forth below, the Florida Public Service Commission ("Commission") should deny Petitioner's Request.

**I. INTRODUCTION**

On February 8, 2010, the Commission granted FPL's Motion to Dismiss Petitioner's Complaint in this proceeding, with prejudice. Later on that same day, Petitioner filed her "Notice and Request for Reconsideration," of the Commission's February 8 decision. Petitioner's Request for Reconsideration should be denied because it falls far short of the well established requirements that must be pled in a Request for Reconsideration.

**II. PETITIONER HAS NOT MET THE REQUIREMENTS FOR RECONSIDERATION**

The purpose of a petition for reconsideration is to bring to the attention of the trial court or, in this instance, the Commission, some point which it overlooked or failed to consider when it rendered its order in the first instance. It is not intended as a procedure for re-arguing the case merely because the losing party disagrees with the judgment or the order. *Diamond Cab Co. of*

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<sup>1</sup> At the request of the customer, FPL has redacted the name of the customer, and simply refers to the customer as the "Petitioner" in this pleading.

*Miami v. King*, 146 So.2d 889 (Fla. 1962). See also, *Pingree v. Quaintance*, 394 So.2d 161 (Fla. 1<sup>st</sup> DCA, 1981); and, *State ex rel. Jaytex Realty Co. v. Green*, 105 So.2d 817 (Fla. 1<sup>st</sup> DCA, 1958) (only in those instances in which such analysis leads to an honest conviction that reviewing court failed to consider a question of law or fact which, had it been considered, would require a different decision, that a petition for rehearing should be filed.)

The standard of review for a motion for reconsideration before the Commission is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its decision. *Re Progress Energy Florida, Inc.*, Docket No. 060658-EI, Order No. PSC-08-0136-FOF-EI, March 3, 2008.

Petitioner has not met the requirements for granting a Request for Reconsideration. Petitioner has not identified any fact or question of law which has been overlooked by the Commission, and which would have led to a different decision by the Commission. Petitioner's only allegation is that she was advised that "there would be opportunity for Petitioner to rebut comments by opposing Counsel. However, such opportunity to oppose inaccuracies stated was denied by Commission Chairman. Petitioner was not permitted a brief rebuttal so not heard fully according to law."

Petitioner was given full notice of the pending Commission decision at the Commission's Agenda Conference held on February 8, 2010. On January 6, 2010, Staff provided Petitioner with notice by mail of the Agenda, and not only encouraged her to speak, but arranged to provide her with a call in number. Petitioner did in fact call in, and fully participated in the Agenda Conference. At the Chairman's request, Petitioner spoke first, to present her position. After Petitioner spoke, the utilities were permitted to respond. A motion was made to approve Staff's Recommendation. Petitioner asked the Chairman for a chance to reply to the utilities'

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comments, but the Chairman denied her request, indicating that the motion had already been made. Petitioner is now simply re-arguing that she should be given a chance to make reply comments. Petitioner points to nothing that would entitle her to make reply comments, nor is there anything in the Commission's rules of procedure that would provide such an entitlement. In short, Petitioner's Request for Reconsideration does not raise any new fact or question of law which has been overlooked by the Commission.

### III. CONCLUSION

Petitioner's Request for Reconsideration falls far short of the well established requirements that must be pled in a Request for Reconsideration and should be denied.

WHEREFORE, based upon the foregoing, FPL requests that the Commission enter an order denying Petitioner's Request for Reconsideration.

Respectfully submitted this 14<sup>th</sup> day of February, 2011.

R. Wade Litchfield, Vice President and General  
Counsel  
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By: /s/Scott A. Goorland  
Scott A. Goorland  
Florida Bar No. 0066834

**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 14th day of February, 2011, 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>	<p>Petitioner (UPS delivery) * </p>

By: /s/Scott A. Goorland  
Scott A. Goorland  
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\*Petitioners name and address redacted per request of Petitioner.