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**Sent:** Thursday, July 14, 2011 5:52 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** Goorland Scott  
**Subject:** Electronic Filing Docket No. Docket No. 100358-EI, Clarification of AFFIRM'S Response To Florida Power & Light Company's Motion To Dismiss AFFIRM's Petition On Proposed Agency Action, Or In The Alternative, Motion For More Definite Statement

**Attachments:** clarification of response.pdf



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Electronic Filing

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b. Docket No. 100358-EI.

c. Document is being filed on behalf of Association for Fairness in Ratemaking (AFFIRM)

d. There are a total of 4 pages in the attached document.

e. The attached document is Clarification of AFFIRM'S Response To Florida Power & Light Company's Motion To Dismiss AFFIRM's Petition On Proposed Agency Action, Or In The Alternative, Motion For More Definite Statement

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DOCUMENT NUMBER - DATE

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the design of Commercial Time-of-Use rates by Florida Power & Light, pursuant to Order No. PSC-10-0153-FOF-EI.

DOCKET NO. 100358-EI

FILED: July 14, 2011

**Clarification of AFFIRM'S Response To Florida Power & Light Company's Motion To Dismiss and Motion For More Definite Statement**

Petitioner, the Association for Fairness in Ratemaking (AFFIRM), by and through its undersigned counsel, hereby files this clarification of its response to Florida Power & Light Company's Motion To Dismiss AFFIRM's Petition On Proposed Agency Action Or In The Alternative Motion For More Definitive Statement.

Counsel for FP&L has brought to AFFIRM's attention a concern that in Section IV of AFFIRM's Response, AFFIRM has misrepresented FPL's participation in this docket and behavior with respect to AFFIRM as less than fully responsive. AFFIRM states that any misrepresentation was inadvertent, and wishes to withdraw or revise the text to avoid that problem. FPL's participation and behavior has been professional throughout.

In the second paragraph of page 8, AFFIRM's Response provides:

In basic response, FPL seems to demand from AFFIRM the level of specificity one would expect after discovery is completed. *To be clear, in the past two years FPL has not provided or offered to provide any data that AFFIRM needs for the purposes of prosecuting this case.* For example, one set of data AFFIRM needs is FPL's forecast of hourly fuel costs for 2011 and 2012. Until AFFIRM obtains the information it needs, it cannot provide FPL the specificity it is seeking. (emphasis added)

AFFIRM withdraws the italicized language. The intent of the language was not backward looking but rather forward looking. AFFIRM did not mean to argue that FPL should have provided more than it has to AFFIRM, but rather that the data AFFIRM would need to provide the level of specificity FPL demands will be sought during discovery.

The third paragraph on page 8 contains the following sentence:

Given the nature of the PAA Order protested *and the limited data available to AFFIRM*, it is difficult to see how AFFIRM could be expected, much less required, to provide a more specific or complete framework for the case.

FPL objects to the italicized language above for the same reasons noted above. AFFIRM withdraws this language, although it does not agree with the significance given the language by FPL.

In the third paragraph on page 10, AFFIRM makes the point that the FPL, AFFIRM, and Staff have never met face to face to discuss AFFIRM's problems with the current tariff and its proposed solution. The last sentence of the paragraph states as follows: "There have been, however, two telephone conferences and the discussions were robust, but they did not appear to produce positive results." (footnote omitted) Actually, there were at least four telephone conferences where discussions were robust. AFFIRM regrets the oversight. AFFIRM's point remains the same: *because* the telephone conferences were ineffective despite the good faith efforts of the parties, the parties and staff should should meet in person.

AFFIRM regrets any statements that may have mischaracterized FPL's behavior,  
and appreciates the opportunity to clarify its previous pleading.

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

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**CERTIFICATE OF SERVICE**

**I hereby certify** that I have served a true and correct copy of the preceding Clarification of Response To Florida Power & Light Company's Motion To Dismiss AFFIRM's Petition On Proposed Agency Action, Or In The Alternative, Motion For More Definite Statement was furnished to the following electronically on this 14<sup>st</sup> day of July, 2011:

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