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COMMISSION CLERK

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

DATE: August 11, 2011  
TO: Office of Commission Clerk (Cole)  
FROM: Division of Economic Regulation (Slemkewicz, Kummer)  
Office of Auditing and Performance Analysis (Prestwood)  
Office of the General Counsel (Bennett)  
RE: Docket No. 100077-EI – Investigation of the appropriateness of the affiliate product offerings to Florida Power & Light customers.

Handwritten initials and signatures: ALM, JS, [unclear], [unclear], [unclear]

AGENDA: 08/23/11 – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brisé

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\100077.RCM.DOC

Case Background

Based on customer testimony at a customer service hearing in Florida Power & Light Company's (FPL or Company) last rate case, the Commission expressed concerns about the relationship between FPL and FPL Energy Services (FPLES), an affiliated company. The issue of affiliate transactions was also raised in the direct testimony of Office of Public Counsel witness Kimberly Dismukes.<sup>1</sup> In the rate case, affiliate transactions were addressed generally in

<sup>1</sup> Docket No. 080677-EI, In re: Petition for increase in rates by Florida Power & Light Company, Document No. 09195-09, Hearing Transcript Volume 17, pp. 2079-82, Direct testimony of Kimberly H. Dismukes, filed July 16, 2009

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Issue 109 in staff's post hearing Recommendation on the disposition of the rate case.<sup>2</sup> Pursuant to the Order disposing of the rate cases, staff was directed to open a docket "to investigate the relationship of, and the appropriateness of, FPLES offering products to FPL consumers."<sup>3</sup> This docket was opened February 11, 2010.

Pursuant to a request dated July 27, 2010, staff conducted an audit of affiliate transactions between FPL and FPLES. The primary purpose of the audit was to determine if FPL had properly allocated all costs associated with services provided to FPLES, and appropriately charged FPLES for those services. The audit reviewed the business plan and procedure manuals for the customer care center, including the telephone scripts used by telephone representatives taking requests for initiation of electric service. The audit also examined whether FPL improperly transferred any confidential customer information to FPLES. The final audit report was submitted on October 11, 2010. FPL responded to the audit on October 29, 2010.

The audit found that FPL appeared to be in compliance with Rule 25-6.1351, Florida Administrative Code (F.A.C.), Cost Allocations and Affiliate Transactions, with respect to cost allocations and pricing of service provided to FPLES. The only outstanding issues the audit addressed were the practice of transferring calls from customers to FPL to FPLES, and whether any confidential customer information was improperly transferred to FPLES.

The Commission has jurisdiction over this matter pursuant to Sections 366.03, 366.04, 366.05, and 366.06, Florida Statutes.

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<sup>2</sup> See Docket No. 080677-EI, In re: Petition for increase in rates by Florida Power & Light Company, Document No. 12182-09, staff post hearing recommendation, filed December 23, 2009, p. 357-9.

<sup>3</sup> Order No. PSC-10-0153-FOF-EI, issued March 17, 2010, in Docket No. 080677-EI, In re: Petition for increase in rates by Florida Power & Light Company, p.156-57.

### Discussion of Issues

**Issue 1:** What action, if any, should the Commission take regarding FPL's policy and practices with respect to transferring customer calls to FPLES?

**Recommendation:** The Commission should direct FPL to revise the script used by its customer service representatives to make clear, prior to transfer, that the regulated portion of the request is complete and that the customer is being transferred to a non-regulated entity. The revised script should be submitted to staff for review within 30 days of the date of the final order in this docket. (Kummer, Slemkewicz)

**Staff Analysis:** Based on testimony, exhibits, and discussions during the Plantation Service hearing in Docket No. 080677-EI,<sup>4</sup> staff was directed to initiate this docket to investigate FPL's interaction with a third-party affiliate, FPL Energy Services (FPLES), with respect to FPLES' provision of non-regulated services. FPLES provides non-regulated services, such as surge protection and appliance insurance, which are billed by FPL on the regulated utility's bill. FPL also includes information on FPLES services in its bill stuffers with customers' electric bills.

As noted previously, staff initiated an audit to look at FPL's interaction with FPLES. The audit reviewed cost allocations for services provided by FPL to FPLES, along with the business plan and procedure manuals for the customer care center, including the telephone scripts used by telephone representatives taking requests for initiation of electric service. Finally, the audit looked at whether any confidential customer information was transferred to FPLES during the call.

The staff audit looked primarily at FPL's compliance with Rule 25-6.1351, F.A.C., Cost Allocations and Affiliate Transactions. Rule 25-6.1351 focuses on ensuring that any services purchased by the regulated utility from an affiliated company are purchased at a fair price. Similarly, the rule requires a utility to charge an affiliate a fair price for any service provided to the affiliate. During the rate case, FPL witness Santos maintained in cross examination that FPL appropriately charged FPLES for billing and other services.<sup>5</sup> The staff audit indicates that that costs have been properly allocated, and services to affiliates appropriately billed and collected, pursuant to Rule 25-6.1351, F.A.C. However, the audit did raise concerns about the policy and practices concerning the transfer of customers calling to initiate regulated electric service to a non-regulated affiliate.

According to the audit, once the FPL customer service representative completes a telephonic service initiation request, FPL informs the customer that they will be transferred in order to receive their confirmation number. The audit found that the FPL customer service representative does not indicate to the customer that they are being transferred to a non-regulated entity, nor that they would be offered additional non-regulated services after the transfer. This may lead the customer to believe that the transfer is necessary to complete their application, and

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<sup>4</sup> See Docket No. 080677-EI, In re: Petition for increase in rates by Florida Power & Light Company, Document No. 07311-09, Transcript of Customer Service Hearing held in Plantation, Florida on June 26, 2009, pp. 47-8, 56-7.

<sup>5</sup> See Docket No. 080677-EI, In re: Petition for increase in rates by Florida Power & Light Company, Document No. 09140-09, Hearing Transcript Volume 13, Cross Examination of FPL witness Marlene Santos, on August 28, 2009, pp. 1584-5.

that they are being transferred to another FPL representative. As long as a customer believes they remain with the regulated entity, they may also believe that any services offered to them are regulated by the Commission.

FPL states the transfer to FPLES provides the customer a confirmation number for the regulated transaction. The audit found that the confirmation number, however, is simply the FPL account number. Staff questions the need for a non-regulated entity to provide an FPL account number to a new customer. This appears to be simply an opportunity for the affiliated company to sell its services. Staff believes that the opportunity exists for customers to be confused about whether they are dealing with a Commission-regulated entity or a non-regulated entity, especially given the name (FPL Energy Services) and the fact that the cost for the service appears on their regulated bill.

This confusion has resulted in eight complaints filed with the Commission's Consumer Complaint Bureau in the last two and a half years about non-regulated services. When Commission staff informed the customers that the Commission had no regulation over the FPLES products or services, customers often become frustrated with the Commission, as much as with FPL and FPLES. FPL asserted that the information provided to customers who sign up for FPLES services clearly note that it was offered by FPLES, not FPL. However, from the inquiries filed with the Commission, it is clear that some customers do not understand that the ApplianceGuard and SurgeShield are not regulated products offered by FPL. While these complaints are not significant in terms of total complaints filed against FPL at the Commission, it also may not reflect the actual number of customers who experience frustration and confusion about who is responsible for these non-regulated services.

Since FPL does not provide such referral services to non-affiliated entities,<sup>6</sup> this practice could also be viewed as a competitive benefit to FPLES, for which FPLES should compensate the regulated entity, pursuant to Rule 25-6.1351, F.A.C., just as it does for billing services and costs associated with call transfers and bill inserts. In its response to the audit, FPL stated that the regulated entity is compensated on a cost-based, per call basis for transferring calls to FPLES, and that the audit showed that the cost allocation was reasonable. FPL argues that further compensation for the call transfers is not warranted because all FPL is offering FPLES is the opportunity to make sales, and that FPL is compensated even if no sale is made. FPL likens the process to purchasing a customer list from a non-affiliated third party. While there may be some perceived additional benefit of the transfers, it would be difficult to quantify, since FPLES makes no money unless it actually closes a sale. As long as FPL properly allocates and collects the direct costs for providing the services to FPLES, it appears they are in substantial compliance with Rule 25-6.1351, F.A.C.

As part of the FPLES transfer process, the audit also noted that FPL provides customer-specific information to FPLES which is normally considered confidential, including names, addresses, and phone numbers. FPLES also asks for the customer's e-mail address in order to

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<sup>6</sup> See Docket No. 080677-EI, In re: Petition for increase in rates by Florida Power & Light Company, Document No, 09140-09, Hearing Transcript Volume 13, Cross Examination of FPL witness Marlene Santos, on August 28, 2009, p. 1589. Ms. Santos noted that FPL offered such services to a non-affiliated party for a short time period but found that the service was not cost effective.

provide the confirmation number. The audit notes that the services offered by FPLES are based on the type of premises, geography, and customer type and profile. This implies a fairly extensive picture of an individual customer. Customer names and specific usage information are typically treated as confidential in matters before the Commission, unless the customer voluntarily provides such information. The audit states that, although FPLES claims it does not keep any of the information on the customer, the name, address and phone number are transferred to FPLES, without the express consent of the customer.

In its response to the audit, FPL stated that FPLES representatives are bound by a confidentiality agreement concerning customer-specific information that is consistent with FPL's stated confidentiality policy filings with the Commission concerning customer information. Detailed customer information is retained by FPLES only if the customer chooses to purchase any FPLES services. If the customer declines to hear about other services, the call is terminated and no information is retained, other than to note the refusal. The confidentiality protections appear to be adequate from a Commission regulatory perspective.

Summary Although FPL appears to be in compliance with current Commission rules with respect to cost allocation and billing for affiliate activities, staff remains concerned that the call transfer process could result in unnecessary customer confusion, both at the time of the transfer and later, if problems arise with the non-regulated service. Staff believes that the customer should be told explicitly by the FPL customer service representative that the transaction relating to regulated service is completed prior to the transfer to FPLES, and that the customer is being transferred to a non-regulated entity. Staff continues to believe that the transfer to FPLES to obtain a confirmation number is unnecessary, unless FPL can show that the process is more cost effective than providing the same service in-house. However, at a minimum, FPL service representatives should explicitly tell the customer when the regulated transaction is completed, prior to transfer.

To that end, staff recommends that FPL be directed to revise the script used by its customer service representatives to make clear, prior to transfer, that the regulated portion of the request is complete and that the customer is being transferred to a non-regulated entity. Such revised script should be submitted to Commission staff for review within 30 days after the order in this docket becomes final.

Docket No. 100077-EI  
Date: August 11, 2011

**Issue 2:** Should this docket be closed?

**Recommendation:** Once FPL has submitted the revised script as described in Issue 1, and staff has notified FPL that it complies with the Commission's direction, the docket should be closed. If Staff and FPL cannot agree on new language, the docket will remain open and the matter brought back to the Commission for a decision. (Bennett)

**Staff Analysis:** Once FPL submits the revised script, staff will review the new script to ensure that it complies with the letter and the spirit of the Commission's decision in Issue 1. Staff will indicate in writing if the script is acceptable, or if additional changes are needed, within 60 days of receipt of the new script. If staff and FPL are unable to agree on the revised script, the matter will be brought back before the Commission for a decision.