

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 100077-EI

In the Matter of:

INVESTIGATION OF THE APPROPRIATENESS
OF THE AFFILIATE PRODUCT OFFERINGS
TO FLORIDA POWER & LIGHT CUSTOMERS.

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 3

COMMISSIONERS
PARTICIPATING: CHAIRMAN ART GRAHAM
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER RONALD A. BRISÉ
COMMISSIONER EDUARDO E. BALBIS
COMMISSIONER JULIE I. BROWN

DATE: Tuesday, August 23, 2011

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR, CRR
Official FPSC Reporter
(850) 413-6734

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FLORIDA PUBLIC SERVICE COMMISSION

FPSC-COMMISSION CLERK

P R O C E E D I N G S

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3 **CHAIRMAN GRAHAM:** Okay. Let's move on to Item
4 Number 3.

5 **MS. KUMMER:** Commissioners, Item 3 addresses
6 FPL's interaction with a nonregulated affiliate, FPL
7 Energy Services. In FPL's last rate case, Staff was
8 directed to investigate the relationship between FPL and
9 FPLES. An audit found that FPL was in substantial
10 compliance with Rule 25-6.1351, which governs affiliate
11 transactions. However, concerns were raised about FPL's
12 practice of transferring customers to FPLES without
13 clearly telling the customer that the regulated
14 transaction was complete and that they were being
15 transferred to a nonregulated entity.

16 Staff recommends that the Commission direct
17 FPL to modify its customer service scripts to address
18 this issue. Staff is here to answer questions, and I
19 believe FPL also is here to answer questions.

20 **CHAIRMAN GRAHAM:** Okay. I don't see my aide,
21 so I guess we don't have the statement from Ms. Larson.

22 Okay. Florida Power & Light.

23 **MR. BUTLER:** Thank you, Mr. Chairman. John
24 Butler appearing on behalf of Florida Power & Light
25 Company.

1 We support the Staff recommendation. I think
2 the Staff has done a very thorough job of auditing FPL's
3 relationship with its affiliate FPLES. As you just
4 heard, the only action called for in the Staff
5 recommendation is for FPL to revise the script that's
6 used when FPL customer service representatives transfer
7 new customers to FPLES. And we have no objection to
8 revising the script to clarify that call transfer
9 process, make it clear that the transfer would be to a
10 nonregulated entity. And we'll submit a script for
11 Staff review shortly, well before the 30-day deadline
12 that the Staff recommendation envisions. And so for
13 that reason, we support Staff and urge you to approve
14 their recommendation. Thank you.

15 **CHAIRMAN GRAHAM:** Thank you, sir.

16 OPC.

17 **MR. MCGLOTHLIN:** Joe McGlothlin with the
18 Office of Public Counsel.

19 OPC also supports the Staff's recommendation.
20 It appears to us that the status quo has the potential
21 and perhaps the high potential to be a source of
22 confusion to the customer. This is a needed step in the
23 right direction.

24 Not for today, but perhaps for future
25 ratemaking proceedings, it appears to us there may be an

1 additional dimension to this situation because whether
2 or not the customer is aware that the customer is
3 speaking to an affiliate as opposed to the regulated
4 company, the affiliate, the unregulated affiliate is put
5 one on one with the customer and is in a conversation
6 that is a commercially valuable opportunity. Think of
7 how much advertising the affiliate would have to do to
8 get the same type of saturation through other means that
9 it has with, with this situation. And so we suggest
10 that might be something to take into account during the
11 next revenue requirements case in terms of possible
12 imputation of revenues from that opportunity.

13 **CHAIRMAN GRAHAM:** Thank you, sir.

14 Commissioner Brown.

15 **COMMISSIONER BROWN:** Thank you, Mr. Chairman.

16 Staff, I have a question for you, probably
17 Ms. Bennett. In this recommendation it's noted that
18 some private confidential information may be relayed to
19 the nonregulated affiliate. And I understand that FPLES
20 is under a confidentiality agreement, but the customers
21 do not know of the transfer. Are there any privacy
22 concerns here?

23 **MS. BENNETT:** The privacy laws would be, inure
24 to the benefit of the customer. So if there were
25 privacy issues, the customer might have a private right

1 of action against FPL if there was a violation. I also
2 understand that there's a new federal regulatory agency
3 that will be enacting new standards on privacy and
4 transfer of information.

5 **COMMISSIONER BROWN:** Do you feel that maybe
6 it's appropriate to include language in the script to
7 inform the customer to this effect, that certain
8 private -- or certain customer information may be
9 relayed to the nonregulated affiliate?

10 **MS. BENNETT:** I think that would be an
11 appropriate jurisdictional item that the Commission
12 could include instructions.

13 **COMMISSIONER BROWN:** Is -- thank you. Is
14 there any impact of adding this additional language?
15 I'd be curious from Staff as well as the parties here.

16 **MS. KUMMER:** I don't -- there may be some
17 minimal cost in revising the scripts. I wouldn't think
18 that there would be any major costs associated with
19 this.

20 **COMMISSIONER BROWN:** Or legal effect. Or
21 legal effect.

22 **MS. BENNETT:** No. There's no negative legal
23 effect to include that.

24 **MR. BUTLER:** Commissioner Brown, for FPL, I
25 think that what Staff has already recommended, which is

1 making it clear that the transfer is to a nonregulated
2 affiliate, ought to take care of the concern that you're
3 raising.

4 First of all, let me make clear that, you
5 know, there is -- each of the customer service
6 representatives at FPLES has to enter into a
7 confidentiality agreement. The information is only
8 retained for the FPL customers if the customer ends up
9 choosing to buy one of the products that FPLES is
10 offering, at which point basically it's retained as
11 information for the new relationship with respect to
12 that product that's being purchased through FPLES.
13 Otherwise, the information is purged from the system.
14 There really is no mechanism for the information to be
15 disseminated further. FPLES doesn't sell customer lists
16 or information off of it. They've had, in the several
17 years of offering these programs, zero complaints
18 related to issues of private information having been
19 disseminated inappropriately.

20 So our view at least is that by keeping the
21 system in place that currently exists for carefully
22 protecting the privacy of that information, making it
23 clear to the customer when they're being transferred
24 that they are being transferred to an unregulated
25 affiliate, that the concerns that you're raising will be

1 addressed.

2 **COMMISSIONER BROWN:** Is there any harm though
3 by including language to that effect just in an
4 abundance of caution to inform the customer?

5 **MR. BUTLER:** And the language you're
6 envisioning would be, would be what?

7 **COMMISSIONER BROWN:** A statement that
8 customer-specific information may be relayed to the
9 nonregulated affiliate, FPLES, upon transfer of the
10 call.

11 **MR. BUTLER:** That, you know, the information
12 you've just provided as a new customer signing up, that
13 we'll be transferring that information to FPLES? I
14 think it's going to make a script a little bit longer
15 and more complex than, my personal view, than it needs
16 to be. I don't think there's any specific harm that
17 would come from providing that, providing that
18 information.

19 But, again, my view is that by identifying
20 that it's being transferred, the call is being
21 transferred to the unregulated affiliate, that, you
22 know, coupled with the confidentiality protections that
23 are already in place, that the issue is thoroughly
24 addressed. But I don't think there would be a
25 substantial harm if the Commission wanted to have that

1 clarification.

2 **COMMISSIONER BROWN:** Thank you.

3 Mr. McGlothlin, do you have any comments?

4 **MR. MCGLOTHLIN:** Could not harm; could
5 possibly help.

6 **COMMISSIONER BROWN:** Thank you.

7 Commissioners, it's my recommendation that we
8 include a succinct additional statement to the effect
9 that I just relayed, providing the customers notice that
10 certain customer information will be relayed -- may,
11 pardon me, may be relayed to the nonregulated affiliate.

12 And, again, it's in an abundance of caution.
13 If there is any privacy concerns, it would be addressed
14 by having that type of disclaimer.

15 **CHAIRMAN GRAHAM:** Mr. Butler, my issue is not
16 necessarily lengthening the statement, but making sure
17 that it's clear that the person wants to be transferred.

18 **MR. BUTLER:** Right.

19 **CHAIRMAN GRAHAM:** I mean, I several times have
20 called customer service lines and they'll ask you if
21 you'd like to do our online survey, or if you want to do
22 our regular survey afterwards, you know, please say so
23 or press one or whatever the mechanism is.

24 What I'd like to see happen is for there to be
25 some sort of mechanism for them to say that they do want

1 to go, that they do agree, that they do say yes or press
2 one or however you guys choose to do that. I mean,
3 because, you know, you can say that we're going to
4 transfer you, you know, to something nonregulated and
5 transfer them through. But, you know, if you give them
6 the opportunity to say yes or no, you may get several of
7 those people that just say, no, I don't want to, and
8 just hang up.

9 **MR. BUTLER:** And people do. There is -- you
10 know, it's a pretty small percentage, but there is a
11 percentage of people who ask not to be transferred even
12 under the existing script. I think with the script as
13 revised the way that Staff has proposed, that it's going
14 to be pretty clear. I mean, if somebody doesn't want to
15 be transferred to this unregulated affiliate, the call
16 can simply end at that point. They're given the
17 information they need and they go their way. If they do
18 want to be transferred, they all stay on the line.

19 And I -- it's a live person hearing the
20 information. I think that there is certainly an
21 opportunity at the point of making the offer to transfer
22 the customer that if he or she is uninterested in doing
23 so, that they certainly can. And as I say, a small
24 percentage of them do say they're not interested in
25 having the transfer.

1 **CHAIRMAN GRAHAM:** Well, the current script,
2 the way it reads, the way I understand it reads is that,
3 "Hold for your confirmation number." And so everybody
4 is going to sit back and wait to hear what their
5 confirmation number is, and that person comes on, gives
6 them a confirmation number, and gives them the rest of
7 the spiel. And so they think that it's a continuation.

8 So what Staff is doing is making sure that
9 it's clear that it's something different, and all I'm
10 doing is making sure that they say yes.

11 **MR. BUTLER:** Understood. And I think that
12 because of the rewording of the script that Staff has
13 recommended, it's just, it's going to make it very clear
14 that this is kind of a fork in the road, that you can
15 either stay on and hear what the unregulated affiliate
16 has to say or not. And we'll, we'll take that into
17 account in proposing the script to Staff to make it
18 clear that it is a fork in the road so that if they want
19 to, if they want to end the call at that point, they
20 have the opportunity to do so.

21 **CHAIRMAN GRAHAM:** And you guys are going to
22 get back to us with a script in 30 days?

23 **MR. BUTLER:** Yes. We'll do it quicker than
24 that, but, yes, that's what the recommendation is.

25 **CHAIRMAN GRAHAM:** Commissioner Balbis.

1 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.
2 And I agree with, with the points that both you and
3 Commissioner Brown have made.

4 I find that just stating that they're being
5 transferred to an unregulated entity, for most people --
6 pretty much everyone who isn't in this room would not
7 understand what that means. So I think something
8 clearer to indicate that this is an unaffiliated or, you
9 know, unregulated and what that means, and I think that
10 the, you know, having the choice as to whether or not
11 they would like to be transferred would make sense.

12 One other thing I wanted to point out is
13 obviously this docket is just for Florida Power & Light,
14 and I would assume that the Commission would like to
15 encourage all the other utilities out there to review
16 their scripts and make sure that there's clarity as to
17 if there is any transfer, again, that it's clear that
18 it's unregulated or not, or basically the same issues
19 we're facing with Florida Power & Light. I don't know
20 if it exists with the other utilities, but I would urge
21 those to look at their current policies, procedures, and
22 scripts to see if anything similar exists.

23 **CHAIRMAN GRAHAM:** You know, I don't think
24 anybody up here is trying to make a big deal about all
25 of this because my understanding, you guys only had

1 eight complaints in three years, two and a half years.
2 I mean, so it's not like, you know, people are going to
3 come, you know, storm the place and come get you. But
4 we just want to make sure that we don't have, you know,
5 we're not going to have any problems moving forward. I
6 mean, I think it's innovative what you're doing, I think
7 it's kind of clever. I just want to make sure that
8 everybody understands that there is Florida Power &
9 Light and there is this entity.

10 **MR. BUTLER:** Thank you, Mr. Chairman. We will
11 make that clearer. And to your point, just, I do want
12 to point out, I mean, this, it has a small benefit to
13 customers as a whole because there's a portion of the
14 costs that are borne by FPLES and therefore are not
15 borne in FPL's retail rates. And FPLES has done
16 customer satisfaction surveys on the experience of being
17 transferred and getting these sort of one-stop shopping
18 for new residence connection services and had over
19 90 percent satisfaction with those, those product
20 offerings.

21 The complaint rate, as you say, is extremely
22 low. FPL just internally, as well as Commission
23 complaints, had less than a .1 percent complaint rate.
24 So this isn't a program that's had a lot of customer
25 dissatisfaction with it, to say the least. But I hear

1 you, understand your concerns, and we will certainly
2 address them in the script that we propose back to Staff
3 and that they'll review.

4 **CHAIRMAN GRAHAM:** Well, Staff, I take it you
5 guys understand what our concerns are. Do you need for
6 us to do anything in a formal manner, or just pass this
7 item as recommended?

8 **MS. BENNETT:** If you pass the item, the two
9 issues -- Issue 2 just allows Staff to review the script
10 and it would not come back to you, and that would be the
11 only thing we need. If you want something different,
12 then we need to change the recommendation in Issue 2.

13 **CHAIRMAN GRAHAM:** I like it the way it is.
14 You guys understood our complaints, I mean our concerns.
15 Commissioner Edgar.

16 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.
17 Then if we're at that point, I would, first of
18 all, like to thank OPC for their participation in the
19 discussion on this item. I think your perspective is
20 particularly helpful. So thank you for that.

21 And, Mr. Chairman, I would move that we
22 approve the Staff recommendation for Item 3, with the
23 understanding that the company and the Staff will work
24 to make sure that the concerns expressed today are
25 followed through upon.

1 **COMMISSIONER BROWN:** Second.

2 **CHAIRMAN GRAHAM:** It's been moved and seconded
3 to move Staff on Item Number 3. Any further discussion?
4 Seeing none, all in favor, say aye.

5 (Ayes unanimous.)

6 Any opposed?

7 (No response.)

8 By your action, you've approved Item Number 3.

9 Thank you very much.

10 (Agenda item concluded.)

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1 STATE OF FLORIDA)
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 4 I, LINDA BOLES, RPR, CRR, Official Commission
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 11 attorneys or counsel connected with the action, nor am I
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13 DATED THIS 26th day of August,
 2011.

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 15 Linda Boles
 LINDA BOLES, RPR, CRR
 16 FPSC Official Commission Reporter
 (850) 413-6734
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