

**Dorothy Menasco**

**From:** Butler, John [John.Butler@fpl.com]  
**Sent:** Friday, September 07, 2012 4:40 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** Electronic Filing / Dkt 120015-EI / FPL's Response in Opposition to OPC's M/Clarification and/or Reconsideration  
**Attachments:** 9.7.12 FPL Response in Opposition to OPC Motion for Clarification.pdf  
 Electronic Filing

a. Person responsible for this electronic filing:

John T. Butler, Esq.  
 700 Universe Boulevard  
 Juno Beach, FL 33408  
 561-304-5639  
[John.Butler@fpl.com](mailto:John.Butler@fpl.com)

b. Docket No. 120015 - EI  
In re: Petition for rate increase by Florida Power & Light Company

c. The Document is being filed on behalf of Florida Power & Light Company.

d. There are a total of 5 pages

e. The document attached for electronic filing is Florida Power & Light Company's Response in Opposition to OPC's Motion for Clarification and/or Reconsideration of Order No. PSC-12-1440-PCO-EI

John T. Butler, Esq.  
 Assistant General Counsel - Regulatory  
 700 Universe Boulevard  
 Juno Beach, FL 33408  
 Ofc: 561-304-5639  
 Fax: 561-691-7135  
[John.Butler@fpl.com](mailto:John.Butler@fpl.com)

**The FPL Law Department is proud to be an ABA-EPA Law Office Climate Challenge Partner. Please think before you print!**

The information contained in this electronic message is confidential information intended only for the use of the named recipient(s) and may be the subject of attorney-client privilege. If the reader of this electronic message is not the named recipient, or the employee or agent responsible to deliver it to the named recipient, you are hereby notified that any dissemination, distribution, copying or other use of this communication is strictly prohibited and no privilege is waived. If you have received this communication in error, please immediately notify us by telephone (305) 442-5930 or by replying to this electronic message. Thank you

9/7/2012

DOCUMENT NUMBER-DATE  
 06074 SEP-7 2012  
 FPSC-COMMISSION CLERK

**BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for rate increase by Florida  
Power & Light Company

Docket No. 120015-EI  
September 7, 2012

**FLORIDA POWER & LIGHT COMPANY'S RESPONSE  
IN OPPOSITION TO OPC'S MOTION  
FOR CLARIFICATION AND/OR RECONSIDERATION  
OF ORDER NO. PSC-12-1440-PCO-EI**

Pursuant to Rule 28-106.204(1), F.A.C., Florida Power & Light Company ("FPL") hereby files this Response in Opposition ("Response") to the Office of Public Counsel's ("OPC's") September 6, 2012 Motion for Clarification and/or Reconsideration of Order No. PSC-12-1440-PCO-EI ("OPC Motion") and states as follows:

1. Order No. PSC-12-1440-PCO-EI ("Order 1440") is the second amendment to the Order Establishing Procedure in this docket. Order 1440 set forth the process and schedule by which the Commission will consider the proposed settlement agreement that FPL, the Florida Industrial Power Users Group ("FIPUG"), the South Florida Hospital and Healthcare Association ("SFHHA") and the Federal Executive Agencies ("FEA") (collectively referred to as the "Signatories") jointly moved the Commission to approve on August 15, 2012. The OPC Motion seeks to exempt OPC from the reasonable requirement in Order 1440 that the parties and Staff cooperate in sharing information about their respective views on the proposed settlement agreement by responding to data requests directed to each other. The Presiding Officer contemplates that "[i]nformation obtained through data requests may be used by the parties in their oral arguments and by staff in advising the Commission [concerning the proposed settlement agreement]." Order 1440, at page 2.

2. The OPC Motion stridently but unconvincingly asserts that sharing such information is somehow unfair to OPC, using disparaging language that is as provocative as it is

unwarranted. But OPC's provocations cannot obscure the simple truth that Order 1440 is completely even-handed: it provides each party with exactly the same rights and responsibilities concerning the sharing of information. And the burden of responding to data requests falls equally on all parties as well. In that regard, FPL notes that it is involved in preparing for the exact same NCRC proceeding and is subject to the exact same briefing requirements constituting what OPC plaintively refers to as the "primary burden" of Order 1440. *See* OPC Motion, at pages 8-9.

3. The OPC Motion seeks clarification or reconsideration, but it makes no case for either. There is nothing about the requirement in Order 1440 for parties to respond to data requests that needs clarifying. The Order is clear and direct: each party is entitled to ask other parties up to 100 data requests, and each party must respond to such data requests from Staff or the other parties within five days. OPC does not seriously contend that this requirement is unclear; it simply does not wish to comply.

4. Nor is the OPC Motion any more convincing with respect to reconsideration. The standard for reconsideration is straightforward:

The standard of review in a motion for reconsideration is whether the motion identifies a mistake of fact or law, or a point of fact or law which was overlooked or which we failed to consider in rendering our Final Order. *Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So. 2d 315 (Fla. 1974); *Diamond Cab Co. v. King*, 146 So. 2d 889 (Fla. 1962); and *Pingree v. Quaintance*, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. *Sherwood v. State*, 111 So. 2d 96 (Fla. 3d DCA 1959), citing *State ex. rel. Jaytex Realty Co. v. Green*, 105 So. 2d 817 (Fla. 1st DCA 1958)

*Re Aqua Utilities Florida, Inc.*, Docket No. 100330-WS, Order No. PSC-12-0259-FOF-WS at 2 (May 29, 2012). OPC points to no mistake of fact or law in Order 1440 that would meet this standard. All OPC can muster is a cobbled-together theory that Order 1440 is authorizing the

parties to conduct formal discovery and that discovery would be inappropriate because the Order says that information gathered through data requests may not be used during the evidentiary proceeding. But there is nothing in Order 1440 suggesting that the Commission is treating data requests as formal discovery. Rule 28-106.211, F.A.C., which is cited in Order 1440 and referenced by OPC, provides that the presiding officer may "issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case ...." Order 1440 does not state that it is relying upon Rule 28-106.211 to effectuate discovery; in fact, nowhere else in the Order does the word "discovery" even appear. FPL suggests that Order 1440 is instead fashioning a process for justly, speedily and inexpensively addressing the proposed settlement agreement, and that process includes directing the parties to cooperate in sharing information via data requests that can then be used to help inform the Commission during oral argument. This is a logical and effective use of the authority granted by Rule 28-106.211. It certainly evinces no mistake of law or fact that would warrant reconsideration.

5. Each of the other Signatories has authorized FPL's counsel to represent that it opposes the OPC Motion.

WHEREFORE, for the foregoing reasons, FPL respectfully requests that the OPC Motion be denied.

R. Wade Litchfield, Vice President and  
General Counsel  
John T. Butler, Assistant General Counsel-  
Regulatory  
Attorneys for Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, Florida 33408-0420  
Telephone: (561) 691-7101  
Facsimile: (561) 691-7135

By: s/John T. Butler

John T. Butler  
Florida Bar No. 283479

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic service this 7th day of September, 2012, to the following:

Caroline Klancke, Esquire  
Keino Young, Esquire  
Martha Brown, Esquire  
Office of the General Counsel  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-1400  
cklancke@psc.state.fl.us  
kyoung@psc.state.fl.us  
mbrown@psc.state.fl.us

J. R. Kelly, Public Counsel  
Joseph A. McGlothlin, Associate Public  
Counsel  
Office of Public Counsel  
c/o The Florida Legislature  
111 W. Madison Street, Room 812  
Tallahassee, FL 32399-1400  
**Attorney for the Citizens of the State of  
Florida**  
Kelly.jr@leg.state.fl.us  
mcglothlin.joseph@leg.state.fl.us  
Rehwinkel.charles@leg.state.fl.us  
Christensen.Patty@leg.state.fl.us  
Noriega.tarik@leg.state.fl.us  
Merchant.Tricia@leg.state.fl.us

Robert Scheffel Wright, Esquire  
John T. LaVia, III, Esquire  
Gardner, Bist, Wiener, Wadsworth, Bowden,  
Bush, Dee, LaVia & Wright, P.A.  
1300 Thomaswood Drive  
Tallahassee, FL 32308  
**Attorneys for the Florida Retail  
Federation**  
schef@gbwlegal.com  
jlavia@gbwlegal.com

Jon C. Moyle, Jr.  
Vicki Gordon Kaufman  
Moyle Law Firm, P.A.  
118 North Gadsden Street  
Tallahassee, FL 32301  
**Attorneys for Florida Industrial Power  
Users Group**  
vkaufman@moylelaw.com  
jmoyle@moylelaw.com

K. Wiseman, M. Sundback, L. Purdy,  
W. Rappolt, J. Peter Ripley  
Andrews Kurth LLP  
1350 I Street NW, Suite 1100  
Washington, DC 20005  
**Attorneys for South Florida Hospital and  
Healthcare Association**  
kwiseman@andrewskurth.com  
msundback@andrewskurth.com  
lpurdy@andrewskurth.com  
wrappolt@andrewskurth.com  
pripely@andrewskurth.com

John W. Hendricks  
367 S Shore Dr  
Sarasota, FL 34234  
jwhendricks@sti2.com

**Federal Executive Agencies**

Ms. Karen White/Captain Samuel T. Miller  
AFLOA/JACKL-ULFSC  
139 Barnes Drive, Suite 1  
Tyndall Air Force Base, FL 32403  
Karen.white@tyndall.af.mil  
Samuel.miller@tyndall.af.mil

William C. Garner, Esq.  
Brian P. Armstrong, Esq.  
Nabors, Giblin & Nickerson, P.A.  
1500 Mahan Drive, Suite 200  
Tallahassee, FL 32308  
bgarner@ngnlaw.com  
barmstrong@ngnlaw.com  
**Attorneys for Village of Pinecrest**

Jason S. Lichtstein, Esquire  
AKERMAN SENTERFITT  
106 E. College Avenue  
Suite 1200  
Tallahassee, Florida 32301  
Florida Bar No. 487856  
jason.lichtstein@akerman.com  
**Attorneys for Algenol Biofuels Inc.**

Paul Woods  
Quang Ha  
Patrick Ahlm  
Algenol Biofuels Inc.  
28100 Bonita Grande Drive, Suite 200  
Bonita Springs, FL 24135  
Intervenor-proceeding@algenol.com  
**Representatives for Algenol Biofuels Inc.**

Thomas Saporito  
6701 Mallards Cove Road, Apt. 28H  
Jupiter, FL 33458  
saporito3@gmail.com

J. Martin Hayes, Esquire  
AKERMAN SENTERFITT  
106 E. College Avenue  
Suite 1200  
Tallahassee, Florida 32301  
martin.hayes@akerman.com  
**Attorneys for Algenol Biofuels Inc.**

BY: /s/ John T. Butler

John T. Butler  
Florida Bar No. 283479