

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation of the appropriateness of
the affiliate product offerings to Florida Power
& Light customers.

DOCKET NO. 100077-EI
ORDER NO. PSC-11-0378-PAA-EI
ISSUED: September 12, 2011

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman
LISA POLAK EDGAR
RONALD A. BRISÉ
EDUARDO E. BALBIS
JULIE I. BROWN

NOTICE OF PROPOSED AGENCY ACTION
ORDER DIRECTING FLORIDA POWER & LIGHT COMPANY
TO REVISE ITS CUSTOMER SERVICE TRANSFER SCRIPT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

DECISION

Based on testimony, exhibits, and discussions during the Plantation Service hearing in Docket No. 080677-EI,¹ we directed our staff to initiate this docket to investigate Florida Power & Light Company (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.

¹ 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.

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The issue of affiliate transactions was also raised in the direct testimony of Office of Public Counsel witness Kimberly Dismukes.² In the rate case, affiliate transactions were addressed generally in Issue 109 in our staff's post-hearing recommendation on the disposition of the rate case.³ Pursuant to the Order disposing of the rate case, we opened this docket to investigate the relationship of, and the appropriateness of, FPLES offering products to FPL consumers."⁴ We have jurisdiction over this matter pursuant to Sections 366.03, 366.04, 366.05, and 366.06, Florida Statutes.

Upon the opening of this docket, our staff conducted an audit of the 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 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.⁵ 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.

While the staff audit found that costs had been properly allocated, and services to affiliates appropriately billed and collected, pursuant to Rule 25-6.1351, F.A.C., 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

² 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

³ 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.

⁴ 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.

⁵ 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.

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 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 we regulate any services offered to them.

In its written response to the audit, 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. We question 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. We are concerned 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 affiliate's 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 our Consumer Complaint Bureau in the last two and a half years about non-regulated services. When our staff informs the customers that we have no regulatory authority over the FPLES products or services, customers often become frustrated with the Commission, as much as with FPL and FPLES. FPL asserts 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 us, 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,⁶ 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.

⁶ 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.

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 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 us, 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 states that FPLES representatives are bound by a confidentiality agreement concerning customer-specific information that is consistent with FPL's stated confidentiality policy filings with us 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 our regulatory perspective.

Based on the foregoing, although FPL appears to be in compliance with our current rules with respect to cost allocation and billing for affiliate activities, we remain 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. We find that the transfer to FPLES to obtain a confirmation number is unnecessary. At a minimum, FPL service representatives shall explicitly tell the customer when the regulated transaction is completed, prior to transfer. Accordingly, we direct that the FPL customer service representative shall explicitly tell the customer 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.

To that end, FPL shall revise the script used by its customer service representatives to make it 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 shall be submitted to our staff for review within 30 days after the order in this docket becomes final. Once FPL submits the revised script, we direct our staff to review the new script to ensure that it complies with the letter and the spirit of our decision. Our 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 our staff and FPL are unable to agree on the revised script, the matter will be brought back before us for a decision.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power & Light Company shall 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. It is further

ORDERED that Florida Power & Light Company shall submit its revised script to our staff for review within 30 days after the order in this docket becomes final. It is further


ORDERED that our staff shall review the new script to ensure that it complies with the letter and the spirit of our decision. Our 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. It is further

ORDERED that if our staff and FPL are unable to agree on the revised script, the matter will be brought before us for a decision. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in this docket shall be closed administratively upon approval of the revised script.

By ORDER of the Florida Public Service Commission this 12th day of September, 2011.



ANN COLE
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
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LCB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on October 3, 2011.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.