

State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

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

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**DATE:** August 3, 2009  
**TO:** Ann Cole, Commission Clerk - PSC, Office of Commission Clerk  
Dorothy E. Menasco, Chief Deputy Commission Clerk, Office of Commission Clerk  
**FROM:** William C. Garner, Assistant to Chairman Carter *WCG*  
**RE:** Docket Nos. 080677-EI and 090079-EI

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Please submit the attached correspondence into the main docket file for the above-referenced dockets.

Thank you.

DOCUMENT NUMBER-DATE

0794 | AUG-3 09

FPSC-COMMISSION CLERK

**Matthew M. Carter II**  
Chairman

**State of Florida**



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## Public Service Commission

August 3, 2009

Barbara Petersen, President  
First Amendment Foundation  
336 East College Avenue  
Suite 101  
Tallahassee, FL 32301

### VIA FACSIMILE

Dear Ms. Petersen:

I am in receipt of your July 31, 2009, letter expressing your confusion at my response to another recent letter you sent. I apologize for any confusion, and hope that I can clarify my response.

In your most recent letter, you ask for two points of clarification. You ask:

- 1) Why do I consider your letter of July 28 concerning a public record request an *ex parte* communication; and
- 2) What authority allows the Public Service Commission to treat a public record request as a proceeding?

First, in my July 31 response I stated that "it was *possible* that the content of your letter *may* constitute" a prohibited *ex parte* communication. I did not make a determination, as such a conclusion would be for others to make. Out of an abundance of caution, to avoid any criticism of the Chairman, I prevented him from viewing it *until the Commission Clerk recorded it in docket file No. 080677-EI* where it would be available for review by all parties of record, the Commissioners, and the public.

The purpose of my letter was merely to point out an issue of concern, and share a way to avoid this concern in the future. I immediately shared your letter with our Executive Director and General Counsel, and then had it placed in the public docket. I am at a loss to understand how I suppressed your letter, when in fact, I shared it openly and publicly, and made it more widely available than if I had merely handed it to the Chairman.

DOCUMENT NUMBER-DATE

07941 AUG-3 09

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Second, the Commission is not treating a public record request as a proceeding. The only relevant public record request of which I am aware is one submitted July 21, 2009, by Ms. Julie Patel, a reporter with the Fort Lauderdale Sun-Sentinel newspaper. The public information requested by Ms. Patel is information not usually kept by the Commission. However, some of what she requested is the subject of discovery requests from the Commission staff in furtherance of its duties in the Florida Power & Light (FPL) rate case. To my knowledge, as of this writing, staff is still pursuing full compliance with those data requests, and may not be in possession of all of the responsive records.

It is also my understanding that FPL is asserting, or may assert, that the information is confidential. Pursuant to law, if such an assertion is made, the Commission must make a determination whether the information is entitled to confidential treatment, and may not release it unless it is determined not to be confidential, and the period for appeal has run. This determination, made within the rate case docket, is the proceeding to which I referred in my previous letter. Clearly, the statute addressed in your letter, and your characterizations of that statute, will be of immediate relevance in the proceeding.

Again, I apologize for any confusion. If you have not already received one, you should also expect to receive a response from the Commission staff to your letter of July 28, 2009.

Sincerely,



William C. Garner  
Chief Advisor to the Chairman  
Florida Public Service Commission

Cc: Jon Kaney, General Counsel, First Amendment Foundation  
JoAnn Carrin, Director, Office of Open Government  
Booter Imhof, General Counsel, Florida Public Service Commission  
Ann Cole, Clerk, Florida Public Service Commission  
Roberta Bass  
Lorena Holley  
Larry Harris  
Bill McNulty