

State of Florida



Public Service Commission

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

DATE: August 10, 2010
TO: Ann Cole, Commission Clerk, Office of Commission Clerk
FROM: Lawrence D. Harris Jr., Senior Attorney, Office of the General Counsel
RE: Docket No. 100312-EI - Complaint against Florida Power & Light Company for alleged violations of various sections of Florida Administrative Code, Florida Statutes, and FPL tariffs pertaining to billing of charges and collection of charges, fees, and taxes.

Please place the attached document, received by the Office of General Counsel by Fax on July 2, 2010, in the above referenced docket file, and provide a copy to all parties. The filing should be identified as "Petitioner's Response to FPL's Motion to Dismiss," and should be classified as a responsive pleading.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION


Petitioner

V

Docket 100312-EI

Florida Power and Light

Respondent

PETITIONER'S RESPONSE TO RESPONDENT'S MOTION TO DISMISS COMPLAINT

Respondent committed wrong and Petitioner has full right to express facts and be heard by Commission that it may resolve the issue according to law.

It is clear Respondent's representatives are attorneys and its Motion to Dismiss Complaint is in legalese. To properly address issues before the Commission parties must communicate in language that is common to and understood by all involved e.g. in plain English. If it is impossible for Respondent to communicate without legalese may it reference Florida Statutes sections that mandate sole use of it as the required style of expression.

Commission should not dismiss Petitioner's concerns and complaint. Respondent's arbitrary statement about the form of "well established pleading requirements..." makes no reference to law as though there is none that would deny Petitioner this opportunity for Florida Power and Light (FPL)'s actions to be made right. Respondent denies no allegations set forth in Complaint, rather critiques form of Petitioner's communication that summarizes actions in question. FPL and Commission received verbal and written communication between June 2008 and June 2010 that address issues with sufficient clarity and detail to state causes of action. Elements in those communications, and records address time, place, manner, misrepresentations, misstatements and factual omissions pertaining to stated specific statutory, rules and tariffs violations, improper billing and collection, federal law, and fraud. The substance of Petitioner's many pleas is clear and supersedes form.

DOCUMENT NUMBER-DATE

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With careful review of all the communications FPL received, and records, FPL would avoid further conjecture and “respond[ing] inadequately” perhaps. All the same Petitioner could again present those details with specific circumstances of joblessness, sickness and retirement, and particularity that form the basis of those concerns and complaint.

Respondent asserts “that Legislature has never conferred upon Commission any general authority to regulate public utilities.” In fact Commission is an arm of the Legislature by State statute (ss. 350.001). FPL is a regulated company (ss. 350.111) that bought its certificate from Commission. Commission regulates electric utility activities (ss. 366.03). Commission also has jurisdiction to regulate rates and service (ss. 366.04). This may be the extent to which Commission has general authority.

With regard to allegation of fraud the required elements of it exist (e.g. act violated law, perpetrator knew act was wrong and benefitted, and customer was harmed by act) that the claim is without frivolity and Commission can align its decision with federal law.

While parties agree some persons read Florida Administrative Code and Florida Statutes in a manner that is harmful to the ordinary customer, Petitioner takes exception to Respondent’s bogus claims of Petitioner “(emphasis added)” to same statement, and Petitioner requests “customers should be free” from paying tax obligations of the company, With these inaccuracies FPL attempts to mislead the reader, and contradict FPL tariffs that obligate customers to pay for services rendered by FPL that they receive.

FPL is responsible where charges, fees and taxes billed are not services customer received. Electric utility service via a company is not the same as tax imposed on a company. Customers who can afford and choose to pay another’s obligations are permitted yet are without mandate to pay those debts.

Commission declaratory statement permitting all persons and requiring no persons to pay another's taxes would align with statutes as follows:

Florida Statute Chapter 203.011(d)1.

Each distribution company that receives payment for the delivery of electricity to a retail consumer in this state is subject to tax on the exercise of this privilege ...

Florida Statute Chapter 203.012(c)1.

The tax shall be levied against the total amount of gross receipts received by a distribution company for its sale of utility services ...

Florida Statute Chapter 203.013(5).

The tax is imposed upon every person for the privilege of conducting a utility ... business, and each provider of the taxable services remains fully and completely liable for the tax, even if the tax is separately stated as a line item or component of the total bill.

It is common knowledge trade secrets exist. One company goal is to pass on costs; while persons can collect costs from themselves employees assist employers to collect costs from customers; as a trade off employees engaging in business with companies may expect to pay their costs. Recent communication with Internal Revenue Service (IRS) Representatives about payment of taxes and demands for money according to IRS Code (including Booklet 1040, Publications 17 & 555 and Form 56) confirms it as being consistent with Public Law that one is permitted though not required to pay another's taxes (unless marries to or otherwise responsible for) and no agent is to demand payment of money from people e.g. children, jobless and elderly who lack adequate access to taxable income.

SUMMARY

To the extent that Respondent's Motion to Dismiss Complaint omits facts and inserts inaccuracies to harm customer and bias Commission, Petitioner's Complaint is affirmed.

Respectfully Submitted on this 3rd day of July, 2010.

/s/ Petitioner

[REDACTED]