

**Diamond Williams**

100155-EG

**From:** Bussey, Jacqueline [Jacqueline.Bussey@fpl.com]  
**Sent:** Monday, September 13, 2010 1:57 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** Katherine Fleming; 'vkaufman@kagmlaw.com'; 'jmoyle@kagmlaw.com';  
suzannebrownless@comcast.net; george@cavros-law.com; Rdc\_law@swbell.net; Cano,  
Jessica  
**Attachments:** Motion for Continuance.pdf

**Electronic Filing**

a. Person responsible for this electronic filing:

Bryan S. Anderson, Esq.  
700 Universe Boulevard  
Juno Beach, FL 33408  
561-304-5253

**Bryan.Anderson@fpl.com**

b. Docket No. 100155-EI

In Re: Petition for Approval of Demand-Side Management Plan of Florida Power & Light Company

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

d. There are a total of pages 7.

e. The document attached for electronic filing is Florida Power & Light Company's Motion for Continuance.

Jacki Bussey, CLA  
Paralegal  
Regulatory Law Dept.  
Florida Power & Light Company  
(561) 691-7120 direct line  
(561) 691-7135 fax

DOCUMENT NUMBER DATE

07636 SEP 13 2010

FPSC-COMMISSIONER OFFICE

9/13/2010

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Petition for Approval of        )  
Demand Side Management Plan        )  
of Florida Power & Light Company    )

Docket No. 100155-EG  
Filed: September 13, 2010

**FLORIDA POWER & LIGHT COMPANY'S  
MOTION FOR CONTINUANCE**

Pursuant to Rule 25-22.061(2), Florida Administrative Code, Florida Power & Light Company ("FPL" or the "Company") hereby requests that the Florida Public Service Commission (the "Commission") enter a continuance with respect to its consideration and decision in Docket No. 100155-EG, pending a determination by Commissioner Skop on FPL's Motion for Disqualification, and judicial review, if necessary. In support of this Motion, FPL states as follows:

1. On September 2, 2010, FPL filed a Verified Motion for Disqualification of Commissioner Skop from all pending FPL dockets, including but not limited to Docket No. 100155-EG. Commissioner Skop has taken no action to date in this docket on FPL's Verified Motion for Disqualification. Therefore, FPL must presume that Commissioner Skop intends to participate in decision making in this docket scheduled for the September 14, 2010 agenda conference.

2. On Wednesday, September 8, 2010, FPL filed with the First District Court of Appeal a Petition for Writ of Mandamus seeking an order requiring Commissioner Skop to rule on the motion for disqualification in this and other FPL dockets in which he has not ruled. On Friday, September 10, 2010, the First District Court of Appeal entered an order requiring that Commissioner Skop "show cause in a response to be filed by September 16, 2010, why the

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petition for writ of mandamus should not be granted.” Case No. 1D10-4758, order entered September 10, 2010, Attached as Ex. A. On September 13, 2010, FPL filed an emergency motion for stay with the First District Court of Appeal requesting the court to stay “the participation of Commissioner Skop with respect to all hearings, deliberations, decision-making, or acting in any other capacity, on all active dockets and matters involving FPL that have not yet been decided by the Commission,” including this docket, pending a decision by the court on whether Commissioner Skop should be disqualified from all such FPL proceedings. At the time of the filing of this motion for a continuance with the Commission, the Court has not yet ruled on FPL’s September 13 motion for a stay.

3. In order to safeguard FPL’s due process rights in this proceeding, in the event that Commissioner Skop does not disqualify himself from participation prior to the Commission taking up its consideration of Docket No. 100155-EG, FPL requests that the Commission continue its consideration and decision of this matter to a future Agenda Conference pending a determination by Commissioner Skop on FPL’s Motion for Disqualification, and, if necessary, judicial review.

4. FPL therefore requests that if (i) Commissioner Skop does not rule on FPL’s verified motion to disqualify prior to Docket No. 100155-EG being considered at the September 14, 2010 Agenda Conference; or (ii) if Commissioner Skop denies FPL’s verified motion to disqualify, that the full Commission immediately consider and decide this motion, and enter the requested continuance until after the First District Court of Appeal rules on FPL’s petition for writ of mandamus.

5. Granting the requested continuance will protect FPL’s due process rights to a fair and impartial decision-maker from being irreparably harmed by Commissioner Skop’s

participation in decision-making involving this matter pending resolution of the petition for mandamus by the First District Court of Appeal.

6. In addition, granting the requested continuance will not result in harm to any party or to the public interest. Other parties that may have planned to participate at the September 14, 2010 agenda conference are not precluded from doing so at a later agenda conference. No other regulated entity will be affected because the Commission may proceed with consideration of the other Demand Side Management (“DSM”) plans scheduled for the September 14, 2010 agenda conference. Further, no customer interests will be harmed. FPL will continue to offer its currently-approved DSM programs to customers, and FPL’s proposed Demand Side Management plan will be fully considered after the First District Court of Appeal’s action. If Commissioner Skop is ultimately disqualified from participating, a quorum of the Commission will remain to consider FPL’s proposed DSM plan.

7. In accordance with Rule 28-106.204(3), Florida Administrative Code, FPL contacted counsel for each party in this docket to determine their position with respect to this Motion. FPL’s counsel was informed that Florida Solar Energy Industry Association and Southern Alliance for Clean Energy oppose this motion. FPL’s counsel was informed that Florida Industrial Power Users Group and Wal-mart Stores East, L.P. & Sam’s East, Inc. take no position.

WHEREFORE, FPL requests that the Commission grant its motion for continuance with respect to the Commission's consideration and decision in Docket No. 100155-EG.

Respectfully submitted this 13th day of September, 2010.

Bryan S. Anderson  
Fla. Auth. House Counsel No. 219511  
Jessica A. Cano  
Fla. Bar No. 0037372  
Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, Florida 33408-0420  
(561) 304-5253  
(561) 691-7135 (fax)

BARRY RICHARD  
Florida Bar No. 105599  
GREENBERG TRAUIG, P.A.  
101 East College Avenue  
Tallahassee, FL 32301  
Telephone (850) 222-6891  
Facsimile (850) 681-0207  
[richardb@gtlaw.com](mailto:richardb@gtlaw.com)

*Attorneys for Florida Power & Light Company*

By: s/ Bryan S. Anderson  
Bryan S. Anderson  
Fla. Auth. House Counsel No. 219511  
Admitted in IL not FL

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Motion for Continuance has been furnished electronically this 13th day of September 2010, to the following:

Katherine E. Fleming, Senior Attorney  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850  
keflemin@psc.state.fl.us

Florida Industrial Power Users Group  
Vicki G. Kaufman  
Jon C. Moyle, Jr.  
Keefe Law Firm, The Perkins House  
118 North Gadsden Street  
Tallahassee, FL 32301  
vkaufman@kagmlaw.com  
jmoyle@kagmlaw.com

Florida Solar Energy Industry Association  
Suzanne Brownless, PA  
1975 Buford Blvd.  
Tallahassee, FL 32308  
[suzannebrownless@comcast.net](mailto:suzannebrownless@comcast.net)

Southern Alliance for Clean Energy  
George Cavros, Esq.  
120 E. Oakland Park Blvd., Ste. 105  
Oakland Park, FL 33334  
[george@cavros-law.com](mailto:george@cavros-law.com)

Wal-Mart Stores East, LP & Sam's East, Inc.  
Rick D. Chamberlain  
Behrens, Taylor, Wheeler & Chamberlain  
6 N.E. 63rd Street, Suite 400  
Oklahoma City, OK 73105  
[Rdc\\_law@swbell.net](mailto:Rdc_law@swbell.net)

By: s/ Bryan S. Anderson  
Bryan S. Anderson  
Fla. Auth. House Counsel No. 219511  
Admitted in IL not FL

**DISTRICT COURT OF APPEAL, FIRST DISTRICT  
301 S. Martin Luther King, Jr. Blvd.  
Tallahassee, Florida 32399-1850  
Telephone No. (850) 488-6151**

September 10, 2010

**CASE NO.: 1D10-4758**

L.T. No. :

Florida Power & Light  
Company

v. Public Service Commission

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Appellant / Petitioner(s),

Appellee / Respondent(s).

**BY ORDER OF THE COURT:**

Respondent shall show cause in a response to be filed by September 16, 2010, why the petition for writ of mandamus should not be granted. Petitioner may reply to the response within three days of service thereof.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

Served:

Barry Richard  
James D. Beasley  
Jon C. Moyle, Jr.  
Charles J. Rehwinkel  
Mary Anne Helton  
J. R. Kelly  
D. Marcus Braswell  
Keino Young  
Lee Eng Tan  
Anna Williams  
Robert A. Sugarman  
Joseph A. Mcglothlin  
Shayla L. Mcneill  
Dianne M. Triplett  
Jennifer Crawford  
Russell A. Badders  
Blaise Huhta  
Lino Mendiola

Margaret-Ray Kemper  
John T. Lavia, Iii  
Martha Brown  
Gary V. Perko  
Suzanne Brownless  
Tamela Ivey-Perdue  
Robert Scheffel Wright  
Mary Elizabeth Keating  
George Cavros  
Jean Hartman  
Jennifer L. Spina  
Stephanie Alexander  
R. Alexander Glenn  
Katherine Fleming  
Patricia Christensen  
John W. Mcwhirter, Jr.  
Gary A. Davis  
Meghan Griffiths

Mark F. Sundback  
Charles J. Beck  
Vicki Gordon Kaufman  
J. Jeffrey Wahlen  
Michael B. Twomey  
S. Curtis Kiser  
Steven Griffin  
John T. Burnett  
Lisa Bennett  
Kenneth Wiseman  
Lisa M. Purdy  
Brian P. Armstrong  
James Michael Walls  
James W. Brew  
Jeffrey A. Stone  
F. Alvin Taylor  
James S. Whitlock  
Cecilla Bradley, A.A.G.

kr

DOCUMENT NUMBER DATE

**EXHIBIT A**

07636 SEP 13 2010

FPSC-COMMISSION CLERK

*Jon S. Wheeler*  
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JON S. WHEELER, CLERK

