

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

COMPLAINT AGAINST AT&T D/B/A
BELLSOUTH FOR ALLEGED VIOLATIONS
OF VARIOUS SECTIONS OF FLORIDA
ADMINISTRATIVE CODE, FLORIDA
STATUTES, AND AT&T REGULATIONS
PERTAINING TO BILLING OF CHARGES
AND COLLECTION OF CHARGES, FEES,
AND TAXES.

DOCKET NO. 100175-TL

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.

DOCKET NO. 100312-EI



PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 2

COMMISSIONERS
PARTICIPATING: CHAIRMAN ART GRAHAM
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER RONALD A. BRISÉ
COMMISSIONER EDUARDO E. BALBIS
COMMISSIONER JULIE I. BROWN

DATE: Tuesday, February 8, 2011

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporter
(850) 413-6732

P R O C E E D I N G S

1
2 **CHAIRMAN GRAHAM:** That brings us to Item
3 Number 2.

4 Larry.

5 **MR. HARRIS:** Good morning, Commissioners.
6 Larry Harris with the Office of the General Counsel.
7 Item Number 2 is a combined recommendation for two
8 dockets that involve a similar customer complaint
9 against FPL and AT&T. I believe the customer is
10 going to be appearing by telephone. I see that
11 representatives of FPL and AT&T are here.

12 The recommendation that's before you
13 addresses motions to dismiss the customer complaints
14 filed by AT&T and FPL. Staff recommends that you
15 grant the motions with prejudice. We are available
16 to answer any questions. And, as I said, I believe
17 the customer will be on the line and wanted to
18 address the Commission.

19 **CHAIRMAN GRAHAM:** Do we have the customer
20 on line currently?

21 **CUSTOMER:** You do.

22 **CHAIRMAN GRAHAM:** Ma'am, I don't know if
23 you want to tell who you are, but you have five
24 minutes to give your side of the story.

25 **CUSTOMER:** Good morning, Chairman,

1 members, staff, and counsel. I'm the Petitioner
2 here for both petitioners. I'm humbled to speak
3 before the Commission.

4 My husband and I would have been there in
5 person, but just couldn't afford it. Yet he and I
6 consider this a great opportunity to make this
7 presentation, and I shall do my best to be brief.

8 What I hope to do this morning is talk
9 about unreasonable practices by Respondents that
10 conflict with regulations, rules, and statutes. And
11 before I get to my point, may I just take a moment
12 to acknowledge staff that has worked extensively
13 with us. The experience has been amazing, and we
14 look forward to resolution.

15 To start, it is known that I am not an
16 attorney and shall give no legal opinion. My
17 presentation is based on ordinary interpretation,
18 and focuses on four key points. One, from
19 March 2005, Respondents have repeatedly overbilled
20 charges that are unaffordable and not applicable.
21 Two, regulations and tariffs require petitioners pay
22 for services received. Three, the statutes show
23 government imposes taxes on Respondents for
24 privileges of doing business in the state, and
25 Respondents are responsible for their taxes. And,

1 four, Respondents have repeatedly demanded that
2 petitioners pay those taxes plus extra charges.

3 Respondents threatened to interrupt and
4 disconnected essential service prior to knowing the
5 specific circumstances of the Petitioners. In the
6 case of BellSouth Communications, AT&T, it wrongly
7 reported the disputed account to credit bureaus. In
8 the case of Florida Power and Light Company, it
9 wrongly spurred action by law enforcement and
10 extorted payment during this investigation. There
11 was assistance afterward; however, there is yet
12 relief.

13 And so to understand specifically how
14 those extra charges are unaffordable and not
15 applicable, it is helpful to know who the
16 petitioners are. I'm here as a family that includes
17 Florida's most vulnerable: A minor, an elderly, and
18 a jobless. Petitioners receive no income, no EBT
19 cash or food benefits, no unemployment benefits, and
20 never have. To put this in perspective, two
21 round-trip tickets to the hearing would have
22 exceeded their budget for the month.

23 This family lives well below poverty
24 guidelines, yet is clearly not sustained by the
25 government. Nonservice charges applied across the

1 board to all customer classes without consideration
2 of specific circumstances make a disadvantage for
3 some people, and this certainly is the case here.

4 Once employed and earning livable wages,
5 the petitioners would pay those extra nonservice
6 charges. The staff recommendation fails to meet the
7 standard of review for a Commission decision. While
8 the purpose of business is to amass profits, law
9 provides for balance in practice so that the people
10 are protected. So, for example, Respondents pass on
11 costs to increase earnings, employees assist
12 employers to collect those costs from consumers.
13 The trade-off is employees as customers engaging in
14 transactions with other companies can expect to pay
15 those company's costs.

16 The trade-off does not apply to the
17 jobless, and that is unacceptable to some -- to some
18 (inaudible) rather than their reactions missed the
19 mark. For example, the initial staff recommendation
20 was resubmitted uncorrected to the Commissioners.
21 It is speculative at best, at worst abusive and must
22 be revised. This is important as rules mandate its
23 use as the basis for a Commission decision.

24 And so the summary. This matter has been
25 about unreasonable practices by Respondents that

1 conflict with law. Respondents overbilled charges
2 that are unaffordable and not applicable.
3 Respondents are responsible for their taxes.
4 Petitioners are required to pay for services
5 received. And staff recommendation fails to meet
6 the standard of review required for the Commission
7 to reach an impartial decision.

8 And so, in conclusion, petitioners seek
9 that you, Chairman, and members of the Commission,
10 one, order substantive revision of the staff
11 recommendation; two, recognize the merits of this
12 complaint according to law and favorable to
13 petitioners; three, declare a statement permitting
14 all and requiring no person to pay another's tax
15 obligations; and, four, deny the staff motion to
16 dismiss complaints.

17 Thank you, Commissioner.

18 **CHAIRMAN GRAHAM:** Thank you. Thank you
19 very much.

20 All right. We'll start with AT&T, and
21 we'll go to FPL, and then come back to the board
22 here.

23 **MR. HATCH:** Good morning, Commissioners.
24 Tracy Hatch on behalf of AT&T Florida.

25 Essentially, I would just support the

1 staff recommendation. They are absolutely correct
2 here. I have a great deal of sympathy for
3 Petitioner, but, nonetheless, she simply just does
4 not have a legal basis upon which she can prosecute
5 her complaint. If there was, I think, any possible
6 way to avoid paying any taxes, I would be leading
7 the charge. Unfortunately, that's just not the
8 world in which we live. And, again, I support the
9 staff recommendation. If there's any questions,
10 I'll be glad to answer them.

11 **CHAIRMAN GRAHAM:** Thank you, sir.

12 **MR. GOORLAND:** Good morning. Scott
13 Goorland for Florida Power and Light, and thank you
14 for the opportunity to speak to you.

15 FPL also fully supports the staff
16 recommendation. And really the question here is
17 based on the motions to dismiss, and the
18 Petitioner's complaint falls far short of the
19 well-established pleading requirements that a
20 complaint must meet under Florida law to be deemed
21 sufficient.

22 I can assure you all of our charges on our
23 bills are proper. We are sorry that the customer is
24 having some difficulty. We want to make sure you
25 are aware that FPL has and continues to attempt to

1 assist the customer with her billing payments. FPL
2 has provided the customer with ten visits to the
3 customer's residence since 2006 for energy
4 efficiency and advising; has made arrangements for
5 seven assist payments from public programs such as
6 LIHEAP, and has continually been in touch with the
7 customer and has granted numerous payment
8 extensions.

9 So because the complaint falls short of
10 and fails to plead any facts or cause of action upon
11 which the Commission can grant relief, FPL does
12 request the Commission dismiss the complaint.
13 Furthermore, the underlying substance of the
14 Petitioner's complaint provides no factual, legal
15 substance, or accuracies. For that reason, the
16 complaint should be dismissed with prejudice. Thank
17 you.

18 **CHAIRMAN GRAHAM:** Thank you, sir.

19 Back here to the board. Lights are flying
20 up everywhere.

21 Commissioner Brown.

22 **COMMISSIONER BROWN:** Thank you.

23 You know, taking the sympathetic view of
24 the Petitioner, I believe that even in looking this
25 thoroughly through, I think even if we were to allow

1 the Petitioner to amend her complaint, she still
2 fails to satisfy the pleading requirements, and
3 Florida and federal law, unfortunately, don't
4 support her position. So there is no legal basis,
5 and I think that the complaint -- I think it should
6 be dismissed with prejudice, based on the fact that
7 the underlying substance is legally and factually
8 incorrect.

9 **CHAIRMAN GRAHAM:** Did you say move staff?

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11 **COMMISSIONER BROWN:** That would be yes.

12 **CHAIRMAN GRAHAM:** Thank you.

13 Commissioner Balbis.

14 **COMMISSIONER BALBIS:** Thank you, Mr.
15 Chair.

16 I have one question for staff. I know the
17 representatives from Florida Power and Light
18 indicated that all of the charges were correct,
19 which I assume in accordance with the rate schedules
20 that were approved by this Commission. Do you agree
21 with that statement?

22 **MR. HARRIS:** Yes, Commissioner. Staff has
23 looked extensively at the bills, and we have been
24 unable to identify on our own any charge that
25 appeared to be incorrect.

1 **COMMISSIONER BALBIS:** Okay. Thank you.
2 That's all I have.

3 **CHAIRMAN GRAHAM:** Commissioner Brisé.

4 **COMMISSIONER BRISÉ:** Thank you, Mr.
5 Chairman.

6 Just for the record, this question is for
7 staff. How long have you been working with this
8 particular Petitioner?

9 **MR. HARRIS:** To my knowledge, I believe it
10 has been about -- a little over a year, perhaps 15
11 months. There were various staff who attempted to
12 work informally. When those were unsuccessful,
13 Ms. Beard was assigned, and she can answer, but it
14 has been over a year for her involvement.

15 **COMMISSIONER BRISÉ:** A follow-up, then.

16 It's my understanding from the briefing
17 yesterday, everything has been done that could be
18 done to assist this particular Petitioner; so,
19 therefore, you have arrived at this recommendation
20 based upon extensively working with the Petitioner.

21 **MR. HARRIS:** Yes, Commissioner. I can
22 assure you staff has done everything that we think
23 we can do, and we literally, including upper
24 management, cannot find anything else that could be
25 done to assist the customer.

1 **CHAIRMAN GRAHAM:** Commissioner Edgar.

2 **COMMISSIONER EDGAR:** Thank you, Mr.

3 Chairman.

4 I am pleased to hear the customer share
5 with all of us that she has had a good experience
6 working with our staff, and I know that to be the
7 case, and am pleased to hear that.

8 I also regret that there are charges that
9 she believes are inappropriate. And I have to say
10 sometimes on my phone bill I think there are charges
11 that I question, as well, but do recognize that many
12 of those are requirements of federal law that are
13 not within our jurisdiction.

14 I appreciate our staff working with this
15 customer, as they do with all others, and I also am
16 sympathetic to the comments about the cost and the
17 time that would have been spent to come to speak
18 before us in person. It's always nice to be able to
19 have face-to-face discussions, but recognizing that
20 this is, of course, a very large state, I know that
21 this Commission always tries to find other ways and
22 convenient ways for our citizens to interact with
23 us.

24 So I would put that message out there,
25 phone, letter, e-mail, web, it all works, and we are

1 open and amenable to all of that. And with that, if
2 we are at that point, I would second the motion.

3 **CHAIRMAN GRAHAM:** It has been moved --

4 **CUSTOMER:** Chairman?

5 **CHAIRMAN GRAHAM:** It's been moved --

6 **CUSTOMER:** Chairman.

7 **CHAIRMAN GRAHAM:** Ma'am, we have already
8 heard from you. We are getting ready to vote on
9 this motion.

10 **CUSTOMER:** I understand, Chairman, that I
11 may be recognized to rebut certain statements, as I
12 was told prior to this hearing. May I have a
13 moment, no more than a minute, sir, to rebut
14 statements that have been made by counsel?

15 **CHAIRMAN GRAHAM:** It has been moved and
16 seconded. Any further discussion?

17 Seeing none, all in favor say aye.

18 (Vote taken.)

19 **CHAIRMAN GRAHAM:** Those opposed?

20 By your action, you have approved staff
21 recommendation on Item Number 2.

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STATE OF FLORIDA)

: CERTIFICATE OF REPORTER

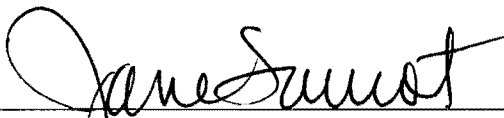
COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 10th day of February, 2011.



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