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April 18, 2018

VIA CERTIFIED MAIL

Art Graham, Chairman
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Data Request - Florida Power & Light Company's Acquisition of Jupiter Tequesta A/C, Plumbing and Electric, LLC

Dear Mr. Graham:

We represent the Florida Refrigeration and Air Conditioning Contractors Association ("FRACCA"), an organization of more than three hundred members which advocates on behalf of HVAC contractors in Florida. As you may be aware, FPL Energy Services, Inc. ("FPL Energy"), a subsidiary of Florida Power & Light Company ("FPL"), completed its acquisition of Jupiter Tequesta A/C, Plumbing & Electric, LLC ("Jupiter Tequesta") on October 25, 2017. Jupiter Tequesta installs, repairs, and maintains cooling, heating, and plumbing systems. It also provides troubleshooting and maintenance services for electrical systems and electric-related issues. It appears that this acquisition is the beginning of FPL's movement into the HVAC installation and maintenance services market. FRACCA believes that this acquisition and FPL's operation of Jupiter Tequesta may involve an improper effort to subsidize non-utility services with ratepayer funds. Given this concern, FRACCA requests that the Florida Public Service Commission (the "Commission") consider investigating whether this venture complies with Florida law governing public utilities.

It is well-settled that, as a regulated public utility, FPL cannot use ratepayer funds to start, buy, or invest in non-utility businesses. The Florida Supreme Court recently ruled that FPL could not require "end-user consumers to guarantee the capital investment and operations" of any speculative project or venture "without the Florida Legislature's authority." *Citizens of State v. Graham*, 191 So. 3d 897, 899 (Fla. 2016) (barring FPL from recovering costs for fuel expenditures and rejecting FPL's claim that an oil and gas exploration project was part of its "hedging activities intended to minimize fuel-price volatility by Florida's investor-owned utilities"). The law that allows FPL to recover the costs of its investments by increasing rates for its consumers "is permissible only for costs arising from the 'generation, transmission, or distribution' of

electricity," and the acquisition of Jupiter Tequesta certainly falls short of this requirement. *See id.* at 901.

Under Florida law, any funds that FPL obtains from operating Jupiter Tequesta must be kept separate from its delivery of electric power service. "Every public utility . . . ***which*** in addition to the production, transmission, delivery or furnishing of heat, light, or power ***also sells appliances or other merchandise*** shall keep separate and individual accounts for the sale and profit deriving from such sales. No profit or loss shall be taken into consideration by the commission from the sale of such items in arriving at any rate to be charged for service by any public utility." Fla. Stat. § 366.05(2) (emphasis added). Jupiter Tequesta allows customers to purchase air conditioning, heating, and cooling systems from them, and it installs those systems. These transactions certainly constitute the sale of appliances, particularly given that the term is not defined in the statute.[1] The Merriam-Webster Dictionary defines an "appliance" as "an instrument or device designed for a particular use or function . . . specifically: a household or office device (such as a stove, fan, or refrigerator) operated by gas or electric current[.]" *Merriam-Webster.com Dictionary*, https://www.merriam-webster.com/dictionary/appliance (based on *Merriam-Webster's Collegiate Dictionary*, 11th ed. 2003)). This definition is also consistent with the use of the term in other sections of the Florida Statutes.[2] *See, e.g.*, *Dependable Air Conditioning & Appliances, Inc. v. Office of Treasurer & Ins. Com'r*, 400 So. 2d 117, 119 (Fla. 4th DCA 1981) (finding that air conditioning and heating systems were "appliances" sold in conjunction with consumer products under statute governing sale of warranty contracts). The Commission has consistently required public utilities like FPL to take their non-utility investments out of consideration when they calculate their customer rates. "[N]on-utility investments will almost certainly increase a utility's cost of capital since there are very few investments that a utility can make that are of equal or lower risk. Removing non-utility investments directly from equity recognizes their higher risks, prevents cost of capital cross-subsidies, and sends a clear signal to utilities that ratepayers will not subsidize non-utility related costs." *In Re Florida Pub. Utilities Co.*, 040216-GU, 2004 WL 2656906 (Fla. P.S.C., Nov. 8, 2004).

In this case, the mandate for separation between accounts is also critical because FPL operates a rebate program in which it agrees to deduct $150 from customers' bills if they hire a

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[1] *See Publix Supermarkets, Inc. v. Santos*, 118 So. 3d 317, 320 (Fla. 3d DCA 2013) (citing *Gardner v. Johnson*, 451 So. 2d 477, 478 (Fla. 1984)) (internal citation omitted)., ("[W]hen a statute has not defined a certain term, a basic canon of statutory construction requires the specific term to be given its plain and ordinary meaning. The plain and ordinary meaning of a term can be ascertained through the use of a dictionary.").

[2] *See, e.g.*, *Sullivan v. Dep't of Health*, 885 So. 2d 873, 876 (Fla. 3d DCA 2004) (affirming ruling in which administrative law judge referred to other sections of Florida Statutes to determine the meaning of the term "legend drugs" where it was not defined in the statute at issue); *Czajkowski v. State*, 178 So. 3d 498, 502 (Fla. 4th DCA 2015) ("In other cases where the exact meaning of a term was not defined in a statute itself, we have ascertained its meaning by *reference to other statutory provisions*, case law, or the plain and ordinary meaning of a word of common usage.") (emphasis added).

"participating independent contractor," or "PIC," to install a new air conditioning system in their home. The PICs must meet pre-approval requirements set by FPL. Among its list of PICs is Jupiter Tequesta - the company which FPL's subsidiary recently acquired. Nowhere, however, in its discussion of its AC rebate program on FPL's website does it disclose that it owns one of the PICs it requires customers to hire to qualify for the reward. FPL already has unfettered access to its customers' energy usage rates as their electric power provider. FPL's rebate program only increases its access to information regarding its customers' energy use patterns and needs, including the energy efficiency of their current units and whether they have recently had their AC and heating systems replaced. FPL's access to this valuable information about Jupiter Tequesta's customer market gives FPL the power to deploy targeted marketing efforts to increase its new company's standing in the HVAC installation and maintenance services market.

In fact, FPL requires all HVAC contractors that participate in the PIC to provide confidential business information regarding their pricing to consumers for the renewal of the PIC. HVAC contractors currently in the PIC program must decide to withdraw from same, suffering the disadvantage, or provide their exact pricing information and data to FPL, which now owns a competitor. Conversely, any HVAC contractor wishing to become PIC, in order to offer the same rebate to consumers that Jupiter Tequesta does, must disclose their pricing to FPL. In either circumstance, this clearly results in a chilling effect upon the competition of Jupiter Tequesta.

Additionally, in February 2018, and on or about March 10, and April 7, 2018, FPL Energy and Jupiter Tequesta held a hiring event at the address of 7201 Cypress Road, Plantation, Florida 33317. This address belongs to parent company FPL and houses the location where FPL operates its aforementioned consumer rebate program. Furthermore, technicians and installers considering employment with Jupiter Tequesta were offered the same benefits that are offered to FPL's employees. These factors can lead to a presumption that FPL is not satisfying the separation of funds imposed on it by law.

The Florida Legislature has vested the Commission with the authority to investigate whether FPL's accounts are sufficiently separate from those of FPL Energy to provide a check on this kind of advantage and to ensure that it does not affect customers' utility rates or cost of service. Indeed, any improper relationship between the accounts may indicate that FPL Energy's acquisition of Jupiter Tequesta requires FPL's consumers to guarantee or subsidize the costs associated with the business in violation of state law.

Florida law provides that "[t]he commission may require the filing of reports and other data by a public utility or its affiliated companies, including its parent company, regarding transactions, or allocations of common costs, among the utility and such affiliated companies. The commission may also require such reports or other data necessary ***to ensure that a utility's ratepayers do not subsidize nonutility activities***." Fla. Stat. § 366.05(9) (emphasis added). FRACCA urges the Commission to exercise its authority to conduct a data request to ensure that the Jupiter Tequesta acquisition does not have a negative effect on electricity rates and that FPL's consumers are not subsidizing its expansion.

Thank you for your time and attention to this matter. If you have further questions, please do not hesitate to contact our office.

Sincerely,

COTNEY CONSTRUCTION LAW, LLP

Trenton H. Cotney

THC:JAC:va

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