

Fort Lauderdale, FL Public Utility Service Tax Notice of Decision

May 13, 2015

Florida Power and Light Company
Examination Period: October 1, 2010 through September 30, 2013



**Fort Lauderdale, Florida
City Hall
100 North Andrews Avenue
Fort Lauderdale, FL 33301**



**Examination Performed by:
Audit Division
MuniServices, LLC
600 Beacon Parkway West
Birmingham, AL 35209**

REPORT OF AUDIT FINDINGS

Executive Summary:

This report presents the results of MuniServices examination of Florida Power and Light Company (FPL) for the period of October 1, 2010 through September 30, 2013, operating within The City of Fort Lauderdale, a municipal corporation of the State of Florida. MuniServices was contracted by Fort Lauderdale Florida as a third party to conduct a compliance review of its public utility service tax remittances from FPL.

The objectives of this examination were to determine if the public utility service tax had been properly calculated, if the methodology used for determining which customers to include in the calculation was correct, and if all applicable revenue sources were included in the calculations. The examination addressed FPL's systems for determining electricity sales and services provided in the City of Fort Lauderdale, FPL's public utility service tax calculation methodologies, and reconciliation of the monthly revenue reported.

During this period, FPL paid the City of Fort Lauderdale Florida a total of \$50,515,172 in utility service tax payments. The remittances of the monthly utility service tax were accompanied by documentation listing the kilowatt hour usage, tax billed to customers for the month, any adjustments, and the fee remitted. The underreported utility service tax due to the city for the audit period is \$774,232. The underreported utility service tax represents the omission of miscellaneous revenue and certain customer accounts that were incorrectly exempted from the tax.

Utility Tax on Miscellaneous Revenue	\$593,669
Utility Tax on Certificate Exemptions	\$10,845
Penalty	\$151,129
Interest	\$18,589
Total Amount Due	\$774,232

Public Utility Service Tax References:

The State of Florida, Statute 166.231, allows municipalities to levy a public utility service tax on the purchase of electricity. Section 166.231 allows Florida municipalities to charge up to ten percent of the payments received by the seller for the taxable service. The City of Fort Lauderdale, Florida Municipal Code Section 15-127 adopted a 10 percent public utility service tax on the purchase of electricity within the municipal limits.

Current Methods:

Each FPL customer is coded to a specific city and/or county in order to determine the correct taxes and fees to be billed based upon power usage. A monthly report is generated detailing the kilowatt hour usage of all customers coded to the City of Fort Lauderdale, as well as the public utility service tax charged to those customers. Total revenue is reduced by miscellaneous revenue, sales to public authorities, sales to customers with exemption certificates, and load control credits to equal a taxable base for the period. This formula is used to report the utility service tax due to the City.

Audit Procedures and Testing Methodology:

Preliminary activities performed by MuniServices included a request of a letter of authorization from the City, a review of the applicable city and state statutes, and a review of the remittance history.

An initial Request for Information (RFI) was sent to FPL that included all of the appropriate documentation to perform an examination of records. An opening interview was conducted by telephone to discuss the RFI and obtain an understanding of FPL's general business operations, products and services offered, and customer base. FPL's procedures for the computation of the public utility service tax, system for tracking sales in the different service categories, and the types of data available for the review were also determined through the initial discussion and requests for records.

The monthly summary reports were reconciled to the monthly utility service tax remittances. Customer information was then reviewed to confirm that the customer service categories were determined correctly. A schedule of additional fees and charges were reviewed to confirm all applicable revenue was being included in the utility service tax calculation.

An analysis of the number of customers reported within the City of Fort Lauderdale was conducted. The analysis included a review FPL's internal procedures related to coding customers to the proper jurisdiction and any subsequent changes to the boundaries of city limits. A complete list of addresses, for the city of Fort Lauderdale, was sent to the company in an attempt to confirm that all customers in Fort Lauderdale were coded correctly.

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Audit Findings and Recommendations:

For the audit period, FPL omitted various sources of revenue that were determined to be necessary components of the public utility service tax calculation. The omitted revenue includes: Miscellaneous Revenue and Certificate Exemptions. Miscellaneous Revenue was omitted in the amount of \$5,936,695 during the audit period and includes check service charges, investigation costs, initial charges, reconnect charges, and service charges.

FPL also excluded \$6,428,416 in revenue for Certificate Exemption Customers. These customers include: not-for-profits, charitable organizations, and religious entities. After a complete review of the exempt certificates to verify that all deductions for those customers were correct, it was discovered that FPL erroneously excluded \$108,451 in revenues from customers that did not have a valid exemption certificate. The Florida State Statute 166.231(6) states, "The municipality shall establish the requirements for qualification for this exemption in the manner prescribed by ordinance. Possession by a seller of a written certification by the purchaser, certifying the purchaser's entitlement to an exemption permitted by this subsection, relieves the seller from the responsibility of collecting the tax on the nontaxable amounts, and the municipality shall look solely to the purchaser for recovery of such tax if it determines that the purchaser was not entitled to the exemption." The omitted revenue was included in the utility service tax calculation. The underreported amounts, including interest, are detailed below:

Excluded Miscellaneous Revenue	\$491,896
Certificated Exemptions	\$6,880
Total Revenue Excluded	\$498,776
Utility Tax Due	\$49,878
Penalty	\$12,469
Interest	\$2,297
Total Amount Due 2010	\$64,644

Excluded Miscellaneous Revenue	\$1,817,305
Certificated Exemptions	\$29,413
Total Revenue Excluded	\$1,846,717
Utility Tax Due	\$184,672
Penalty	\$46,168
Interest	\$7,266
Total Amount Due 2011	\$238,106

Excluded Miscellaneous Revenue	\$1,774,569
Certificated Exemptions	\$40,474
Total Revenue Excluded	\$1,815,043
Utility Tax Due	\$181,504
Penalty	\$45,376
Interest	\$5,255
Total Amount Due 2012	\$232,136

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Excluded Miscellaneous Revenue	\$1,852,926
Certificated Exemptions	\$31,684
Total Revenue Excluded	\$1,884,610
Utility Tax Due	\$188,461
Penalty	\$47,115
Interest	\$3,770
Total Amount Due 2013	\$239,346

Total Underreported Utility Tax **\$774,232**

References:

Title XII Municipalities

166.231 Municipalities; public service tax.

(1)(a) A municipality may levy a tax on the purchase of electricity, metered natural gas, liquefied petroleum gas either metered or bottled, manufactured gas either metered or bottled, and water service. Except for those municipalities in which paragraph (c) applies, the tax shall be levied only upon purchases within the municipality and shall not exceed 10 percent of the payments received by the seller of the taxable item from the purchaser for the purchase of such service. Municipalities imposing a tax on the purchase of cable television service as of May 4, 1977, may continue to levy such tax to the extent necessary to meet all obligations to or for the benefit of holders of bonds or certificates which were issued prior to May 4, 1977. Purchase of electricity means the purchase of electric power by a person who will consume it within the municipality.

166.234 Public service tax; administrative provisions; rights and remedies.

(4)(a) A municipality may issue a proposed assessment of tax levied under s. 166.231 or s. 166.232 within 3 years after the date the tax was due. However, this limitation is tolled for 1 year if within the 3-year period the municipality issues to the seller a notice of intent to audit. If the audit cannot be completed prior to the expiration of this limitation period as extended by tolling, and such condition is due to the seller's refusal or delay in allowing access to applicable records, the municipality may make a proposed assessment from an estimate based upon the best information available for the taxable period, unless the seller agrees in writing to extend the limitation period. The municipality may also make a proposed assessment from such an estimate if, notwithstanding agreed extensions of the limitation period to a date which is 3 years following issuance of the notice of intent to audit, the seller does not allow access to applicable records prior to such date.

(7) Municipalities are authorized to assess interest and penalties in accordance with this subsection for failure to pay any tax when due or to file any required return, except that no penalty shall be assessed absent willful neglect, willful negligence, or fraud. Interest may be assessed at a maximum rate of 1 percent per month of the delinquent tax from the date the tax was due until paid. Penalties may be assessed at a maximum rate of 5 percent per month of the delinquent tax, not to exceed a total penalty of 25 percent, except that a municipality may provide that in no event will the penalty for failure to file a return be less than \$15. In the case of a fraudulent return or a willful intent to evade payment of the tax, the seller making such fraudulent return or willfully attempting to evade payment of the tax, shall be liable for a specific penalty of 100 percent of the tax. Interest and penalties shall be computed on the net tax due after application of any overpayments, and are subject to compromise pursuant to subsection (14). Interest or penalties and the rates thereof shall be authorized by ordinance.

(8) Any proposed assessment or finding of amounts due the seller constitutes a determination of the municipality for purposes of this section. A determination must separately state the amounts of tax, interest, and penalty claimed to be due or to be refunded, must be accompanied by a written narrative explanation of the basis for the municipality's determinations, must inform the seller of the remedies available to it if it disagrees with any such determination, and must state the consequences of the seller's failure to comply with any demand of the municipality which is stated in the determination.

(9) A seller may file with the municipality a written protest of any determination within 60 days after the determination is issued. The municipality must consider the protest and must, within 60 days, issue a written notice of decision to the seller. The seller may petition the municipality for reconsideration of a notice of decision within 30 days after the issuance of the notice, and, following reconsideration of such a petition, the municipality must, within 30 days, issue a written notice of reconsideration to the seller.

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(10) A determination becomes final 60 days after the date of issuance, unless the seller, before the 60-day period expires, has filed a protest or secured a written extension of time within which to file a protest. If the seller has secured a written extension of time and fails to file a protest within the extended time period, the proposed assessment becomes a final assessment at the expiration of the extended filing period. If a protest is timely filed and the seller and the municipality are unable to resolve the disputed issues, the determination becomes final as of the date of issuance of the notice of decision, unless the seller timely files a petition for reconsideration. If a petition for reconsideration is timely filed, the determination becomes final upon issuance of a notice of reconsideration.

(11) A notice of decision or a notice of reconsideration must address each issue raised in the protest or petition, must explain the reasoning underlying the conclusions reached, and must advise the seller of the remedies available to it if it disagrees with the municipality's disposition of the issues.

(12) A seller may contest the legality of any determination by filing an action in circuit court within 60 days after the date the determination becomes final. However, in any action filed in circuit court to contest the legality of any tax, penalty, or interest assessed under this section, the plaintiff must pay the municipality the amount of the tax, penalty, and accrued interest which is not being contested by the seller. Venue lies in the county where the municipality is located. The defendant in any such action is the municipality.

(13) A seller's failure to protest a determination under this section administratively or judicially does not waive or impair the seller's right to seek refund of any overpayment within the time allowed under subsection (4).

City of Fort Lauderdale, Florida Municipal Code 15-127. - Rate and amount of tax on purchase of public utility services; collection of tax.

There is hereby levied and imposed by the city upon every purchase in the corporate limits of the city of electricity, metered gas, bottled gas, fuel oil, and water service, included in or reflected by any bills required to be rendered by the seller to the purchaser hereunder, a tax based upon a charge made by the seller thereof, as follows:

(1) When the seller renders a bill to the purchaser to cover such purchase made during the period of time to which such bill is applicable, the amount of tax shall be ten (10) percent, exclusive of governmental charges and taxes, of the total amount shown on such bill as due and payable on account of the purchase of electricity, metered gas, bottled gas, telegraph service and water service. The amount of tax on the purchase of fuel oil shall be four cents (\$0.04) per gallon. The total amount of taxes due pursuant to this section shall be computed to the nearest whole cent.



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January 27, 2016

Jonathan V. Gerth, Esq.
MuniServices, LLC
600 Beacon Parkway, Suite 900
Birmingham, AL 35209

Re: City of Ft. Lauderdale, Florida Public Utility Tax Audit, Periods October 1, 2010–
September 30, 2013

Dear Mr. Gerth:

We are in receipt of your written Notice dated January 19, 2016 regarding the audit assessment for underreported and delinquent Public Service Taxes under Florida Statute §166.234, referenced above.

Attached please find our check in the amount of \$13,959 representing full and final payment of the tax liability, penalties and interest on the exempt customer issue which we do not contest and which has been resolved by agreement with the City. The enclosed payment is broken down as follows:

Tax	\$10,845
Interest	\$403
Penalty	\$2,711
<u>Total</u>	<u>\$13,959</u>

This payment satisfies the provisions of Florida Statute §166.234(12) requiring FPL to pay any uncontested amounts prior to instituting an action in Circuit Court to determine the legality of the City's audit findings. We continue to protest the alleged remaining tax liability of \$593,669, penalty of \$148,417 and \$18,326 in interest.

We remain interested in pursuing any available options for an amicable resolution with the City short of filing suit. Please feel free to contact me should you wish to pursue that option.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Yvonne M. Yegge', is written over the typed name.

Yvonne M. Yegge
Senior Attorney

FLORIDA POWER & LIGHT COMPANY
700 Universe Boulevard
Juno Beach, FL 33408

Check Date: 01/28/2016

Check No. 5000421626

BANK OF AMERICA, NA

THIRTEEN THOUSAND NINE HUNDRED FIFTY-NINE DOLLARS

\$13,959.00

Void after 180 days

PAY TO THE
ORDER OF

CITY OF FORT LAUDERDALE
FINANCE DEPT 6TH FLOOR
100 N ANDREWS AVE
FORT LAUDERDALE FL 33301

FLORIDA POWER & LIGHT CO

Paul Cutler

⑈ 5000421626 ⑈ ⑆ 061112788 ⑆ 3299977761 ⑈

FLORIDA POWER & LIGHT CO
Vendor Name: CITY OF FORT LAUDERDALE

Check Date : 01/28/2016
Check Number: 5000421626

Invoice Number	Invoice Date	Document Header Text	SAP Document	Gross Amount	Discount	Net Amount
MUT FTL AUDIT	01/27/2016	*MUT FTL Audit	1900423662	13,959.00	0.00	13,959.00
		Check Total.....				\$13,959.00