

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for increase in rates by Florida Power & Light Company.

DOCKET NO. 080677-EI

In re: 2009 depreciation and dismantlement study by Florida Power & Light Company.

DOCKET NO. 090130-EI  
ORDER NO. PSC-09-0563-PCO-EI  
ISSUED: August 18, 2009

ORDER GRANTING PETITION TO INTERVENE ON LIMITED BASIS

On November 17, 2008, Florida Power & Light Company (FPL) filed a test year letter, as required by Rule 25-6.140, Florida Administrative Code (F.A.C.), notifying this Commission of its intent to file a petition in the Spring of 2009 for an increase in rates effective January 1, 2010. Pursuant to the provisions of Chapter 366, Florida Statutes (F.S.), and Rules 25-6.0425 and 25-6.043, F.A.C., FPL filed the petition for an increase in rates on March 18, 2009. On August 6, 2009, Staff filed a Motion for Order Compelling Responses to Interrogatories (Motion to Compel) requesting the Commission to direct FPL to provide responses to interrogatories regarding employee compensation, to which FPL had previously objected.

Petition for Intervention

By petition dated August 7, 2009, Maria E. Gomez, William Ho, Rudy M. Sanchez, William Reichel, Manuel B. Miranda, M. Beth Farr, Robert J. Hughes, C. L. Weaver, John E. Kirkpatrick, C. A. Pell, Irene White, Rob Adams, Susan Gampfer, William J. Burrows and Alejandro Zappani (FPL Employees) requested permission to intervene in this proceeding for the limited purpose of opposing Staff's Motion to Compel and any other efforts to cause FPL to disclose to the Commission or other third parties the amount of FPL Employees' compensation or other personal financial information. FPL and FPL Employees filed a joint Response and Memorandum in Opposition to Staff's Motion to Compel (Response in Opposition) on August 7, 2009.

FPL Employees state that they are current employees of FPL whose individual compensation has been maintained by FPL as confidential. FPL Employees assert that with the exception of a small number of FPL executives and employees who have responsibilities relating to the setting and administration of compensation, their compensation information has not been disclosed to third parties inside or outside of FPL, but has been made available on a confidential basis to the Commission. According to FPL Employees, that compensation information, as well as the additional information that is subject to Staff's Motion to Compel, would possibly be made available to the public if the Motion to Compel is granted.

FPL Employees contend that the company has conscientiously maintained the confidentiality of employee compensation for three primary reasons: (1) knowledge within the company of comparative employee compensation would be contrary to the atmosphere of

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workplace goodwill that FPL seeks to foster and which it believes is important for overall job satisfaction, morale, and employee retention; (2) FPL operations require employment of persons with special skills in a highly competitive market, such that disclosure of compensation information would increase the cost to FPL of obtaining and retaining such employees; and (3) FPL desires to respect the privacy rights of its employees and to support its employees' constitutional right to privacy guaranteed by Article I, Section 23 of the Florida Constitution. FPL Employees state that they have a substantial interest in this matter because disclosure of compensation information would undermine these interests.

### Standards for Intervention

Pursuant to Rule 25-22.039, F.A.C., persons, other than the original parties to a pending proceeding, who have a substantial interest in the proceeding, and who desire to become parties may petition for leave to intervene. Petitions for leave to intervene must be filed at least five (5) days before the final hearing, conform with Rule 28-106.201(2), F.A.C., and include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to Commission rule, or that the substantial interests of the intervenor are subject to determination or will be affected through the proceeding. Intervenors take the case as they find it.

To have standing, the intervenor must meet the two-prong standing test set forth in Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2nd DCA 1981). The intervenor must show that (1) he will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57, F.S., hearing, and (2) this substantial injury is of a type or nature which the proceeding is designed to protect. The first aspect of the test deals with the degree of injury. The second deals with the nature of the injury. The "injury in fact" must be both real and immediate and not speculative or conjectural. International Jai-Alai Players Assn. v. Florida Pari-Mutuel Commission, 561 So. 2d 1224, 1225-26 (Fla. 3rd DCA 1990). See also, Village Park Mobile Home Assn., Inc. v. State Dept. of Business Regulation, 506 So. 2d 426, 434 (Fla. 1st DCA 1987), rev. den., 513 So. 2d 1063 (Fla. 1987) (speculation on the possible occurrence of injurious events is too remote).

### Analysis & Ruling

It appears that FPL Employees meet the two-prong standing test in Agrico. FPL Employees assert that they are current employees of FPL, whose substantial interests will be affected by this Commission's decision whether to grant Staff's Motion to Compel. Specifically, FPL Employees maintain that disclosure of employment compensation information, which is the subject of Staff's Motion to Compel, will undermine workplace goodwill, interfere with their employer's ability to retain skilled employees in a highly competitive market, and violate their fundamental right to privacy. FPL Employees further state that this is the type of proceeding designed to protect their interests. Therefore, FPL Employees meet the two-prong standing test of Agrico. Accordingly, FPL Employees' petition for intervention shall be granted for the limited purpose of opposing Staff's Motion to Compel and any other efforts to cause FPL to disclose to the Commission or other third parties the amount of FPL Employees' compensation

or other personal financial information. Pursuant to Rule 25-22.039, F.A.C., FPL Employees take the case as they find it.


Based on the foregoing, it is

ORDERED by Commissioner Katrina J. McMurrian, as Prehearing Officer, that the Petition to Intervene filed by Maria E. Gomez, William Ho, Rudy M. Sanchez, William Reichel, Manuel B. Miranda, M. Beth Farr, Robert J. Hughes, C.L. Weaver, John E. Kirkpatrick, C.A. Pell, Irene White, Rob Adams, Susan Gampfer, William J. Burrows and Alejandro Zappani is hereby granted as set forth in the body of this Order. It is further

ORDERED that all parties to this proceeding shall furnish copies of all testimony, exhibits, pleadings and other documents which may hereinafter be filed in this proceeding to:

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By ORDER of Commissioner Katrina J. McMurrian, as Prehearing Officer, this 18th  
day of August, 2009.

  
KATRINA J. McMURRIAN  
Commissioner and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Commission Clerk, Office of Commission Clerk, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.