

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 120015-EI
ORDER NO. PSC-13-0015-PCO-EI
ISSUED: January 9, 2013

ORDER DENYING THOMAS SAPORITO'S MOTION FOR RECONSIDERATION OF
COMMISSION'S DECEMBER 13TH, 2012 ORDER APPROVING FLORIDA POWER & LIGHT
COMPANY'S SETTLEMENT AGREEMENT, MOTION FOR FURTHER HEARING AND
MOTION FOR OPPORTUNITY TO ENGAGE IN DISCOVERY

On March 19, 2012, Florida Power & Light Company (FPL) filed a petition for an increase in rates to take effect in January, 2013. On May 9, 2012, Mr. Thomas Saporito was granted intervention in this docket as a pro-se residential customer of FPL. On August 15, 2012, FPL and three other intervening parties, the Florida Industrial Power User's Group, the Federal Executive Agencies, and the South Florida Hospital and Healthcare Association, filed a Motion to Approve Settlement Agreement, relating to a proposed settlement of the rate case entered into by those four parties. The Commission took additional testimony and evidence regarding the Settlement Agreement on November 19-21, 2012, and on December 13, 2012, the Commission voted to approve a Revised Settlement Agreement.

On December 14, 2012, Mr. Saporito filed a Motion For Reconsideration Of Commission's December 13th, 2012 Order Approving Florida Power & Light Company's Settlement Agreement, Motion For Further Hearing And Motion For Opportunity To Engage In Discovery (Motion for Reconsideration). On December 18, 2012, FPL filed a Response In Opposition To Thomas Saporito's Motion For Reconsideration (Response).

Mr. Saporito's Motion

In his Motion, Mr. Saporito states that at the conclusion of the August technical hearings, the Commission ordered a "further hearing and process" to consider the Settlement Agreement, and that the Commission held such hearing on December 13, 2012. Mr. Saporito alleges he was not invited to negotiate any settlement terms or conditions with FPL representatives during a break in the December 13 hearing, and that after the break, "certain and specific material changes which FPL had made to the Settlement" were announced by FPL and staff. Mr. Saporito further maintains that additional changes were made on the advice of staff legal counsel, and as a result, a "new settlement document" was "created solely between FPL, the Commission, and the Commission Staff."

Mr. Saporito identifies the legal standard for a motion for reconsideration, and argues that the Commission's approval of the new settlement "overlooked factual matters and is error by the Commission as a matter of law." Mr. Saporito alleges that the December 13 hearing created a new settlement document that "was negotiated solely by FPL, the Commission and the Commission staff." Mr. Saporito goes on to conclude that the new settlement is a document

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“separate and apart” from the August 15th settlement document, and that the Commission’s consideration of the new settlement was error as a matter of law. Mr. Saporito further alleges that the Commission erred as a matter of law “in failing to provide the non-signatories an opportunity to engage in further hearing and discovery with respect to the significant and material changes made to the August 15th, 2012 Settlement document.” Mr. Saporito avers that he has a “‘due-process’ right . . . to engage in the discovery process and a ‘due-process’ right to engage in further hearing to challenge the significant and material changes made to the August 15, 2012 Settlement document.” As relief, Mr. Saporito requests that the Commission reconsider approval of the December 13, 2012 settlement document, allow the parties to engage in further discovery, and allow the parties to participate at a further hearing regarding the December 13, 2012 settlement document.

FPL’s Response in Opposition

In its Response, FPL argues that “Mr. Saporito's Motion for Reconsideration is premature and should be denied.” In support thereof, FPL maintains that Mr. Saporito’s Motion was filed December 14, 2012, the day after the Commission’s vote to approve a Settlement Agreement in this docket. FPL points out that the Commission has not yet issued an order, and that Rule 25-22.060, Florida Administrative Code (F.A.C.), as cited by Mr. Saporito, requires that a Motion for Reconsideration be filed within fifteen days of the issuance of an order, and therefore, “a request for reconsideration necessarily requires a final Commission order or action.” FPL concludes that “Mr. Saporito's Motion for Reconsideration is premature and fails to comply with Rule 25-22.060, F.A.C., so it should be denied.” FPL also states that it “is authorized to represent that the co-Signatories [to the Settlement Agreement] support FPL's opposition to Mr. Saporito's Motion for Reconsideration.”

Ruling

After consideration of the Motion for Reconsideration and FPL’s Response in Opposition, I find that Mr. Saporito’s Motion for Reconsideration should be denied. Rule 25-22.060, F.A.C. requires that the Commission issue a written order before a Motion for Reconsideration is authorized. Although Mr. Saporito's Motion repeatedly refers to the Commission’s December 13, 2012 “Order,” no such Order has yet been reduced to writing and issued. As Mr. Saporito’s Motion for Reconsideration was filed prior to the issuance of a written order, it is untimely and must be denied. Given the untimely filing of the Motion, Mr. Saporito’s remaining requests for additional discovery and a hearing are also denied.

Based on the foregoing, it is

ORDERED by Chairman Ronald A. Brisé, as Presiding Officer, that Mr. Saporito’s Motion For Reconsideration Of Commission's December 13th, 2012 Order Approving Florida Power & Light Company's Settlement Agreement, Motion For Further Hearing And Motion For

Opportunity To Engage In Discovery is DENIED.

By ORDER of Chairman Ronald A. Brisé, as Presiding Officer, this 9th day of January, 2013.



RONALD A. BRISE
Chairman and Presiding Officer
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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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 Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, 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.