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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida Power & Light Company.	DOCKET NO.: 20210015-EI FILED: October 11, 2021

LARSON POST-HEARING STATEMENT OF POSITIONS AND POST-HEARING BRIEF FOR SETTLEMENT CASE

Pursuant to Florida Public Service Commission ("FPSC" or "Commission") Order No. PSC-2021-0116-PCO-EI, issued on March 24, 2021, as modified by Order Nos. PSC-2021-0120-PCO-EI, PSC-2021-0120A-PCO-EI, PSC-2021-0233-PCO-EI, PSC-2021-0314-PCO-EI, and PSC-2021-0362-PHO-EI issued on April 1, April 8, June 28, August 20, and September 16, 2021 respectively, Mr. Daniel R. Larson and Mrs. Alexandria Larson ("Larsons"), by and though undersigned counsel, hereby file their Post-Hearing Statement of Positions and Post-Hearing Brief for the Settlement Case in the above captioned docket. In support thereof, the Larsons state as follows:

SUMMARY OF ARGUMENT

The Commission should deny the Joint Motion for Approval of Settlement Agreement ("Joint Motion") filed by Florida Power & Light Company ("FPL), the Office of Public Counsel ("OPC"), the Florida Industrial Power Users Group ("FIPUG"), the Florida Retail Federation ("FRF"), and the Southern Alliance for Clean Energy ("SACE") on August 10, 2021, because the proposed settlement is not in the public interest. Specifically, the Larsons oppose the Joint Motion because:

(1) The proposed settlement is not in the public interest;

(2) The proposed settlement will result in rates during the settlement period that are unfair, unjust, and unreasonable;

(3) The proposed settlement unjustly subsidizes commercial customers at the expense of residential customers;

(4) The Return on Equity ("ROE") under the proposed settlement is excessive and unjustified in comparison to the recent settlements in the Duke and TECO electric rate cases;

(5) The additional ROE adjustment based upon the expected treasury interest rate increases represent an another excessive and unjustified giveaway to FPL at the expense of FPL customers who are forced to fuel corporate profits;

(6) The proposed settlement will result in rates which produce revenues that are far in excess of what FPL requires to provide safe and reliable service and remain financially health during the settlement period;

(7) The proposed settlement will result in intergenerational inequities and excessive rates immediately following the settlement period as a result of depleting surplus depreciation funds to maintain FPL earnings levels far in excess of what is required to maintain a fair and reasonable Return on Equity ("ROE") in comparison to other Florida Investor Owned Utilities ("IOUs"); and

(8) The proposed settlement represents the largest, unjustified, electric rate increase and rate case settlement in Florida's history.

The Larsons note for record that the positions taken by OPC within their prehearing statement in July 2021 (specifically that the FPL request to increase rates was not justified, that the FPL ROE request was excessive and unjustified, and that the Commission lacked the authority to approve the mechanisms contained within the FPL rate request) completely

contradict the egregious terms of the settlement to which OPC (Richard Gentry) acquiesced as a signatory to the Joint Motion prior to the scheduled rate case hearing.

The Larsons believe that it is important to recognize that the prior Public Counsel (who served the state admirably for 14 years) was conveniently forced out by the Florida Legislature prior to the filing of the FPL rate case. In simple terms, a seasoned professional with 14 years of experience in protecting the interests of Florida ratepayers was inexplicably replaced by a lobbyist. Accordingly, the Larsons believe that newly minted Public Counsel (Richard Gentry) effectively sold out FPL customers and has lost all credibility by agreeing to an egregious settlement that completely contradicts the positions taken in its prehearing statement

In a famous "indecency" case, Supreme Court Justice Porter Stewart stated, "I know it when I see it". Likewise, in the context of this proceeding, the Commission should equally know an excessive and egregious settlement that is not in the public interest when they see it. Approval of the proposed settlement (if left unmodified) represents the largest electric rate increase in Florida's history and the largest electric rate case settlement in Florida's history.

Furthermore FPL, and the other signatories to the Joint Motion, failed to consult with the Larsons prior to filing the Joint Motion required by Rule 28-106.204(3), Florida Administrative Code. Despite expressly stating their desire and willingness to participate in any FPL settlement discussions relating to the above captioned docket, the Larsons were not afforded the opportunity to participate in the settlement discussions that led to the filing of the Joint Motion. Consistent with the Alternative Dispute Resolution ("ADR") process encouraged by the Florida Public Service Commission ("Commission" or "FPSC"), the Larsons believe that all parties to a

contested docket should have been afforded the meaningful opportunity to participate in settlement discussions in a good faith effort to reach a stipulated settlement agreement that could be supported by all of the parties in a heavily contested docket.

Based upon the above, the Larsons believe that the proposed settlement (in its current form) contained within the Joint Motion is not in the public interest and should be appropriately denied by the Commission, or alternatively modified by the Commission such that the proposed settlement is fair, just, and reasonable to FPL residential customers.

ISSUES AND POSITIONS

ISSUE 1: Does the Commission have the statutory authority to grant FPL's requested storm cost recovery mechanism as part of the Stipulation and Settlement Agreement?

No. The Commission lacks the statutory authority to pre-approve a rate increase as a result of the storm cost recovery mechanism requested by FPL.

ARGUMENT

The Commission lacks the statutory authority to pre-approve a rate increase as a result of the storm cost recovery mechanism requested by FPL.

ISSUE 2: Does the Commission have the statutory authority to approve FPL's requested Reserve Surplus Amortization Mechanism (RSAM) as part of the Stipulation and Settlement Agreement?

No. The proposed settlement will result in intergenerational inequities and excessive rates immediately following the settlement period as a result of depleting surplus depreciation funds to maintain FPL earnings levels far in excess of what is required to maintain a fair and reasonable There is no statutory basis for the Commission to include the accrued depreciation for ratemaking purposes.

ARGUMENT

The Commission does not have the ability to establish non-cost-based rates. Recording debits or credits to accumulated depreciation reserve unrelated to recording depreciation to achieve a certain ROE is contrary to the definition of the Account 108. Previous U.S. Supreme Court rulings have found that the accumulated depreciation reserve "represent the consumption of capital, on a cost basis" and cautions against using depreciation "to the extent, subscribers for the telephone service are required to provide, in effect, capital contributions, not to make good losses incurred by the utility in service rendered, and thus to keep its investment unimpaired, but to secure additional plant and equipment upon which the utility experts a return. See, Lindheimer v. Illinois Bell Tel. Co., 292 US 151 (1934) pp. 168-169. Furthermore, this concept is also codified in Florida Statutes, Sections 366.06, Fla. Stat., which provides that after the Commission has investigated and determined "the actual legitimate costs of the property of each utility company, actually used and useful in the public service," only the net investment of the honestly and prudently invested actual legitimate costs used and useful, less the accrued depreciation, shall be used for ratemaking purposes. There is no statutory basis for the Commission to include the accrued depreciation for ratemaking purposes. Allowing the RSAM would effectively impact the amount of money FPL is allowed to keep from the established rates during the 4-year term – thus, would be used for ratemaking purposes. Additionally, it would require any of the RSAM amount used from the accrued depreciation would have to be recollected from future customers. Therefore, using the excess accumulated depreciation a manner that allows them to keep the excess contribution of accumulated depreciation to increase profits allowed by rates is contrary to Supreme Court case law and Florida Statutes.

ISSUE 3: Does the Commission have the statutory authority to approve FPL's requested Solar Base Rate Adjustment mechanism for 2024 and 2025 as part of the Stipulation and Settlement Agreement?

No. The FPL Solar Base Rate Adjustment proposal circumvents the required showing that FPL is earning outside the range of reasonableness, thus cannot be approved by the Commission.

ARGUMENT

While the Commission "may adopt rules for the determination of rates in a full revenue requirement proceeding which rules provide for adjustments of rates based on revenues and costs during the period new rates are to be in effect and for incremental adjustments in rates for subsequent periods," the Commission has no such rules. See, Section 366.076, Fla. Stat.. Moreover, Section 366.071, Fla. Stat., the interim statute section, only provides for interim rates based on a showing that utility is earning outside its range of reasonableness. Thus, the Commission can grant an interim rate increase only after a showing that the Company is earning outside the range of reasonableness. The FPL Solar Base Rate Adjustment proposal would not require the necessary demonstration that they are earning outside the range of reasonableness, thus cannot be approved.

ISSUE 4: Does the Commission have the statutory authority to adjust FPL's authorized return on equity based on FPL's performance as part of the Stipulation and Settlement Agreement?

*No. There is no statutory basis for the Commission to adjust the authorized return on equity for performance except under Section 366.82(9), Fla. Stat. which provides that the Commission is only authorized to allow an investor-owned electric utility an additional return on equity of up to 50 basis points for exceeding 20 percent of their annual load-growth through energy efficiency and conservation measures.

ARGUMENT

Sections 366.06 and 366.07, Fla. Stat., provide for rate changes only "after public hearing" where the Commission has investigated and determine "the actual legitimate costs…" and finds that rates are insufficient that then the Commission "by order" can "fix the fair and reasonable rates." There is no statutory basis for the Commission to adjust the authorized return on equity for performance except under Section 366.82(9), F.S. Section 366.82(9), F.S., provides that the Commission is authorized to allow an investor-owned electric utility an additional return on equity of up to 50 basis points for exceeding 20 percent of their annual load-growth through energy efficiency and conservation measures.

ISSUE 5: Does the Commission have the statutory authority to include non-electric transactions in an asset optimization incentive mechanism as part of the Stipulation and Settlement Agreement?

No. Pursuant to Section 366.05(2), Fla. Stat., the Commission lacks the statutory authority to include non-electric transactions within any incentive mechanism for rated being charged.

ARGUMENT

Under Section 366.05(2), Fla. Stat., "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."

ISSUE 5(a): Does the Commission have the authority to approve FPL's requested proposal for a federal corporate income tax adjustment that addresses a change in tax if any occurs during or after the pendency of this proceeding as part of the Stipulation and Settlement Agreement?

No. FPL's request for a tax adjustment for a speculative future tax change is premature and thus prohibited based on the Commission's decision in Order No. PSC-2017-0099-PHO-EI. Should federal tax changes occur in the future, the issue should be addressed at the appropriate time in a separate proceeding by the Commission.

ARGUMENT

No. FPL's request for a tax adjustment for a speculative future tax change is premature and thus prohibited based on the Commission's decision in Order No. PSC-2017-0099-PHO-EI as the Commission ruled in identical circumstances in 2017 when speculation was rampant about possible statutory tax rate changes in the absence of passed legislation. As the Commission stated then, and as it stands now, the issue is premature and not ripe for consideration at this time. Should federal tax changes occur in the future, the issue should be addressed at the appropriate time in a separate proceeding.

ISSUE 6: Does the Commission have the statutory authority to grant FPL's requested four year plan as part of the Stipulation and Settlement Agreement?

No. The Commission cannot waive its own statutory obligations to hold a public hearing to determine just and reasonable rates upon receipt of a legally sufficient request to review the rates being charged.

ARGUMENT

Under Section 366.06(2), Fla. Stat., if the Commission finds, upon its own motion or request made by another, that such rates are insufficient to yield reasonable compensation for the services rendered, *or that such rates yield excessive compensation for services rendered*, the Commission shall order and hold a public hearing to determine the just and reasonable rates to be charged. The Commission cannot waive its own statutory obligations to hold a public hearing to determine just and reasonable rates upon receipt of a legally sufficient request to review the rates being charged.

ISSUE 9: Has Floridians Against Increased Rates, Inc. demonstrated individual and/or associational standing to intervene in this proceeding?

The Larsons take no position on this issue.

ARGUMENT

Not Applicable.

ISSUE A: Should the Stipulation and Settlement Agreement dated August 9, 2021, be approved?

No. The Commission should deny the Joint Motion for approval of the proposed settlement because the proposed settlement agreement is not in the public interest. Alternatively, the Commission should modify the proposed settlement to ensure that the electric rates being charged are fair, just, and reasonable to FPL residential customers.

ARGUMENT

The Commission should deny the Joint Motion for approval of the proposed settlement because the proposed settlement agreement is not in the public interest. Alternatively, the Commission should modify the proposed settlement to ensure that the electric rates being charged are fair, just, and reasonable to FPL residential customers. The Commission has the ability to reject and modify a proposed settlement agreement as discussed within the Decision section of Commission Order No. PSC-13-0023-S-EI (Exhibit 621). Specifically, the Larsons oppose the proposed Stipulation and Settlement Agreement because:

(1) The proposed settlement is not in the public interest;

(2) The proposed settlement will result in rates during the settlement period that are unfair, unjust, and unreasonable;

(3) The proposed settlement unjustly subsidizes commercial customers at the expense of residential customers;

(4) The Return on Equity ("ROE") under the proposed settlement is excessive and unjustified in comparison to the recent settlements in the Duke and TECO electric rate cases;

(5) The additional ROE adjustment based upon the expected treasury interest rate increases represent an another excessive and unjustified giveaway to FPL at the expense of FPL customers who are forced to fuel corporate profits;

(6) The proposed settlement will result in rates which produce revenues that are far in excess of what FPL requires to provide safe and reliable service and remain financially health during the settlement period;

(7) The proposed settlement will result in intergenerational inequities and excessive rates immediately following the settlement period as a result of depleting surplus depreciation funds to maintain FPL earnings levels far in excess of what is required to maintain a fair and reasonable Return on Equity ("ROE") in comparison to other Florida Investor Owned Utilities ("IOUs"); and

(8) The proposed settlement represents the largest, unjustified, electric rate increase and rate case settlement in Florida's history.

The Larsons note for record that the positions taken by OPC within their prehearing statement in July 2021 (specifically that the FPL request to increase rates was not justified, that the FPL ROE request was excessive and unjustified, and that the Commission lacked the authority to approve the mechanisms contained within the FPL rate request) completely contradict the egregious terms of the settlement to which OPC (Richard Gentry) acquiesced as a signatory to the Joint Motion prior to the scheduled rate case hearing. Simply put, the Larsons believe that OPC (Richard Gentry) sold out FPL customers and has lost all credibility by

agreeing to an egregious settlement that completely contradicts the positions taken by OPC in their prehearing statement.

Furthermore, the ROE under the proposed settlement is excessive, well in excess of what OPC claimed it should be, and well in excess of the ROE set forth under the recent Duke and TECO settlements. Based upon its strong balance sheet and high equity ratio, FPL should be perceived as having lower market risk to investors compared to other Florida electric utilities resulting in an lower ROE requirement and WACC.[1] Likewise, RSAM does not constitute cost-based ratemaking if approved by the Commission. The egregiousness of the proposed settlement is clearly evidenced by the fact that proposed ROE, ROE adjustment mechanism, and RSAM represent a windfall giveaway to FPL that is well in excess of what FPL requires to provide safe and reliable service and remain financially health during the settlement period.

Accordingly, the Commission should deny the Joint Motion for approval of the proposed settlement because the proposed settlement agreement is not in the public interest. Alternatively, the Commission should modify the proposed settlement to ensure that the electric rates being charged are fair, just, and reasonable to FPL residential customers. The Commission should not approve an egregious settlement unjustly subsidizes FPL commercial customers at the expense of FPL residential customers. The Commission has the ability to reject and modify a proposed settlement agreement as discussed within the Decision section of Commission Order No. PSC-13-0023-S-EI (Exhibit 621).

[1] Beta is approximately 0.7 for NEE common stock.

WHEREFORE, the Larsons respectfully request that the Commission deny the Joint Motion for approval of the proposed settlement because the proposed settlement agreement is not in the public interest. Alternatively, the Larsons respectfully request that the Commission modify the proposed settlement to ensure that the electric rates being charged are fair, just, and reasonable to FPL residential customers.

Respectfully submitted this 11th day of October 2021.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed with the Commission Clerk and furnished to the parties of record indicated below via electronic mail on October 11, 2021:

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