

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-12-0487-PCO-EI  
ISSUED: September 21, 2012

ORDER CLARIFYING SECOND  
ORDER REVISING ORDER ESTABLISHING PROCEDURE  
SETTING PROCEDURAL SCHEDULE FOR COMMISSION  
CONSIDERATION OF SETTLEMENT AGREEMENT  
AND  
GRANTING PROTECTIVE ORDER

This docket was opened to consider Florida Power & Light Company's (FPL) petition for a base rate increase. Eleven parties were granted intervention in the docket. By the Order Establishing Procedure, Order No. PSC-12-0143-PCO-EI, issued March 26, 2012, the hearing was set to commence on August 20, 2012. On August 15, 2012, FPL and three of the eleven intervening parties filed a Motion to Approve Settlement Agreement (Settlement Agreement) and a Motion to Suspend the Procedural Schedule.<sup>1</sup> The Motion to Suspend the Procedural Schedule was denied by Order No. PSC-12-0430-PCO-EI, issued August 17, 2012. All parties were given an opportunity to file responses to the Settlement Agreement. The Office of Public Counsel (OPC), Florida Retail Federation (FRF), City of Pinecrest, Daniel and Alexandria Larson, Mr. Nelson, Mr. Hendricks and Mr. Saporito filed responses in opposition to the Settlement Agreement.

On August 20, 2012, the Commission convened the technical hearing addressing FPL's petition for a rate increase as scheduled in the Order Establishing Procedure. Following the commencement of the hearing, OPC made an ore tenus motion for reconsideration of the Order Denying the Joint Motion to Suspend Procedural Schedule. Thereafter oral argument was made by the parties. Following oral argument the Commission denied the Motion for Reconsideration and declined to address the Settlement Agreement prior to convening the technical hearing. Rather, the Commission elected to address the Settlement Agreement at a time certain following the technical hearing, and stated that the hearing would proceed as scheduled, excluding any evidence concerning the settlement, and thus, ensuring that the technical hearing and the alternative resolution mechanism of the settlement would remain separate.

On August 27, 2012, the Presiding Officer issued PSC-12-0440-PCO-EI revising the Order Establishing Procedure and setting the procedural schedule for the Commission's consideration of the Settlement Agreement. The Order provided that upon the conclusion of the

<sup>1</sup> FPL, Florida Industrial Power Users Group (FIPUG), Federal Executive Agencies (FEA), and South Florida Hospital and Healthcare Association (SFHHA) are the signatories to the Settlement Agreement. While party Algenol did not execute the Settlement Agreement or join in the motion, it did express its support for the Settlement Agreement.

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evidentiary portion of the hearing, the Commission would recess until a date and time to be announced to take up the Settlement Agreement.<sup>2</sup> The Order stated that consideration of the Settlement Agreement is not an evidentiary proceeding, and no evidence would be taken. However, the Order did permit oral argument from the parties and granted thirty minutes for each side to divide among the parties as they deem appropriate.

In order to facilitate the parties' ability to meaningfully analyze the Settlement Agreement prior to the Commission's deliberations on September 27, 2012, the Order provided the opportunity for Commission staff and the parties to issue data requests. The limited purpose of the data requests is clearly contained within the Order. It provides that information obtained through data requests may be used by the parties in their oral argument, and by staff in advising the Commission on the Settlement Agreement. The sole purpose of affording the parties with an opportunity to gather additional information regarding the Settlement Agreement is to assist the tribunal in its deliberations on the Settlement Agreement. Data requests that exceed the scope of the limited analysis of the Settlement Agreement are not relevant nor are they useful to the deliberative process.

On August 28, 2012, FPL served OPC with interrogatories regarding the proposed Settlement Agreement. On September 4, 2012, counsel for OPC sent a letter to FPL objecting to the interrogatories (Letter). Subsequently, on September 6, 2012, OPC filed a Motion for Clarification and/or Reconsideration of Order No. PSC-12-0440-PCO-EI (Motion for Clarification). On September 7, 2012, FPL filed a response to the Motion for Clarification. Also, on September 7, 2012, FPL sent the same questions to OPC styling it as a data request instead of interrogatories.

Having reviewed OPC's Motion for Clarification, FPL's response, FPL's first data request to OPC, and OPC's September 4, 2012 Letter to FPL, I find that it is appropriate to treat OPC's Motion for Clarification as a Motion for Protective Order, relieving OPC from the obligation of responding to the questions in FPL's data request. Rule 28-106.211, Florida Administrative Code, affords the Presiding Officer with the authority to issue any orders necessary to promote the just, speedy, and inexpensive determination of all aspects of the case.<sup>3</sup> Pursuant to this authority and in order to facilitate the just, speedy, and inexpensive deliberation concerning the Settlement Agreement, I find that with the exception of question numbers five and six, the questions in FPL's first data request to OPC are beyond the scope of the Settlement Agreement and are not relevant. With respect to question number five, OPC addressed the substance of the question in its Letter, which directed FPL to its responses to the Settlement Agreement and OPC's positions contained within its post-hearing brief in Docket No. 080677-EI.<sup>4</sup> Moreover, any calculation demonstrating how the GBRA would increase FPL's earned return on equity above the authorized mid-point of 10.7% would be based on speculation by

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<sup>2</sup> On August 30, 2012, the Presiding Officer specified that the Settlement Agreement would be addressed on September 27, 2012, where oral argument would be heard by the Commission.

<sup>3</sup> See also Interblock USA, LLC et al. v. Dept. of Bus. and Prof. Reg., Case No. 11-1075RX CON (Fla. DOAH March 22, 2002).

<sup>4</sup> Docket No. 080677-EI, is the docket in which FPL included in its petition a request for a generation base rate adjustment mechanism (GBRA) analogous to the provision in the Settlement Agreement.

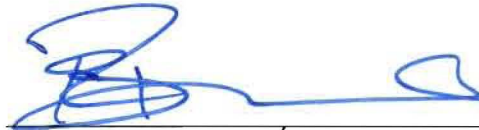
OPC and thus is not useful to the deliberative process regarding the Settlement Agreement. Similarly, with respect to question number six, OPC has addressed the substance of this question in its Letter.

Based on the foregoing, it is

ORDERED by Chairman Ronald A. Brisé, as Presiding Officer that Order No. PSC-12-0440-PCO-EI is clarified as set forth in the body of this Order. It is further

ORDERED that the Office of Public Counsel's Motion for Clarification and/or Reconsideration of Order No. PSC-12-0440-PCO-EI shall be treated as a Motion for Protective Order, and OPC is relieved from the obligation to respond to FPL's data request, as set forth in the body of this Order. It is further

ORDERED by Chairman Ronald A. Brisé, as Presiding Officer, this 21st day of September, 2012.



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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.