

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Florida Power) Docket No. 000982-EI
& Light Company for Approval of)
conditional settlement agreement) Filed November 9, 2000
which terminates standard offer)
contracts originally entered into)
between FPL and Okeelanta)
Corporation and FPL and Osceola)
Farms, Co.)

**PETITION REQUESTING SECTION 120.57 HEARING AND
PROTEST OF PROPOSED AGENCY ACTION**

Pursuant to Rules 25-22.029 and 28-106.201, Florida Administrative Code, the Petitioner files this petition to protest proposed agency action order no. PSC-00-1913-PAA-EI issued October 19, 2000, and request an evidentiary hearing under section 120.57, Florida Statutes (2000).

1. Section 25-22.029, Florida Administrative Code, provides that one whose substantial interests may or will be affected by the Commission's proposed action may file a petition for a Section 120.569 or 120.57 hearing, in the form provided by Rule 28-106.201, F.A.C. Any such petition shall be filed within the time stated in the notice issued pursuant to subsection (1) of this rule.

2. The name, address and telephone numbers of petitioner are as follows:

Michael T. Caldwell, 12540 SW 108th Avenue, Miami, Florida, 33176, telephone 305-233-7779. Petitioner received notice of the Commission's decision by regular United States Postal Service on or about October 20, 2000.

ASST
CAG
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Done 11/14/00

DOCUMENT NUMBER-DATE
14513 NOV-98
FPSC-RECORDS/REPORTING

3. Michael T. Caldwell is currently, and has been for over the past twenty-seven years, a customer of Florida Power and Light Company and as such is considered a person whose substantial interests are affected by the Commission's proposed action.

4. The action taken by the Florida Public Service Commission (Commission) in its proposed agency action order no. PSC-00-1913-PAA-EI affects the substantial interests of petitioner because the order approves Florida Power and Light Company's settlement of \$222.5 million and allows Florida Power and Light Company to begin collection of the settlement payment over a term of five years as follows: 79% through the capacity clause; and 21% through the fuel adjustment clause. The Commission should not have approved Florida Power and Light Company's collection of the settlement payment through either the capacity clause or the fuel adjustment clause since the settlement is for damages caused by Florida Power and Light Company as a result of its voluntary actions in terminating its standard offer contracts with Okeelanta Corporation and Osceola Farms, Co. Had the Commission not approved this settlement, the proposed agency action order would not have increased the rates paid by the Petitioner.

5. Petitioner submits the following disputed issues of material fact, policy, and law for resolution in a hearing conducted under Section 120.57, Florida Statutes (2000):

a. The Commission approved both standard offer contracts for cost recovery by Order No. PSC-92-0050-FOF-EQ on March 11, 1992 in Docket No. 911140-EQ. Florida Power and Light Company never petitioned the Commission for approval to buy out those standard

offer contracts on the basis that those contracts were no longer cost-effective. Instead, Florida Power and Light Company voluntarily chose to terminate those standard offer contracts.

b. Florida Power and Light Company voluntarily chose not to exercise what it believed to be its option to extend the commercial operation deadline of the QFs under the standard offer contracts; this voluntary choice by the company led to litigation which resulted in damages being incurred by the QFs and caused the QFs to file for bankruptcy in May, 1997; the proposed settlement agreement of \$222.5 million is to settle those damages incurred as a result of Florida Power and Light Company's voluntary actions.

c. The Commission erroneously approved this settlement agreement as a "buy out" of the Okeelanta Corporation and Osceola Farms, Co. standard offer contracts. As noted in 5(a) above, FPL never petitioned the Commission for a buy out of these contracts prior to FPL's voluntary termination of those contracts.

d. The \$222.5 million settlement is to pay off the bondholders of the two QFs and thus to settle the damages incurred by the QFs as a result of FPL's voluntary actions. These voluntary actions, and the resulting damages, were simply bad business decisions on the part of FPL's management.

e. One of the four possible outcomes of the litigation is that FPL prevails. The potential cost of this outcome is a potential cost to the ratepayers of \$7.6 million in attorney's fees and court costs. Obviously this would be a better choice if FPL's customers are to pay for

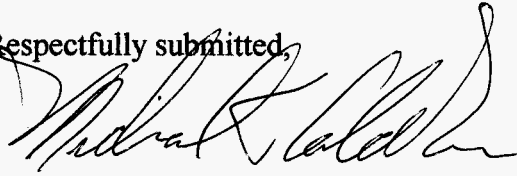
the outcome of the litigation.

f. If the outcome of the litigation is that the QFs prevail and the Court orders performance of the contracts , then FPL could petition the Commission for approval of a buy out of the contracts on the basis that the contracts are not cost-effective.

6. The Commission erroneously approved this settlement as a buy out of standard offer contracts. This settlement was not a petition by FPL to buy out contracts that were no longer cost effective but instead is a settlement for damages incurred by FPL as a result of voluntary actions which were bad business decisions. Such damages are not reasonable and prudent costs that should be passed on to FPL's customers. The risk of such bad business decisions should be borne solely by the utility, not the customers. The Commission should not approve cost recovery of damages incurred due to bad business decisions. In addition, the Commission's proposed agency action is premature; it should wait to see what the outcome of the litigation is; then, if FPL does not prevail and the Court orders performance of the QF contracts, the Commission could entertain a petition by FPL for a buy out of the QF contracts.

WHEREFORE, the Petitioner protests the Commission's proposed agency action order no. PSC-00-1913-PAA-EI issued October 19, 2000, requesting that the Commission's order be reversed, and requests an evidentiary hearing to be held pursuant to Section 120.57, Florida Statutes (2000), as described in this petition.

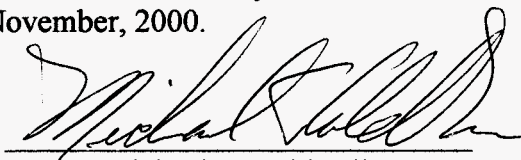
Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael T. Caldwell". The signature is fluid and cursive, with a large initial "M" and a long, sweeping tail.

MICHAEL T. CALDWELL
12540 SW 108th Avenue
Miami, FL 33176
305-233-7779

DOCKET NO. 000982-EI
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail or hand-delivery to the following parties on this 9th day of November, 2000.

A handwritten signature in black ink, appearing to read "Michael T. Caldwell", written over a horizontal line.

Michael T. Caldwell

Wm. Cochran Keating IV
Senior Attorney
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850