

RECEIVED - FPSC

12 AUG 20 AM 11:05

COMMISSION
CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida
Power & Light Company

Docket No: 120010E1

Filed: August 20, 2021

**OFFICE OF PUBLIC COUNSEL'S MOTION TO DISMISS THE SETTLEMENT
SUBMITTED BY FPL/SFHHA/FIPUG/FEA OR SET FOR EXPEDITED ORAL
ARGUMENT ON THE MOTION TO APPROVE THE SETTLEMENT SUBMITTED BY
FPL/SFHHA/FIPUG/FEA OR IN THE ALTERNATIVE DISMISS FPL'S PETITION
FOR RATE INCREASE SUBMITTED MARCH 2012**

The Citizens of the State of Florida, through the Office of Public Counsel (OPC), hereby files its Motion to Dismiss the Settlement Agreement submitted by Florida Power & Light Company (FPL), South Florida Hospital and Health Care Association (SFHHA), the Florida Industrial Power Users Group (FIPUG), and the Federal Executive Agencies (FEA) (FPL settlement agreement) or Set for Expedited Oral Argument the Motion to Approve the FPL settlement agreement or in the Alternative Dismiss FPL's Petition for Rate Increase submitted March 2012. The grounds for Citizens Motion are set forth as follows:

A. Motion to Dismiss the purported FPL Settlement

The purported settlement agreement is fatally flawed based on the four corners of the document itself. A motion to dismiss challenges the legal sufficiency of the facts alleged in a petition. The standard to be applied in disposing of a motion to dismiss is whether, with all the allegations in the petition assumed to be true, the petition states a cause of action upon which relief can be granted. Meyers v. City of Jacksonville, 754 So. 2d 198, 202 (Fla. 1st DCA 2000).

When making this determination, only the petition and documents incorporated therein can be reviewed, and all reasonable inferences drawn from the petition must be made in favor of the petitioner. Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1st DCA 1993); Flye v. Jeffords, 106

COM
AFD 2
APA
ECO
ENG
GCL
IDM
TEL
CLK

DOCUMENT NUMBER-DATE

05707 AUG 20 21

FPSC-COMMISSION CLERK

So. 2d 229 (Fla. 1st DA 1958), overruled on other grounds, 153 So. 2d 759, 765 (Fla. 1st DCA 1963).

The FPL settlement agreement claims to resolve all of the issues of the pending rate case. However, based on the four corners of the document, this assertion is facially wrong. First, the settlement agreement is executed among (only) four of the eleven parties to this docket, FPL, SFHHA, FIPUG, and FEA. Further, the ratepayer signatories only represent a small fraction of the total FPL customers who are going to be impacted by the outcome of the rate proceeding.

Second, the purported settlement document does not include the participation of OPC, which the Florida Legislature created to represent the interests of all ratepayers in Commission proceedings. The failure to include this indispensable party renders void the purported settlement agreement. The rates approved by the Commission, either by settlement or by final disposition of the Commission, apply equally to all customers including those who are not represented by the settling parties. Since these settling ratepayer parties do not represent all the ratepayers, and they cannot bind the non signatory parties, including Citizens and the Florida Retail Federation, the settlement on its face cannot as a matter of law resolve all the issues in this case. Therefore, the purported FPL settlement should be dismissed prior to the beginning of the hearing on the Petition for Rate Increase filed March 2012 so that it will not have a prejudicial effect on hearing.

B. Alternative Motion to Set Expedited Oral Argument on the FPL Settlement

If the Commission denies Citizens' Motion to Dismiss the purported FPL settlement agreement, then Citizens request that it be allowed to heard on the merits of the purported FPL settlement agreement prior to the hearing. Citizens intend to file their substantive response to the

Motion to Approve the Settlement on Tuesday, August 21, 2012 and will be prepared to be heard on oral arguments on Wednesday, August 23, 2012.

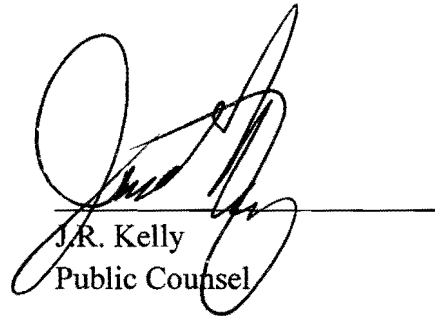
Citizens continue to be prejudiced by the existence of the purported FPL settlement which contains terms that are materially different than those filed in support of FPL's original petition. Further, since the terms of the settlement itself provide that the signatories will not do anything to support a result that would differ from the purported FPL settlement Agreement, Citizens continue to be prejudiced by the fact that the prefiled testimonies and prehearing positions filed by the signatories pursuant to the Commission Order Establishing Procedure are substantially different than the terms of the purported FPL settlement agreement. Unless the merits of the FPL settlement are resolved before the hearing on the substance of the FPL Petition filed March 2012, Citizens and all other non-signatory parties will be irreparably harmed, since we have no way of determining what position (the purported settlement positions or March 2012 rate case positions) the signatories will actually take at a hearing. Thus, Citizens urge the Commission to resolve the issue of the outstanding FPL settlement agreement before the taking of any testimony in the technical portion of the evidentiary hearing.

c. Alternative Motion to Dismiss FPL's Petition for Rate Increase filed March 2012

If the Commission denies Citizens' alternatives set forth in A and B of this Motion, Citizens, in the Alternative, request that the Commission dismiss FPL's Petition for Rate Increase filed March 2012. As noted above, the purported FPL settlement agreement significantly alters the requested amount and terms of the original March 2012 filing. In effect, the FPL settlement agreement is akin to FPL submitting a completely new request for rate relief which would require all of the supporting documentation required under Commission Rule for a

rate increase. Given that the terms and requested revenue increase included in the settlement are wholly different to the extent that a “new” rate requested has been filed, FPL should not be given the benefit of attempting to move forward with two alternative rate petitions at the same time. So long as the purported FPL settlement agreement is outstanding at the same time as evidence is taken on the March 2012 Petition, the Commission in fact would be allowing FPL the unprecedented ability to propose and move forward on two competing and wholly different rate cases. Section 366.081, Florida Statutes, contemplates a single rate increase request with due process protections under Chapter 120, Florida Statutes, for all substantially effected persons. Allowing two competing FPL generated rate increase requests to move forward at the same time would necessarily violate the due process protections of Chapter 120. Thus, if the purported FPL settlement agreement were to remain in place, due process and the rudiments of fundamental fairness would require that only the merits of the new, August 15th rate increase proceed be considered for determination, and that the March 2012 FPL petition be dismissed.

WHEREFORE, the Citizens of the State of Florida request the Commission to Motion to Dismiss the FPL Settlement Agreement or Set for Expedited Oral Argument the Motion to Approve the FPL settlement agreement, or in the Alternative Dismiss FPL's Petition for Rate Increase submitted March 2012



J.R. Kelly
Public Counsel

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400
(850) 488-9330

Attorney for the Citizens of the
State of Florida

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and foregoing **Office Of Public Counsel's Motion To Dismiss The Settlement Submitted By FPL/SFHHA/FIPUG/FEA Or Set For Expedited Oral Argument On The Motion To Approve The Settlement Submitted By FPL/SFHHA/FIPUG/FEA Or In The Alternative Dismiss FPL's Petition For Rate Increase Submitted March 2012** has been furnished by hand delivery on this 20th day of August, 2012, to the following:

Caroline Klancke
Keino Young
Florida Public Service Commission
Office of the General Counsel
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

John T. Butler
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408-0420

Ken Hoffman
R. Wade Litchfield
Florida Power & Light Company
215 South Monroe Street, Suite 810
Tallahassee, FL 32301-1858

Kenneth L. Wiseman
Mark F. Sundback
J. Peter Ripley
Andrews Kurth LLP
1350 I Street, NW, Suite 1100
Washington, DC 20005

Daniel R. and Alexandria Larson
06933 W. Harlena Drive
Loxahatchee, FL 33470

Charles Milsted
AARP, Associate State Director
200 West College Avenue
Tallahassee, FL 32301

Vickie Gordon Kaufman
Jon C. Moyle
c/o Moyle Law Firm
118 North Gadsden Street
Tallahassee, FL 32301

Robert Scheffel Wright
John T. LaVia
Gardner Law Firm
1300 Thomaswood Drive
Tallahassee, FL 32308

Karen White
Federal Executive Agencies
c/o AFLOA/JACL-ULFSC
139 Barnes Drive, Suite 1
Tyndall Air Force Base, FL 32403

Thomas Saporito
6701 Mallards Cove Rd., Apt. 28H
Jupiter, FL 33458

John W. Hendricks
367 S. Shore Drive
Sarasota, FL 34234

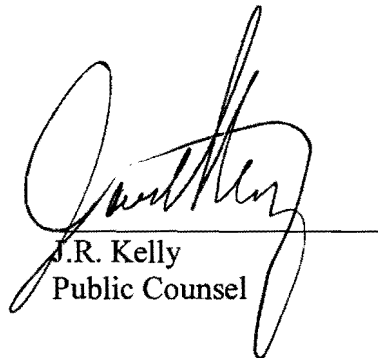
Linda S. Quick, President
South Florida Hospital and
Healthcare Association
6030 Hollywood Blvd., Suite 140
Hollywood, FL 33024

Quang Ha, Paul Woods, Patrick Ahlm
Algenol Biofuels, Inc.
28100 Bonita Grande Drive, Suite 200
Bonita Springs, FL 24135

William C. Garner
Brian P. Armstrong
Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, FL 32308

Mr. Larry Nelson
312 Roberts Road
Nokomis, FL 34275

Mr. Glen Gibellina
7106 28th Street East
Sarasota, Florida 34243



J.R. Kelly
Public Counsel