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Subject: Docket No. 120015-EI Thomas Saporito's Motion in Limine
Attachments: 2012.08.21 Motion in Limine.pdf

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket No. 120015-EI

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

c. Documents being filed on behalf of the Office of Public Counsel

DOCUMENT NUMBER-DATE

05723 AUG 21 09

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8/21/2012

d. There are a total of 6 pages.

e. The document attached for electronic filing is: THOMAS SAPORITO'S MOTION IN LIMINE REGARDING ANY TESTIMONY RELATED TO THE PROPOSED SETTLEMENT AGREEMENT BETWEEN THE FLORIDA POWER AND LIGHT COMPANY AND THE FLORIDA INDUSTRIAL POWER USERS GROUP AND THE SOUTH FLORIDA HOSPITAL AND HEALTHCARE ASSOCIATION AND THE FEDERAL EXECUTIVE AGENCIES.

Thank you for your attention and cooperation to this request.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Rate Increase by
Florida Power and Light Company

Docket No. 120015-EI
Served: 20 AUG 2012

**THOMAS SAPORITO'S MOTION IN LIMINE REGARDING ANY TESTIMONY RELATED
TO THE PROPOSED SETTLEMENT AGREEMENT BETWEEN THE FLORIDA POWER
AND LIGHT COMPANY AND THE FLORIDA INDUSTRIAL POWER USERS GROUP AND
THE SOUTH FLORIDA HOSPITAL AND HEALTHCARE ASSOCIATION AND THE
FEDERAL EXECUTIVE AGENCIES**

COMES NOW, Thomas Saporito (Saporito), *pro se*, Intervenor and moves the Florida Public Service Commission ("Commission") for entry of its Order in Limine prohibiting the Florida Power and Light Company (FPL) and the Florida Industrial Power Users Group (FIPUG) and the South Florida Hospital and Healthcare Association (SFHHA) and the Federal Executive Agencies (FEA) (collectively "Signatories") from soliciting from any witness in this Docket - testimony regarding the Proposed Settlement Agreement (Settlement) between FPL, FIPUG, SFHHA and FEA, and as grounds therefore shows:

On August 21, 2012, the Commission opened the above-captioned matter and held a lengthy discussion amongst the parties regarding the aforementioned Settlement - in consideration of a motion filed by the Office of Public Counsel (OPC) for reconsideration by the Commission of [its] Order Denying Joint Motion to Suspend Procedural Schedule (Order) issued on August 17, 2012. The Commission voted unanimously to deny OPC's motion for reconsideration. The Chairman for the Commission then made clear to all parties that they were not permitted to solicit witness testimony regarding the Settlement.

Thereafter, on more than one occasion, one or more signatories to the Settlement solicited witness testimony directly and/or indirectly related to the Settlement. OPC and Florida Retail Federation (FRF) along with Saporito objected to these attempts by signatory representatives to

circumvent the Chairman's directive which prohibited solicitation of witness testimony about the Settlement. The Chairman overruled each and every objection made about Signatories' solicitation of witness testimony about the settlement. Notably, one or more Signatories misstated the Chairman's directive believing that they could solicit witness testimony about the Settlement for the consideration of the Commission. Thus, to the extent that the Chairman continues to allow the record to be spoiled with prohibited witness testimony about the settlement over the objections of non-signatory parties, there exists "**due-process**" violations in the instant action which must be stopped by this motion in limine to protect the record and the due-process rights of the non-signatory parties in this Docket.

MEMORANDUM OF LAW IN SUPPORT OF MOTION IN LIMINE

A motion in limine is used to shorten trial, simplify issues, and reduce the potential for mistrial, thereby moving the case toward a conclusion on the merits. *See, Rosa v. Fl. Power & Light Co.*, 636 So. 2d 60 (Fla. 2d DCA 1994); *See also*, §90.403, Fla. Stat. (2009)("Relevant evidence is inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence."). Further, "[a] motion in limine...is generally used to prevent the introduction of improper evidence, the mere mention of which at trial would be prejudicial." *See, Dailey v. Multicon Development, Inc.*, 417 So. 2d 1106 (Fla. 4th DCA 1982); *Adkins v. Seaboard Coast Line R. Co.*, 351 So. 2d DCA 1977).

Additionally, Florida Statute §90.105 provides, "[t]he court shall determine preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence." Also, §90.104(2) provides "[i]n cases tried by a jury, a court shall conduct proceedings, to the maximum extent practicable, in such a manner as to prevent inadmissible evidence from being suggested to the jury by any means." Based upon due process, a fair trial, an impartial jury, and effective assistance from the Chairman, Saporito and the non-signatory parties are entitled to a hearing and ruling on the following issue before this Docket can continue.

STATEMENT OF THE FACTS

Based on the record in this Docket, one or more Signatories to the Settlement - on more than one occasion - solicited witness testimony related to the Settlement in defiance of the Chairman's directive prohibiting such conduct. Moreover, the Chairman overruled each and every objection made by any of the non-signatory parties about the prohibited solicitation of witness testimony related to the Settlement.

ARGUMENT

The objected to testimony would be highly prejudicial to the non-signatory parties and not tend to prove any issue(s) of FPL's rate case.

The test of admissibility is relevancy. *See, Reddish v. State*, 167 So. 2d 858, 861 (Fla. 1964); Fla. Stat. §90.401 (2009). Relevant evidence is evidence that has "any logical tendency to prove or disprove a fact" in issue. *See, State v. Taylor*, 648 So. 2d 701, 704 (Fla. 1995). Although evidence tending to prove or disprove one material issue of the FPL rate case is relevant, prohibited testimony about the Settlement has no tendency to prove or disprove a material fact at issue in this Docket.

I. ANY ALLEGED PROBATIVE VALUE OF THE INTRODUCTION OF WITNESS TESTIMONY RELATED TO THE SETTLEMENT IS SUBSTANTIALY OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE TO THE NON-SIGNATORY PARTIES

As stated above, the prohibited solicitation of witness testimony by Signatories is irrelevant to the issues in this Docket. However, even if this Commission were to deem such testimony somewhat relevant, such testimony must still be excluded. Fla. Stat. §90.403 (2009)(Relevant evidence is inadmissible if its probative value is substantially out weighed by the danger of unfair prejudice, confusion of the issues, misleading the jury or needless presentation of cumulative evidence. *See, Huhn v. State*, 511 So. 2d 583, 588 (Fla. 4th DCA 1987).

In the present Docket, any purported probative value is tenuous, and thereby worthy of

exclusion. The prohibited solicitation of witness testimony related to the Settlement has nothing to do with the issues in this Docket.

There is no proper inclusion in similar fact evidence per §90.404.

CONCLUSION

FOR ALL THE ABOVE STATED REASONS, and in the interests of Saporito's and the non-signatory parties' **due-process rights** in this Docket, this Commission should grant this motion in limine to properly exclude any further solicitation of witness testimony related to the Settlement as a matter of law.

Respectfully submitted this 20th day August of 2012.

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By: _____

**CERTIFICATE OF SERVICE
DOCKET NO. 120015-EI**

I HERBY CERTIFY that a true and correct copy of the foregoing document was served electronically via email/link on this 20th day of August 2012 to the following:

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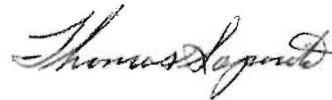
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