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Subject: Electronic Filing - Docket No. 120015-EI

Attachments: 120015.FRF.Response.in.Opposition.08-22-2012.pdf

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b. 120015-EI
In Re: Petition for Increase in Rates by Florida Power & Light Company.

c. Document being filed on behalf of the Florida Retail Federation.

d. There are a total of 9 pages.

e. The document attached for electronic filing is The Florida Retail Federation's Response in Opposition.
(see attached file: 120015.FRF.Response.in.Opposition.08-22-2012.pdf)

Thank you for your attention and assistance in this matter

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Increase In Rates By Florida Power & Light Company	)	DOCKET NO. 120015-EI
	)	FILED: AUGUST 22, 2012

THE FLORIDA RETAIL FEDERATION'S RESPONSE IN OPPOSITION TO JOINT MOTION FOR APPROVAL OF SETTLEMENT

The Florida Retail Federation ("FRF"), pursuant to Rule 28-106.204(1), Florida Administrative Code ("F.A.C."), and by and through its undersigned counsel, hereby files this its Response in Opposition to the Joint Motion for Approval of Settlement (hereinafter the "Motion for Approval") filed in this docket on August 15 by Florida Power & Light Company ("FPL"), the Florida Industrial Power Users Group ("FIPUG"), the South Florida Hospital and Healthcare Association ("SFHHA"), and the Federal Executive Agencies ("FEA"). FPL, FIPUG, SFHHA, and the FEA are hereinafter referred to collectively as the "Partial Settlers," and the document that they have signed, which is the subject of the Motion for Approval, is referred to as the "Partial Settlement."

In summary, the Commission should deny the Motion for Approval because it is legally improper, inconsistent with the Commission's mandate to protect the public interest, and further inconsistent with, and not authorized by, the one earlier case in which the Commission approved a settlement that was objected to by one party to a general rate proceeding.

DISCUSSION

First, the Motion for Approval is legally improper. On its

face, it seeks the Commission's authority to change its base rates, including a set of retail electric service tariffs that is different from those submitted by FPL in its Minimum Filing Requirements ("MFRs") to take effect in January 2013, plus two additional general base rate increases to take effect in 2014 and 2016. Thus, in legal substance, the Motion for Approval is, in fact, a petition for approval of four sets of new base rates.[1] A party can call a "petition" a "motion," but that doesn't make it a motion in the eyes of the law. Because of the relief requested, the Motion for Approval is, in legal fact, a petition for four general base rate increases, three of which are not supported by the Company's MFRs, testimony, or exhibits filed in this docket, and thus, if for no other reason, the Commission should deny the Motion for Approval outright.

As such, the Motion for Approval fails to comply with numerous provisions of law, including Section 366.06(1), Florida Statutes, and Rules 25-6.140, 25-6.043, and 25-106.201, F.A.C. Section 366.06(1), Florida Statutes, provides that "All applications for changes in rates shall be made to the commission in writing under rules and regulations prescribed, and the commission shall have the authority to determine and fix fair, just, and reasonable rates that may be requested, demanded, charged, or collected by any public utility for its service."

[1] Given that the Motion for Approval is, in legal fact, a petition, the FRF reserves its rights to file a motion to dismiss within the time prescribed by Rule 28-106.204(2), F.A.C.

The "rules and regulations prescribed" for petitions seeking general base rate increases include Commission Rule 25-6.140, F.A.C., Test Year Notification, and Rule 25-6.043, F.A.C., Investor-Owned Electric Utility Minimum Filing Requirements. The Motion for Approval is clearly a petition for changes in FPL's general base rates: it includes proposed tariff sheets for all of FPL's retail customer classes.

The Motion for Approval and the Partial Settlement seek the Commission's approval of additional general base rate increases in future years, for the Riviera plant in 2014 and for the Port Everglades plant in 2016. FPL, however, has failed to file a Test Year Notification letter as required by Rule 25-6.140, F.A.C., with respect to either 2014 or 2016. Moreover, FPL has not submitted any Minimum Filing Requirements, let alone any testimony or exhibits purporting to show that FPL needs a base rate increase in either year in order to fulfill its mandate under Section 366.03, Florida Statutes, and its acknowledged goal, of providing safe and reliable service at the lowest possible cost. Any proceedings that might be conducted on the Motion for Approval must comply with these requirements as well as with the requirements of Chapter 366, Florida Statutes, Chapter 120, Florida Statutes, and Chapter 28-106, Florida Administrative Code. This would include the filing of full MFRs for the 2014 and 2016 test periods, full discovery by all parties to any such proceedings on any and all aspects of all rate

proposals at issue therein, and hearings as required by Section 366.06(2), Florida Statutes, conducted in accordance with Chapter 120, Florida Statutes. Thus, the Motion for Approval is legally improper and insufficient, and the Commission should deny it accordingly.

Further, if the Commission were to entertain the notion of proceeding toward a substantive hearing on the underlying substance of the Motion for Approval - which is, in fact, a petition for approval of four general base rate increases, three of which are not supported by the Minimum Filing Requirements, testimony, and other exhibits that FPL has filed in this docket[2] - the Commission would first have to require FPL to follow the requirements of the Commission's rules and the uniform rules of administrative procedure (i.e., Chapter 28-106, F.A.C.) promulgated pursuant to Section 120.54(5), Florida Statutes. The Commission would then have to follow both the uniform rules of procedure and the requirements of Chapter 120, Florida Statutes, including, among others, affording all parties the opportunity to

[2] The requested rate increases are: (1) a general base rate increase which the Partial Settlers assert is for an increase of $378 million per year to take effect in January 2013; an additional general base rate increase of $173.9 million per year to take effect in June 2013 (this increase is the only one of the four that is the same as included in the Company's MFRs and testimony); (3) an additional general base rate increase to take effect in 2014, contemporaneous with FPL's planned Riviera power plant coming into service; and (4) a further general base rate increase that the Partial Settlers propose would take effect in 2016, contemporaneous with FPL's proposed Port Everglades power plant coming into service.

conduct discovery, to present evidence, and to have a full evidentiary hearing[3] pursuant to Section 120.57(1), Florida Statutes, because there are many, many issues of material fact related to rate proposals contemplated by the Partial Settlement that would be disputed by the non-settling parties in this docket. The non-settling parties include the Public Counsel, as the statutory representative of the Citizens of the State of Florida; the Florida Retail Federation; the Village of Pinecrest, a Florida municipality; and two pro se litigants, Mr. John W. Hendricks and Mr. Thomas Saporito, who are FPL customers.

The requested approval of the Partial Settlement is, at best, not authorized by South Florida Hospital and Healthcare Association v. Jaber, 887 So. 2d 1210 (Fla. 2004). In SFHHA v. Jaber, the Florida Supreme Court did indeed approve a settlement over the objection of one party; interestingly and ironically, that one party was the very same South Florida Hospital and Healthcare Association that is now a signatory to the Partial Settlement that the Partial Settlers are attempting to impose on the non-settling parties. Id. However, this is the beginning and

[3] The suggestion, articulated by counsel for one of the Partial Settlers, that the Motion for Approval might be addressed in a "fairness hearing," such as might be conducted regarding a proposed settlement - on behalf of all similarly situated plaintiffs - in a class action lawsuit, is simply inapplicable to a substantive request by a Florida public utility to increase its base rates by hundreds of millions of dollars a year, particularly where the representative of all of FPL's customers, as well as other customer parties, opposes the proposed settlement.

the end of any similarity between SFHHA v. Jaber and the instant situation. The first, and probably the most critical, difference is that in SFHHA v. Jaber, the settlement included the Public Counsel, as the statutory representative of the Citizens of the State of Florida. See, In Re: Review of the Retail Rates of Florida Power & Light Company, Docket No. 001148-EI, Order No. 02-0501-AS-EI at 9 (Fla. Pub. Service Comm'n, April 11, 2002). Thus, the interests of all of FPL's customers were represented by their Public Counsel, as well as by other consumer parties, including the FRF, in that case.

The second, and perhaps nearly as critical, difference is that the settlement challenged by the SFHHA in SFHHA v. Jaber produced a **general base rate reduction of $250 million a year**, Id. at 2, with provisions for additional refunds to customers pursuant to revenue-sharing provisions of the settlement in that case. Id. at 12-13. However, by the Partial Settlement, the Partial Settlers are attempting to impose four general base rate **increases** on all of FPL's customers. (On this point, recall that the three intervenor members of the Partial Settlers group represent a very limited number of FPL customer accounts, as opposed to the 4.5 million customer accounts represented by the Public Counsel and the 8,000-plus Florida businesses who are members of the Florida Retail Federation.)

A third significant difference is that the underlying rate proceeding in SFHHA v. Jaber was a Commission-initiated earnings

review in which the Commission never even promised a full evidentiary hearing. The Supreme Court described the proceedings as follows.

> The PSC properly initiated the proceeding below on its own motion for the purpose of ensuring the reasonableness of FPL's rates. See § 366.076(1), Fla. Stat. (2002) (providing that the PSC may, on its own motion, conduct "a limited proceeding to consider and act upon any matter within its jurisdiction, including any matter the resolution of which requires a public utility to adjust its rates"). At the commencement of the proceeding below, the PSC refused to speculate on the need for an evidentiary hearing to address the reasonableness of FPL's rates, and expressly recognized the possibility of a negotiated settlement as provided under Florida law. See § 120.57(4), Fla. Stat. (2002) ("Unless precluded by law, informal disposition may be made of any proceeding by stipulation, agreed settlement, or consent order.").
>
> Subsequently, the PSC expanded the scope of the proceeding to include a more detailed rate review, and ordered the submission of minimum filing requirements. The PSC acted in accordance with the authority granted under section 366.076(1) of the Florida Statutes in broadening its review. See § 366.076(1), Fla. Stat. (2002) (vesting the PSC with the sole authority to determine the issues to be considered during a limited rate proceeding).

SFHHA v. Jaber, 887 So. 2d 1210 at 1212. Thus, SFHHA v. Jaber would not apply to the instant, FPL-initiated general rate case in any event.

Finally, granting the Motion for Approval would be contrary to the public interest, because it would impose substantial base rate increases on all of FPL's customers without respecting all parties' due process rights and without respecting the procedures set forth in the Commission's governing statutes, the Commission's governing rules, and the essential protections afforded to all parties by the Florida Administrative Procedure

Act and the uniform rules of procedure promulgated to govern proceedings pursuant to that Act.

CONCLUSION

The Motion for Approval proffered by the Partial Settlers is legally improper, fails to comply with the Commission's rules applicable to requests for general rate relief, and contrary to the public interest. Moreover, the Motion for Approval is inconsistent with, and at best not authorized by, SFHHA v. Jaber. If the Commission were to even consider moving forward toward a hearing on the Partial Settlement, it would have to require full compliance with the requirements of all applicable statutes and provisions of the Florida Administrative Code.

WHEREFORE, the Florida Retail Federation opposes the Partial Settlement and respectfully urges the Florida Public Service Commission to deny the Joint Motion for Approval of Settlement Agreement.

Respectfully submitted this 22nd day of August 2012.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail this 22nd day of August 2012, to the following:

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