

**Eric Fryson**

**From:** Thomas Saporito [saporito3@gmail.com]  
**Sent:** Tuesday, August 28, 2012 9:29 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** Algenol; Brian P. Armstrong; Captain Samuel T. Miller; Caroline Klancke; Charles Rehwinkel; Daniel R. Larson; J. Peter Ripley; J.R.Kelly; John T. Butler; John T. LaVia; John W. Hendricks; Jon C. Moyle; Jordon White; Joseph A. McGlothlin; Karen White; Keino Young; Kenneth L. Wiseman; Larry Nelson; Lisa M. Purdy; Maria J. Moncada; Mark F. Sundback; Martha Brown; Patty Christensen; R. Wade Litchfield; Robert Scheffel Wright; Tarik Noriega; Thomas Saporito; Tricia Merchant; Vicki Gordon Kaufman; William C. Garner; William M. Rappolt  
**Subject:** Docket No. 120015-EI Electronic Filing - Emergency Motion  
**Attachments:** 2012.08.28 Emergency Motion.pdf

Electronic Filing

a. Person responsible for this electronic filing:

Thomas Saporito  
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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 Thomas Saporito

d. There are a total of 5 pages.

e. The document attached for electronic filing is: THOMAS SAPORITO'S EMERGENCY MOTION FOR EXPEDITED RECONSIDERATION OF THE COMMISSION'S DENIAL OF THOMAS SAPORITO'S AUGUST 20, 2012 MOTIN 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.

/Thomas Saporito

Thomas Saporito

DOCUMENT NUMBER DATE

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FPSC-COMMISSION CLERK

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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

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**Docket No. 120015-EI  
Served: 28 AUG 2012**

**THOMAS SAPORITO'S EMERGENCY MOTION FOR EXPEDITED RECONSIDERATION  
OF THE COMMISSION'S DENIAL OF THOMAS SAPORITO'S AUGUST 20, 2012 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, *pro se* Intervenor, Thomas Saporito (Saporito), and hereby files *Thomas Saporito's Emergency Motion for Expedited Reconsideration of the Commission's Denial of Thomas Saporito's August 20, 2012 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*, (Emergency Motion), and states in support thereof, as follows:

**BACKGROUND**

On August 20, 2012, the undersigned filed a *Motion in Limine Regarding Any Testimony Related to the Proposed Settlement Agreement Between the Florida Power and Light Company and the Florida Industrial Users Group and the South Florida Hospital and Healthcare Association and the Federal Executive Agencies*, (Motion in Limine) (hereinafter parties to the Settlement identified as ("Signatories")), with the Florida Public Service Commission (Commission), in the above-captioned matter. In filing his Motion in Limine, Saporito sought to protect his "due-process" rights by having any testimony related to the proposed settlement agreement between the Signatories prohibited by the Commission in this Docket.

On or about August 21, 2012, the Commission voted four to one to deny Saporito Motion in

Limine<sup>1</sup> and instead elected to once again referee the matter from the bench - despite the fact that such method by the Commission failed in the past in this Docket (**to protect Saporito's due-process rights**) causing Saporito to file a Motion in Limine. Once again, the parties were admonished by the Commission not to solicit witness testimony related to the Settlement.

On August 27, 2012 the Commission issued *Second Order Revising Order Establishing Procedure Setting Procedural Schedule for Commission Consideration of Settlement Agreement* (Order). The Order stated in relevant part that:

- *"...Based on the hearing scheduled in this docket, and the Commission's schedule, the Commission will consider the Settlement Agreement at a date and time to be announced at the conclusion of the evidentiary portion of the hearing... and that ... upon the conclusion of the evidentiary portion of the hearing, the Commission will recess until the date and time announced by the Commission to take up the Motion to Approve the Settlement Agreement... and that ... our staff and the parties will be permitted a limited time to ask data requests..."*

*Id.* at pp.1-2<sup>2</sup>.

### STATEMENT OF THE FACTS

During the normal course of proceedings in this Docket, Attorney John Moyle, representing the Florida Industrial Power Users Group (FIPUG) (a Signatory), **willfully and deliberately**, solicited witness testimony related to the Settlement. The conduct by Mr. Moyle was in direct violation of the Commission's prior admonishments prohibiting the solicitation of witness testimony related in any way to the Settlement. Moreover, this very same attorney, was alleged (earlier) to have violated the Chairman Brise' explicit direction not to solicit witness testimony related in any way to the Settlement. Following the witness' answer, to Mr. Moyle's "prohibited" question, OPC raised an objection with Chairperson Brown. The Chairperson acknowledged the inappropriately of Mr. Moyle's solicitation of witness testimony related to the Settlement; however, the Chairperson alleged that OPC should not

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1 Commissioner Julie Brown voted nay - and had requested (prior to the vote) a written response from FPL to the Motion in Limine. To date, FPL has not responded to Commissioner Brown's request from the bench.

2 Despite the clear direction afforded to the parties in this Docket by the Commission's Order, on August 28, 2012, Florida Power & Light Company (FPL) improperly served the Office of Public Counsel (OPC) with *Florida Power & Light's First Set of Interrogatories (Nos.1-21) to the Office of Public Counsel Regarding Proposed Settlement*.

have waited until the witness answered the question - before lodging an objection - that the answer would not be stricken from the record. Shortly, thereafter, the witness completed his testimony and was released by the Chairperson and the hearing was adjourned for the day.

### LEGAL ARGUMENT

First, it matters not that OPC allowed the witness to complete his testimony before lodging an object to the prohibited testimony on the record - because Saporito and the other non-signatory parties were given clear assurances from the Commission (on more than one occasion) that the Commission was more than capable to referee the conduct of the parties from the bench - without a Motion in Limine - and prohibit the solicitation of witness testimony related in any way to the Settlement. As the record reflects, the Commission has once again failed to protect Saporito's due-process rights - and allowed prohibited witness testimony into the record - related to the Settlement. Such as a bell **cannot be un-rung** - nor can the record in this Docket be eradicated of all the prohibited witness testimony related in any way to the Settlement.

### CONCLUSION

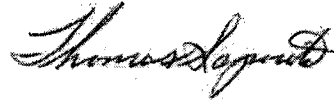
FOR ALL THE ABOVE STATED REASONS, and to the extent that Saporito's due-process rights and the due-process rights of the other non-signatory parties have been irreparably harmed, Saporito Moves this Commission to reconsider its August 17, 2012 Order in this Docket and to **Dismiss the Settlement**. In the alternative, Saporito urges this Commission to grant [h]is August 20, 2012 Motion in Limine<sup>3</sup>.

Respectfully submitted this day of 2012.

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<sup>3</sup> To the extent that this Commission reconsiders and grants Saporito's Motion in Limine, Saporito maintains that [his] due-process rights have been irreparably harmed in this Docket.



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 28<sup>th</sup> day of August 2012 to the following:

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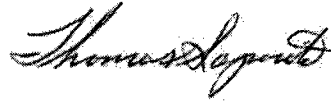
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