

Eric Fryson

From: danlarsen [danlarsen@bellsouth.net]
Sent: Tuesday, October 16, 2012 4:23 PM
To: Filings@psc.state.fl.us
Cc: Schef Wright; William C. Garner (Bill); Joseph Mcglothlin; Village of Pinecrest; Algenol Biofuels; Brian Armstrong; Captain Samuel T. Miller; Charles Rehwinkel; Charles Murphy; Records Clerk; Curt Kiser; Jim Varian; Karen White; KELLY.JR; ken.hoffman@fpl.com; Kenneth L. Wiseman Andrews Kurth LLP; Larry Nelson; Noriega.Tarik; rmiller@frf.org; Thomas Saporito; Vicki G. Kaufman FIPUG; John W. Hendricks
Subject: Electronic Filing (Docket 120015-EI)
Attachments: Petition to Re-Intervene.pdf

Electronic Filing

a. Person responsible for this electronic filing:

Mrs. Alexandria Larson
 16933 W. Harlena Dr.
 Loxahatchee, FL 33470
 Phone: (561) 791-0875
 Email: danlarsen@bellsouth.net

b. Docket No. 120015-EI

In re: Petition for increase in rates by Florida Power & Light Company.

c. Document being filed on behalf of:

Mrs. Alexandria Larson
 16933 W. Harlena Dr.
 Loxahatchee, FL 33470

d. There are a total of 9 pages.

e. The document attached for electronic filing is: Petition to Re-Intervene.pdf

Thank you for your attention and cooperation to this request.

Sincerely,

Mrs. Alexandria Larson
 16933 W. Harlena Dr.
 Loxahatchee, FL 33470
 Phone: (561) 791-0875
 Email: danlarsen@bellsouth.net

*10/16/12
 Parties
 updated
 -am*

DOCUMENT NUMBER-DATE

07054 OCT 16 2012

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for increase in rates by Florida
Power & Light Company.

DOCKET NO.: 120015-EI

FILED: October 16, 2012

PETITION TO RE-INTERVENE

Pursuant to sections 120.569 and 120.57(1), Florida Statutes and Rules 25-22.039 and 28-106.205, Florida Administrative Code, Mrs. Alexandria Larson, hereby files this Petition to Re-Intervene in the above captioned docket. In support thereof, the petitioner state as follows:

1. Name and address of the affected agency.

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

2. Name and address of the petitioners.

Mrs. Alexandria Larson
16933 W. Harlena Dr.
Loxahatchee, FL 33470

3. Service. All pleadings, motions, orders and other documents directed to the petitioner should be served on:

Mrs. Alexandria Larson
16933 W. Harlena Dr.
Loxahatchee, FL 33470
Phone: (561) 791-0875
danlarson@bellsouth.net

4. Notice of Docket. Petitioner originally received notice of this docket by reviewing the above captioned docket on the Florida Public Service Commission (FPSC) website.

DOCUMENT NUMBER-DATE

07054 OCT 16 2012

FPSC-COMMISSION CLERK

5. Background. Petitioner was previously granted intervention in this docket by FPSC Order No. PSC-12-0221-PCO-EI (April 26, 2012). Due to the illness of her mother-in-law, in conjunction with the death of her sister-in-law, petitioner was unable to travel to Tallahassee to attend the start of the evidentiary hearing on August 20, 2012. Petitioner communicated with the FPSC Chairman's office prior to the start of the hearing and showed good cause as to why petitioner should be allowed to be excused from attending the hearing and requested that petitioner be allowed to file a post-hearing brief. At the commencement of the hearing, the Chairman summarily dismissed petitioner as a party to the above-captioned docket for failure to appear at the hearing without acknowledging that petitioner had made a good faith effort to show good cause. Petitioner subsequently requested the Chairman to acknowledge that petitioner had shown good cause by requesting reconsideration of the ruling dismissing petitioner as a formal party to the proceeding.

Despite a showing of good cause, the Commission subsequently voted to deny petitioner's Motion for Reconsideration. Petitioner is currently an interested party to the above captioned docket which has materially changed in both form and substance since the petitioner was dismissed as a formal party to the proceeding. Such a material change in the character and nature of the proceedings, as well as the Commission's willingness to entertain such a radical departure from the test year filed in the FPL rate case, along with the introduction of new issues into this proceeding adversely affects petitioner's substantial interests and due process rights in a manner not governed by the grounds of the Commission's prior ruling on petitioner's continued participation as a party in this docket. Accordingly, re-intervention is both warranted and necessary to protect

petitioner's due process rights and substantial interests in relation to the previously unidentified issues now being actively litigated in relation to the FPL settlement proposal.

6. New Point of Entry Has Been Created. The procedural posture adopted by the Commission creates a new point of entry under Chapter 120, Florida Statutes. This new point of entry is separate and distinct from any point of entry associated with FPL's original rate case filing in the above captioned docket because the Commission is now allowing new issues to be introduced and litigated with respect to the FPL proposed settlement agreement. Unlike the rate case pending before the Commission, the FPL proposed settlement agreement effectively seeks blanket approval of four different rate increases exceeding one billion dollars over a term that is years beyond the test year filed in the FPL rate case. Unlike the pending rate case, FPL has not filed the required test year letters for these additional rate increases as required by Commission rule. Furthermore, FPL has not filed the required MFRs as required by Commission rule for these additional rate increases. In fact, FPL has adamantly refused to re-file its MFRs in support of the FPL proposed settlement agreement in apparent violation of the Commission's own rules.

As discussed below, Petitioner asserts that it is disingenuous for the Commission to characterize these new issues as "*supplemental to the issues in the rate case*" because the FPL proposed settlement agreement is an entirely new rate case that seeks blanket approval of four different rate increases exceeding one billion dollars over a term that is years beyond the test year filed in the FPL rate case.

Specifically, the Commission, having completely departed from past precedent, and over the vigorous due process objections of the Office of Public Counsel, Florida

Retail Federation, and other similarly situated parties, is now proceeding to conduct an entirely separate Chapter 120 proceeding to consider the FPL proposed settlement agreement within the original Chapter 120 proceeding initiated by the FPL test year letter and subsequent rate case filing. The Commission's Third Order Revising Order Establishing Procedure (3rd Revised OEP) clearly illustrates this point. The 3rd Revised OEP does not merely change dates, but rather establishes a completely separate evidentiary proceeding providing for: (1) the introduction of five (5) new issues relating to the FPL settlement proposal, (2) the conduct of additional discovery related to the five (5) new issues (months after the original discovery cut-off date), (3) a separate pre-hearing conference with respect to the additional issues to be considered in relation to the FPL proposed settlement agreement, (4) separate hearing dates to litigate and to develop an evidentiary record regarding the new issues associated with the FPL proposed settlement agreement, and (5) the filing of post-hearing briefs only in relation to the FPL proposed settlement agreement. Petitioner asserts that the actions taken by the Commission have materially changed the character, nature, and subject matter of the proceeding thereby creating a new point of entry under Chapter 120, Florida Statutes. Petitioner therefore requests to re-intervene in this proceeding, taking the case as petitioner finds it, in order to protect petitioner's due process rights and substantial interests in relation to the blanket approval being sought for subject matter and cost recovery that is far beyond the test year and the FPL rate case as originally filed.

In seeking to re-intervene in this proceeding, petitioner objects to the Commission's characterization and introduction of these new issues as "*supplemental to the issues in the rate case*" because the new issues relating to the FPL proposed

settlement agreement: (1) specifically address the recovery of costs that are far outside of the test year for the FPL rate case filing, (2) introduce new revenue and expenses that have not been included within the Commission required MFRs filed by FPL in the rate case, (3) materially departs from the scope of the FPL rate case as filed, and (4) provides for the litigation of additional subject matter that was not originally included within the FPL rate case filing.

While the Commission may acquiesce to FPL's demands to conduct an evidentiary hearing in relation to the FPL proposed settlement agreement, the Commission cannot legally deny the due process rights of an FPL ratepayer to intervene in the same proceeding. As an illustrative example, just as any FPL ratepayer who alleged that their substantial interests were affected by the FPL proposed settlement agreement would be granted intervention at this point, so should the petitioner's request to re-intervene in this proceeding be granted. To deny petitioner's due process rights to participate as a party to this evidentiary hearing under the circumstances presented herein would constitute an abuse of discretion and depart from following the essential requirements of the law under Chapter 120, Florida Statutes. Such a denial would also grant petitioner the right to immediately seek appellate review of the denial which would most likely stay the proceedings in the lower tribunal. Furthermore, if the Commission fails to rule upon this petition in an expedited manner, the petitioner would also have the right to compel a ruling by filing writs with the appellate court. Accordingly, in the interest of justice and due process, petitioner respectfully requests that the Commission approve this Petition to Re-Intervene without further delay.

7. Statement of Substantial Interests. Petitioner is a residential customer of Florida Power & Light Company (FPL) and served at the above listed address. The FPL electric bill constitutes a significant portion of the petitioner's monthly household expense. Petitioner has a substantial interest in the above captioned docket as approval of the petition, or alternatively the FPL proposed settlement agreement, will significantly increase petitioner's electric rates. Petitioner further asserts that the character and nature of this proceeding has materially changed as set forth above. The substantial interests of petitioner may also be adverse to the positions taken by the Office of Public Counsel regarding the FPL proposed settlement agreement. Given this conflict, the Office of Public Counsel cannot adequately represent the petitioner's substantial interests in relation to the FPL proposed settlement agreement. Based upon the above, petitioner hereby files a Petition to Re-Intervene in the above captioned docket to protect to petitioner's substantial interests and due process rights in the proceeding.

8. Standing. Petitioner is a residential customer of FPL. Moreover, the petitioner's substantial interests are of the type that this proceeding is designed to protect. See, Agrico Chemical Company v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2nd DCA 1981). The purpose of the original proceeding was to evaluate the FPL request to increase customer rates. The purpose of the Chapter 120 proceeding set forth within the 3rd Revised OEP is to separately consider the FPL proposed settlement agreement (effectively four individual rate increases spanning far beyond the test year) that will increase customer rates in excess of the amounts requested in the FPL rate case filing. Petitioner has a substantial interest in the FPL proposed settlement agreement as approval of the FPL request will significantly increase petitioner's electric rates. Accordingly,

consideration of the FPL settlement proposal directly coincides with the substantial interests of the petitioner to ensure that FPL rates are fair, just, and reasonable.

9. Petition to Re-Intervene. Petitioner hereby requests the Commission to grant the Petition to Re-Intervene in the above captioned docket on the basis set forth in Paragraphs 1-8 above. Petitioner intends to conduct discovery, attend the pre-hearing conference, and participate in the evidentiary hearing as set forth in the 3rd Revised OEP.

10. Disputed Issues of Material Fact. Disputed issues of material fact have been limited to the new Settlement Issues identified within the 3rd Revised OEP as follows:
 1. Are the generation base rate adjustments for the Canaveral Modernization Project, Riviera Beach Modernization Project, and Port Everglades Modernization Project, contained in paragraph 8 of the Stipulation and Settlement, in the public interest?

 2. Is the provision contained in paragraph 10(b) of the Stipulation and Settlement, which allows the amortization of a portion of FPL's Fossil Dismantlement Reserve during the Term, in the public interest?

 3. Is the provision contained in paragraph 11 of the Stipulation and Settlement, which relieves FPL of the requirement to file any depreciation or dismantlement study during the Term, in the public interest?

 4. Is the provision contained in paragraph 12 of the Stipulation and Settlement, which creates the "Incentive Mechanism" including the gain sharing thresholds established between customers and FPL, in the public interest?

5. Is the Settlement Agreement in the public interest?

11. Disputed Legal Questions. Disputed legal questions include the following

1. Whether FPL has complied with the requirements of Rule 25-6.140, F.A.C. regarding FPL proposed settlement agreement?

2. FPL has complied with the requirements of Rule 25-6.043, F.A.C. regarding the FPL proposed settlement agreement?

WHEREFORE, petitioner respectfully requests the Commission to enter an order granting the Petition to Re-Intervene in the above captioned docket.

s/ Alexandria Larson
Alexandria Larson
Petitioner

16933 W. Harlena Dr.
Loxahatchee, FL 33470
Phone: (561) 791-0875
danlarson@bellsouth.net

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following via Electronic Mail this 16th day of October, 2012 to all parties of record as indicated below.

s/ Alexandria Larson
Alexandria Larson
Petitioner

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| <p>Florida Power & Light Company Mr. Ken Hoffman 215 South Monroe Street, Suite 810 Tallahassee, FL 32301-1858 Phone: (850) 521-3900 Fax: (850) 521-3939 Email: ken.hoffman@fpl.com</p> <p>Florida Industrial Power Users Group Vickie Gordon Kaufman / Jon C. Moyle 118 North Gadsden Street Tallahassee, FL 32301 Phone: (850) 681-3828 Fax: (850) 681-8788 Email: vkaufman@kagmlaw.com</p> <p>Gardner Law Firm Robert Scheffel Wright/John T. La Via 1300 Thomaswood Drive Tallahassee, FL 32308 Phone: (850) 385-0070 Fax: (850) 385-5416 Email: schef@gbwlegal.com</p> <p>Nabors, Giblin & Nickerson, P.A. William C. Garner, Esq. Brian P. Armstrong, Esq. 1500 Mahan Drive, Suite 200 Tallahassee, FL 32308 bgarner@ngnlaw.com barmstrong@ngnlaw.com</p> <p>Federal Executive Agencies Ms. Karen White Captain Samuel T. Miller Lt. Col. Gregory Fike USAF / AFLOAIJACLIULFSC 139 Barnes Drive, Suite 1 Tyndall AFB, FL 32403-5317 samuel.miller@tyndall.af.mil karen.white@tyndall.af.mil gregory.fike@tyndall.af.mil</p> | <p>Office of Public Counsel J.R. Kelly/Joseph A. McGlothlin c/o The Florida Legislature 111 W. Madison Street, Room 812 Tallahassee, FL 32399-1400 Phone: (850) 488-9330 Email: mcglothlin.joseph@leg.state.fl.us</p> <p>Andrews Law Firm K. Wiseman/M. Sundback/L. Purdy/W. Rap 1350 I Street NW, Suite 1100 Washington, DC 20005 Phone: (202) 662-2700 Fax: (202) 662-2739 Email: kwiseman@andrewskurth.com</p> <p>Akerman Senterfitt 106 E. College Avenue, Suite 1200 Tallahassee, Florida 32301 martin.hayes@akerman.com</p> <p>Paul Woods Algenol Biofuels Inc. 28100 Bonita Grande Drive, Suite 200 Bonita Springs, FL 24135 Intervenor-proceeding@algenol.com</p> <p>Thomas Saporito 6701 Mallards Cove Rd., Apt. 28H Jupiter, FL 33458 saporit03@gmail.com</p> <p>John W. Hendricks 367 S Shore Dr. Sarasota, FL 34234 jwhendricks@sti2.com</p> |
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