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Subject: Docket No. 120015-EI

Attachments: Pinecrest Motion for Summary Final Order.pdf

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b. The docket number and title if filed in an existing docket:

Title: In Re: Petition for Increase in Rates by Florida Power & Light Company
Docket No. 120015-EI

c. The name of the party on whose behalf the documents are filed:

Village of Pinecrest, Florida

d. The total number of pages in each attached document:

Pinecrest Motion for Summary Final Order - 13 pages

e. A brief but complete description of each attached document:

Village of Pinecrest's Motion for Summary Final Order Denying FPL, SFHHA, FIPUG & FEA's Joint Motion for Approval of Settlement Agreement

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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: November 20, 2012

VILLAGE OF PINECREST'S MOTION FOR SUMMARY FINAL ORDER DENYING FPL, SFHHA, FIPUG & FEA'S JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT

The Village of Pinecrest ("Village"), by and through its undersigned counsel, pursuant to Rule 28-106.204, Florida Administrative Code, hereby moves that the Florida Public Service Commission ("Commission" or "PSC") enter a Summary Final Order denying the Joint Motion for Approval of Settlement Agreement ("proposed settlement") filed in this docket 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") insofar as such settlement proposal relates to facts beyond FPL's filed calendar year 2013 test year in this docket, and in support of this motion states as follows:

1. Pursuant to Rule 28-106.204, Florida Administrative Code, administering section 120.57(1)(h), Florida Statutes, in cases where the administrative tribunal has final order authority, any party may move for summary final order whenever there is no genuine issue as to any material fact. As set forth below, no genuine issue as to any material fact exists with respect to key elements of the proposed settlement, approval of which is necessary to the effectiveness of the entire proposed settlement.

2. FPL is engaged in business as a public utility providing electric service as defined in Section 366.02, Florida Statutes, and is therefore subject to the jurisdiction of this Commission.

3. FPL provides electric service to approximately 4.5 million retail customers in all or a

portion of 35 Florida Counties.

4. The Commission is required to enforce section 366.03, Florida Statutes, which requires that "[a]ll rates and charges made, demanded, or received by any public utility for any service rendered, or to be rendered by it... shall be fair and reasonable." Further, section 366.05, Florida Statutes, empowers the Commission to prescribe rates that are "fair and reasonable." Additionally, sections 366.041 and 366.06, Florida Statutes, reference the Commission's authority to set rates which are fair, just reasonable and compensatory.

5. On January 17, 2012, FPL announced its intention to seek a base rate increase and a step base rate increase of $525 million and $170 million (later adjusted to $516.5 million and $173.9 million) respectively, and proposed that the rates be based on a projected test year ending December 31, 2013. On February 8, 2012, the Commission acknowledged the proposed test year, and informed FPL that a docket had been opened.

6. This proceeding formally commenced on March 19, 2012, with the filing of a petition for a permanent rate increase accompanied by pre-filed witness testimony and Minimum Filing Requirements.

7. Pursuant to Section 366.06(3), Florida Statutes, the Commission and customers have an eight month period, beginning upon FPL's filing of its actual application for a rate increase and associated minimum filing requirements, testimony, and exhibits in support thereof to conduct discovery, present conflicting testimony, prepare for cross-examination of FPL witnesses, participate in evidentiary hearings, present briefs, and for Commission staff, present a recommendation to the Commission. Finally, the Commission must render a decision based upon all of the above.

8. The eight month period to conduct these laborious and extensive activities is consistent

with the period provided in many, if not most utility rate setting jurisdictions across the country. The rationale for this eight month period is obvious. A utility can spend many months, even years, preparing its application for a rate increase and the supporting evidence and arguments. Utility customers require some period of time to test the validity of such evidence and arguments. To deny customers sufficient time to evaluate, conduct discovery and prepare to challenge the utility's evidence and arguments is to violate the customers' right of due process under the United States and Florida Constitutions.

9. FPL has requested as part of its initial base rate filing an increase in base retail rates and charges to generate $516.5 million in additional gross annual revenues, beginning January 1, 2013, and has also requested an additional step-increase in base retail rates and charges to generate $173.9 million in additional gross annual revenues, beginning June 1, 2013 (subsequently adjusted to $165.3 million by FPL witnesses). These increases would allow FPL to earn a return on shareholder equity of up to 12.25 percent, or 12.5 percent if the Commission approved an earnings incentive proposed by FPL.

10. On August 15, 2012, after nearly five months of case preparation including analysis of minimum filing requirements, requests for and review of voluminous amounts of discovery and the filing of direct and rebuttal testimony by expert witnesses, FPL filed a motion to approve a purported settlement agreement it reached with representatives of certain interruptible class customers intervening in this docket. A key provision in this proposed settlement agreement states: "The provisions of this Agreement are contingent on approval of this Agreement in its entirety by the Commission without modification."

11. This proposed settlement agreement, which is opposed by the Office of Public Counsel, the Florida Retail Federation, the Village of Pinecrest and pro se intervenors provides for, among

other things, a four year term during which FPL is authorized to increase base retail rates three times by means of a "Generation Base Rate Adjustment" or GBRA mechanism. The proposed settlement would provide FPL increased rates during periods entirely outside of FPL's requested test year, in fact, as far into the future as 2016.

12. Under FPL's proposed settlement, FPL would charge rates beginning in January 2013 which would generate additional revenues in the amount of $378 million and authorize an ROE midpoint of 10.7 percent. FPL's proposed settlement would authorize FPL to increase general base rates three additional times – an additional $165.3 million projected in June of 2013, an additional $236 million projected in June of 2014, and an additional $217.9 million projected in June 2016. Neither FPL's application for rate increase nor any of the evidence presented in this proceeding relating thereto addresses nor contemplates the rate increases associated with alleged investments in plant allegedly to be placed in service in 2014 and 2016.

13. FPL's evidence in support of its outside-of-the-filed-test-year rate increase is wholly deficient. FPL presents no copies of permits, construction contracts, work orders, invoices, applications for permits, proof of ownership of the land upon which facilities are to be located, plan of finance (equity or debt), financing documents, proof of financing costs, plant drawings, analysis of alternatives to plant construction or virtually any other demonstration to substantiate its rate increase proposal as it relates to recovery for investments made outside of the filed test year.

14. The abbreviated period allowed by the Commission for discovery is insufficient to provide Customers the ability to request, obtain, and review such evidence – and FPL failed to file such evidence with its testimony. FPL merely filed testimony of witnesses which is conclusory and without any documentary support.

15. In depositions relating to FPL's actual filed test year rate increase request, FPL witness William E. Avera testified as follows:

> My general understanding is that the company has been able to earn the 11 percent return and has endeavored, in adjusting its accounting, to hit the 11 percent, but because of lags and so forth, it can't be done exactly."

(p. 29, Telephonic Deposition of William E. Avera, August 8, 2012)

At page 132 of his deposition, referencing possible FPL overearnings, Mr. Avera testified as follows:

> I didn't agree that it occurred, but it is possible that it may have occurred before the accounting caught up with the operating earnings... . That's why a lot of these adjustment mechanisms from an investor's perspective are a two-edged sword, because they assure that you have an opportunity to earn what you spend, at most, but you can never earn more."

Subsequently, at page 146 of his deposition, in response to being asked why FPL would be making all the accounting adjustments to reduce its reported returns on equity if FPL's customers obtain a litany of benefits from high FPL returns, which Mr. Avera had identified, Mr. Avera testified:

> I am not an accountant, but as an economist and financial analyst, I believe what FPL is attempting to do is develop a revenue requirement presentation that is consistent within regulatory requirements and reflects what is likely to happen in the future.

When asked to identify the accounting adjustments that FPL is making to reduce its reported returns on equity, at page 146 of his deposition, Mr. Avera testified:

> I probably made a mistake by agreeing with you at the beginning of this conversation...but generally accounting adjustments are made by utilities because it is necessary to have a representative presentation of what has happened and what is likely to happen in the future and respond to the requirements of the FERC system of accounts.

Mr. Avera then attempted to apologize for his prior testimony throughout his deposition that FPL was making accounting adjustments to lower its stated returns, at page 147, suggesting that "that's what he did wrong, and I'm trying to apologize for. I don't know why they're making

adjustments...I can't agree and should not have agreed with you that their purpose is to reduce the ROE."

16. Perhaps even more troubling than this deposition testimony from FPL's return on equity witness is the subsequent August 9, 2012 deposition testimony of Commission Staff witness Kathy Welch, who admitted that Staff's audit did not include a review of FPL's "accounting adjustments", as referenced by Mr. Avera. Pinecrest would have expected that if FPL's outside return on equity expert is aware that such adjustments are being made and they obviously impact FPL's published earnings, Staff's audit of such adjustments would have been thorough and comprehensive to ensure that any adjustments being made are appropriate – but Staff's audit witness could not even identify or confirm what accounting adjustments FPL actually is making or whether improper adjustments are being made to conceal over-earnings situations.

17. If this proceeding to date has failed to confirm the legitimacy of FPL's accounting adjustment practices and thus the accuracy of FPL's reported, actual, historic earnings, the prudence of establishing rates to take effect in four years based upon mere conjecture and speculation as to what FPL's projected returns on equity, capital structure, costs, capital investments, sales, etc., will be, and subject to unidentified accounting adjustments, appears all the more unjustified, unlawful and unconstitutional.

18. FPL and certain interruptible class intervenors ask the Commission to approve these out-of-test-year rate increases based on cost estimates allegedly presented in need determination proceedings held in 2008.

19. FPL requests that this Commission accept on faith that no event will intervene which will alter or deny FPL's ability to complete construction and place into operation certain "planned"

power plants.[1] FPL further requests this Commission to accept on faith that economic and operating conditions will remain substantially the same as they are now through the year 2016. In order to test the reasonableness of these requests and assumptions, consider that four years ago the national and local economies had not yet suffered a historic downturn, and that the recent financial crisis had not yet hit. Further consider that, also within the last four years, FPL, after having obtained a determination of need to construct its proposed Turkey Point Units 6 & 7, has taken the position that it will decide at some indeterminate future date whether to actually build its proposed units, and that the projected costs and in-service dates continue to change – for the worse. It should be clear to the observant how rapidly circumstances can change. FPL's 2005 settlement agreement, which also incorporated a GBRA mechanism, was approved in a period of economic growth and stability – conditions which clearly do not prevail today.

20. In considering a past FPL GBRA proposal, the Commission rejected such proposal stating, "[i]t is not possible for us to exercise as adequate a level of economic oversight within the context of a GBRA mechanism as we can exercise within the context of a traditional rate case proceeding." Order No. PSC-10-0153-FOF-EI, at p. 16 (the "FPL 2010 Rate Case Order").

21. In the FPL 2010 Rate Case Order, the Commission made specific note of the fact that FPL had built a number of generating units since 1985 without seeking a rate increase. Citing the testimony of FPL's own witnesses, the Commission noted that FPL acknowledged that if economic conditions or other factors changed, FPL's base rates could be sufficient to cover the cost of a new generating unit in whole or in part without the application of the FPL proposed GBRA. The Commission correctly found that "[o]ther factors, such as the addition of new

[1] The Commission should not forget the ease with which FPL can halt investments in projects, even those which FPL's most senior executives testified repeatedly were necessary to protect customers and to ensure that adequate supply would be available to them. A single day after the Commission's vote denying the vast majority of its $1.2 billion rate increase in its last general rate proceeding, FPL's former President halted all further investments in such projects, according to FPL's own press release.

customers and increased electricity sales tend to offset the additional costs of new power plants."

22. The Commission further rejected as unreasonable an attempt to rely upon evidence from a need determination proceeding to justify a rate increase, stating:

> "[i]t is not possible for us or interested parties to examine projected costs at the same level of detail during a need determination proceeding as we would be able to do in a traditional rate case proceeding. A need determination examines costs only in comparison to alternative sources of generation. It does not allow for a review of the full scope of costs and earnings, as a rate case does."

Finally, the Commission rejected FPL's GBRA proposal noting FPL's admission that "the GBRA mechanism would be a limited-scope proceeding focused only on the GBRA, and intervenors would not be able to raise other cost issues in such a proceeding." The Commission thus rejected FPL's proposed GBRA rate increase mechanism.[2]

23. The proposed GBRA mechanism precludes examination of whether FPL's overhead allocations are appropriate and whether FPL is over-recovering such costs through such allocations. A GBRA does not provide an opportunity for the Commission and interested parties to investigate rates and revenue impacts from events such as a potential sale of assets, as might occur with the City of South Daytona, or a potential purchase of assets, as might occur if FPL purchases the City of Vero Beach's electric utility or other municipal electric utilities it currently is pursuing.

24. The Commission also rejected FPL's GBRA since FPL already collected about 61 percent of its total revenues through various "pass-through" mechanisms and cost recovery clauses. Thus, the Commission was not convinced that "adding another such mechanism ... would

[2]In Order No. PSC-10-0153-FOF-EI, the Commission distinguished its prior decision to approve the GBRA mechanism in the utility's 2005 settlement agreement on the basis that: 1) the 2005 agreement was the result of the "give-and-take" in negotiating the agreement; 2) the parties stipulated to the basis for the costs, as well as the return on equity and capital structure to be used in the calculation of the cost factor to be submitted for true-up purposes in the Capacity Clause projection filing; 3) the GBRA mechanism was time-limited, to remain in effect until the Commission established new base rates; 4) base rates could not change during the term of the agreement; and 4) the negotiated agreement provided a revenue sharing plan between shareholders and customers.

provide advantages over traditional rate case procedures found in Section 366.06, F.S." FPL 2010 Rate Case Order, at p. 16. Currently, despite significant reductions in fuel costs, FPL continues to collect more than 50 percent of its revenue through these pass-through mechanisms and cost recovery clauses. Adjusting rates in 2016 in the manner proposed under the proposed GBRA mechanism in this proceeding prevents the Commission from adjusting the ROE and capital structure based on facts and circumstances which may exist in 2014, 2015 and 2016, including the reduced financial risk afforded FPL by application of such pass through mechanisms and cost recovery clauses old and new, such as the advanced nuclear cost recovery mechanism.

25. The proposed FPL settlement agreement differs from the 2005 settlement, and all other settlements containing the GBRA mechanism, materially: it is not the result of "give-and-take" negotiations with the vast majority of FPL's customers. The Office of Public Counsel, the only intervenor with a statutory mandate to represent all of FPL's customers, was never privy to the settlement talks. The negotiations also did not include the Florida Retail Federation, an entity representing a broad swath of the business community, small and large. The negotiations also did not include the Village of Pinecrest. The negotiations also did not include any pro se intervenor participating in this docket.

26. The FPL proposed settlement agreement differs from the 2005 settlement, and all other settlements containing the GBRA mechanism, materially: no parties other than certain interruptible class customers have stipulated to the costs, the return on equity or capital structure assumed in the settlement. This is a critical distinction, as the Commission may rely on such stipulation of facts in the absence of competent substantial evidence in the record identifying costs, ROE and capital structure.

27. The basis for costs, ROE and capital structure assumed in the proposed settlement have

not been stipulated by the parties representing the vast majority of FPL's customers, no substantial or credible evidence has been introduced to substantiate such costs, ROE or capital structure more than four years into the future[3], and thus it is impossible for the Commission to determine that rate increases through FPL's GBRA mechanism would be fair, just and reasonable when charged to FPL's customers.

28. Pinecrest agrees with FPL witness Deason in this proceeding that "the Commission has taken guidance from Section 366.041, Florida Statutes, that the resulting rates [from a settlement agreement] should be just, reasonable, and compensatory. Like so much of the Commission's regulatory authority, a determination of reasonableness is an essential requirement." Direct Testimony of Terry Deason (Proposed Settlement Agreement), p. 2.

29. The Florida Supreme Court also agrees. The Court recognized the responsibility delegated to the Commission by the Legislature through these statutory provisions when it opined that "[t]he statutory standard imposed upon the Commission is to fix 'fair, just and reasonable rates.'" Citizens of Florida v. Public Service Commission, 425 So. 2d 534 (Fla. 1982)(citing sections 366.06(2) and 366.05(1), Florida Statutes (1979). In stating that an interim rate increase need not be subjected to the same scrutiny as permanent rates, the Court acknowledged the "intense scrutiny, cross-examination, and adversarial contest...required in the final public hearings" when establishing permanent rates. Id. In its 2010 Order denying an FPL request to establish a permanent General Base Rate Adjustment mechanism ("GBRA"), the Commission itself recognized the importance of this "intense scrutiny" when it rejected as unreasonable the attempt to rely upon evidence from need determination proceedings to justify the GBRA rate

[3] FPL has provided no evidence in the underlying rate case regarding the cost of the Riviera Modernization projected to begin serving customers in June 2014, or the Port Everglades Modernization projected to begin serving customers in June 2016, and has provided no reliable evidence concerning the appropriate ROE or capital structure for these investments.

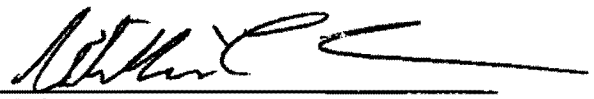
increases.

30. It being impossible in the absence of competent evidence regarding actual or likely costs of the Riviera and Port Everglades Modernizations and regarding the appropriate ROE or capital structure for such investments, or in the alternative, stipulations from substantially affected parties of these facts, the Commission has no basis in the record for determining the fairness, justness and reasonableness of the rates which will result from approval of the purported settlement agreement, and therefore has no basis for a determination that such agreement would be in the Public Interest.

31. Absent such facts or such stipulation, there is no genuine issue as to any material fact in this proceeding, and pursuant to section 120.57(1)(h), Florida Statutes, Pinecrest is entitled to entry of a final order as a matter of law.

FOR THE FOREGOING REASONS THE VILLAGE OF PINECREST moves that the Public Service Commission enter a Final Order denying the Joint Motion to Approve Settlement Agreement filed in this docket.

Respectfully submitted,



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