

**Eric Fryson**

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**From:** Butler, John [John.Butler@fpl.com]  
**Sent:** Tuesday, December 04, 2012 2:25 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** Electronic Filing / Dkt 120015-EI / FPL's Response to Saporito's Motion for Summary Final Order  
**Attachments:** 12.4.12 Joint Response to Saporito's Motion for Summary Final Order.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. The Document is being filed on behalf of Florida Power & Light Company, the Florida Industrial Power Users Group, the South Florida Hospital and Healthcare Association and the Federal Executive Agencies.

d. There are a total of 5 pages

e. The document attached for electronic filing is the Joint Response to Thomas Saporito's Motion for Summary Final Order

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DOCUMENT NUMBER - DATE

07974 DEC-4 2012

FPSC-COMMISSION CLERK

12/4/2012

**BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION**

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

Docket No. 120015-EI  
December 4, 2012

**JOINT RESPONSE TO THOMAS  
SAPORITO'S MOTION FOR SUMMARY FINAL ORDER**

Florida Power & Light Company, the Florida Industrial Power Users' Group, the South Florida Hospital and Healthcare Association and the Federal Executive Agencies (collectively, the "Signatories") pursuant to Florida Rule of Administrative Procedure 28-106.204, hereby respond to Thomas Saporito's Motion for Summary Final Order. Mr. Saporito's Motion is procedurally improper and untimely, and should therefore be denied. In further support, the Signatories state:

As Mr. Saporito correctly recognizes, Rule 28-106.204, F.A.C., administering section 120.57(1)(h), F.S., provides that a summary final order is appropriate whenever there is no genuine issue as to any material fact and the movant is entitled to an order in his favor as a matter of law. The standard for granting a summary final order is very high. *Re Florida City Gas*, Docket No. 090539-GU, Order No. PSC-11-0244-FOF-GU (Fla. P.S.C. June 2, 2011). Under Florida law, the burden is on the party moving for summary judgment to conclusively demonstrate that an issue of material fact does not exist and that the opposing party cannot prevail. *Id.* Summary judgment should not be granted unless "the facts are so crystallized that nothing remains but questions of law." *Id.*

Mr. Saporito has not *and cannot* show the absence of genuine issues of material fact. To the contrary, he expressly acknowledges that an "extended hearing took place," which included the cross-examination of ten witnesses, and that "[t]he parties of record have filed their respective post-hearing briefs." Motion at p. 1. The extensive cross-examination and briefing sufficiently demonstrates – without the need to restate the parties' opposing positions – the existence of

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disputed material facts regarding each issue: the generation base rate adjustments, amortization of depreciation and dismantlement reserve, deferral of the depreciation and dismantlement studies, the proposed incentive mechanism and whether the proposed Settlement Agreement as a whole is in the public interest. Thus, summary final order is inappropriate.

Mr. Saporito's Motion for Summary Final Order is also untimely. It is well-established that "[t]he purpose of a summary final order is to avoid the expense and delay of trial" when no disputed facts exist. *Re Florida City Gas*, Docket No. 090539-GU, Order No. PSC-11-0244-FOF-GU (Fla. P.S.C. June 2, 2011) at p. 4. A summary final order would serve no purpose at this juncture. The Commission has spent a total of twelve days taking evidence, and now has all of the facts it needs to render a decision on the merits. The Commission recognized this on November 20, 2012, during the technical hearing when it unanimously denied a similar motion filed by the Village of Pinecrest, a ruling made in Mr. Saporito's presence. *See* Tr. 6338-41. Mr. Saporito's motion effectively asks the Commission to decide the case based on the evidence presented. That is precisely what the Commission is scheduled to do on December 13, 2012. In short, because the Commission has already held a trial and no expense or delay will be avoided, Mr. Saporito's Motion for Summary Final Order should be denied.

While recognizing the increased latitude afforded to *pro se* intervenors such as Mr. Saporito, the current Motion is both untimely and unjustifiable as the Commission, just two weeks ago, denied another motion that raised virtually identical arguments. The Signatories are concerned about the needless increase in the cost of litigation and the unnecessary burdens that Mr. Saporito is imposing on the time and resources of the Commission and the other parties to this proceeding.

Respectfully submitted this 4th day of December 2012.

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

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Notice has been furnished electronically this 4th day of December 2012, to the following:

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