

**Eric Fryson**

**From:** Thomas Saporito [saporito3@gmail.com]  
**Sent:** Friday, December 14, 2012 4:11 AM  
**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; Joseph A. McGlothlin; Karen White; Keino Young; Kenneth L. Wiseman; Larry Nelson; 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 (Thomas Saporito's Motion for Reconsideration)  
**Attachments:** 2012.12.14 Motion for Reconsideration (Saporito).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. The document(s) is/are being filed on behalf of Thomas Saporito.

d. The total number of pages is 6.

e. Brief description of documents being filed:

- ~~Proposed Florida Power & Light Company's Settlement Agreement and Motion for Order Hearing and Motion for Opportunity to engage in Discovery~~ December 14, 2012

Thank you for your cooperation and timely attention to this electronic filing.

s/Thomas Saporito

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FPSC-COMMISSION CLERK

**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  
Dated: 14 DEC 2012**

**THOMAS SAPORITO'S MOTION FOR RECONSIDERATION OF COMMISSION'S  
DECEMBER 13TH, 2012 ORDER APPROVING FLORIDA POWER & LIGHT COMPANY'S  
SETTLEMENT AGREEMENT – AND MOTION FOR FURTHER HEARING AND MOTION  
FOR OPPORTUNITY TO ENGAGE IN DISCOVERY**

Thomas Saporito, *pro se*, (Saporito), pursuant to Rule 25-22.060, Florida Administrative Code, hereby (1) moves for reconsideration of the Florida Public Service Commission (Commission) Order verbally given by the Commission on December 13, 2012, unanimously approving the Florida Power & Light Company (FPL) Settlement Agreement (Settlement) in the above-captioned matter; and (2) moves for further hearing in the above-captioned matter; and (3) moves for opportunity to engage in discovery in the above-captioned matter (hereinafter “motion”). The grounds for Saporito's motion are as follows:

**INTRODUCTION AND BACKGROUND**

At the conclusion of the technical hearing with respect to FPL's March 2012 filing a petition for rate increase, the Commission ordered further hearing and process to consider a proposed settlement agreement (hereinafter “Settlement”) signed by FPL and three intervenor parties (hereinafter “Signatories”) on August 15, 2012. The Office of Public Counsel (OPC), the Florida Retail Federation (FRF), Saporito, Hendricks, and the Village of Pinecrest (hereinafter “non-signatories”) all opposed the Settlement. At the conclusion of the supplemental hearing, the Commission noticed a December 13, 2012 date for the purpose of deciding whether or not to approve the Settlement.

On December 13, 2012, the Commission held a proceeding to consider the Settlement. During the context of that proceeding, the Commission discussed the various issues within the Settlement and

then took a brief recess directing the parties to consider what the Commission had discussed amongst itself and provide the Commission a response.

The undersigned then observed that FPL representatives left the hearing room for the cafeteria and that representatives for the non-signatories left the hearing room for other areas. The undersigned then ate lunch in the cafeteria where he again observed FPL representatives talking; and they observed the undersigned sitting at a table eating lunch. At no time, did FPL offer to discuss or negotiate any Settlement terms or conditions.

Thereafter the proceeding recommenced and the Executive Director for the Commission read into the record a written statement which was prepared by OPC and supported by the non-signatories – with the exception of Hendricks – who was not present. The document read as follows:

1. OPC renews its legal objections to the August 15 purported settlement and to the process the Commission created to consider it.
2. Legal infirmities aside, OPC cannot support, will not sign, and objects to the August 15 purported settlement, with or without the modifications suggested by the Commission.
3. Today's meeting was noticed for a vote on the August 15 purported settlement. The break today does not provide a meaningful opportunity to negotiate.
4. OPC has been and remains open to meaningful negotiations toward a result that is fair and reasonable to all parties.

Next, the Executive Director for the Commission verbally announced certain and specific material changes which FPL had made to the Settlement which were qualified by Staff counsel and by FPL. At some point in the proceeding, Commissioner Edgar chastised OPC's written statement with respect to opinion of OPC that – the break did not provide a meaningful opportunity to negotiate. Commissioner Edgar further stated that there had been ample opportunity since the end of the supplemental hearing (paraphrasing) – where the parties could have engaged in negotiations.

It is noted here, that shortly after the conclusion of the supplemental hearing, the undersigned sent FPL's attorney (Litchfield) an email soliciting FPL's support in conjunction with the assistance of

the Commission's Staff to further negotiate a settlement with OPC and with all parties in this matter. The email was copied to all parties and to the Commission's Staff. However, neither FPL nor Staff made any attempt to meet (or arrange to meet) with the non-signatories to engage in settlement negotiations. Thus, to the extent that the Commission' Staff was copied that email correspondence, Commissioner Edgar knew – or should have known – that FPL had been duly put on notice that the non-signatories desired to engage in meaningful negotiations. None-the-less, Commissioner Edgar inappropriately chastised OPC and the other non-signatories in these circumstances.

On the advise of Staff's Legal Counsel, further material changes were made to the Settlement document. Those material changes were made between only FPL, the Commission, and the Commission's Staff for which a “*New Settlement Document*” (hereinafter “New Settlement”) was created solely between FPL, the Commission, and the Commission's Staff.

Incredibly, it was this New Settlement document which the Commission ultimately voted to approve on December 13, 2012. The New Settlement document was stamped by the Commission Clerk as being received on 12 DEC 13 PM at 3:24 and assigned a Document Number Date of 08123 DEC 13 12.

## ARGUMENT

### 1. The Standard for Reconsideration

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law that the Commission overlooked or failed to consider in rendering its order. *See, Diamond Cab Co. of Miami v. King*, 146 So. 2d 889, 891 (Fla. 1962)(purpose of petition for reconsideration is to bring to an agency's attention a point of law or fact which it overlooked or failed to consider when it rendered its order); *Steward Bonded Warehouse, Inc. v. Bevis*, 294 So. 2d 315, 317 (Fla. 1974)(granting petition for reconsideration should be based upon specific factual matters set forth in the record and susceptible to review); *see also, In re: Review of Florida Power Corporation's*

*earnings, including effects of proposed acquisition of Florida Power Corporation by Carolina Power & Light*; Docket No. 000824-EI; Order No. PSC-01-2313-PCO-EI, November 26, 2001.

As described below, the Commission's December 13, 2012, Order Approving FPL's Settlement (hereinafter "Order"), overlooked factual matters and is error by the Commission as a matter of law.

**2. The Commission Erred When it Approved a "New Settlement" Document With Terms and Conditions Which Are Materially Different From Those Contained in the August 15, 2012 Settlement Document**

As described earlier, the purpose of the December 15, 2012, proceeding initiated by the Commission, was for the sole purpose of deciding whether or not to approve the FPL August 15<sup>th</sup>, 2012 Settlement document. What took place instead – however – was the creation of a "New Settlement" document which was materially different from the August 15<sup>th</sup>, 2012 Settlement document; and which contained "modified" terms and conditions and/or deletions that were negotiated solely by FPL, the Commission and the Commission Staff. Notably, the non-signatory parties were not involved in the apparently "*secret*" negotiations between FPL, and the Commission Staff which ultimately resulted in the creation of a "New Settlement" document that contained material changes to the August 15<sup>th</sup>, 2012 Settlement document – the document that the Commission had noticed to consider and decide. Nonetheless, the Commission discarded the August 15, 2012 Settlement document – and then voted to approve the "New Settlement" document which incorporated material changes to the terms and conditions set-forth in the August 15, 2012 Settlement document.

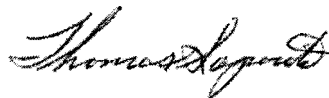
The undersigned maintains that the Stipulation and Settlement document that the Commission approved on December 13<sup>th</sup>, 2012 (Document Number Date 08123 DEC 13 12) is a "New Settlement" document – separate and apart – from the August 15<sup>th</sup>, 2012 Settlement document which was the subject document for consideration by the Commission. Instead, the Commission erred – as a matter of law - in allowing and "encouraging" FPL to materially modify the terms and conditions of the August 15<sup>th</sup>, 2012 Settlement document – for which the Commission later approved.

The Commission further erred in failing to provide the non-signatories an opportunity to engage in further hearing and discovery with respect to the significant and material changes made to the August 15<sup>th</sup>, 2012 Settlement document and entered in the “New Settlement” document dated December 13<sup>th</sup>, 2012.

The undersigned further maintains that [he] and the other non-signatories have a “due-process” right (under Chapter 120 and under Section 366 and under the rules before the Commission) to engage in the discovery process and a “due-process” right to engage in further hearing to challenge the significant and material changes made to the August 15, 2012 Settlement document and entered in the “New Settlement” document - voted and approved by the Commission on December 13<sup>th</sup>, 2012. The non-signatories have a “due-process” right to bring further witness testimony and evidence before the Commission at hearing to show that the material changes contained in the “New Settlement” document dated December 13<sup>th</sup>, 2012 are not “fair”, “just”, or “reasonable” and therefore not in the Public Interest as a matter of law.

FOR ALL THE ABOVE STATED REASONS, the undersigned requests that the Commission (1) reconsider its December 13<sup>th</sup>, 2012 Order approving the FPL December 13<sup>th</sup>, 2012 Settlement document; (2) allow the parties to engage in further discovery; and (3) allow the parties to participate at further hearing to bring forth witness testimony and evidence in opposition to the FPL December 13<sup>th</sup>, 2012 Settlement document – to demonstrate that the Settlement is not “fair”, “just”, or “reasonable” and therefore not in the Public Interest as a matter of law.

Respectfully submitted,

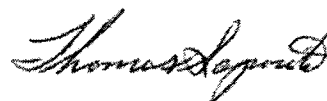


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**CERTIFICATE OF SERVICE  
DOCKET NO. 120015-EI**

I HERBY CERTIFY, that a true and correct copy of the foregoing document was served electronically via email/link on this 14th day of December 2012 to the following:

Keino Young Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, Florida 32399-0850	Daniel & Alexandra Larson 16933 W. Harlena Drive Loxahatchee, Florida 33470
John T. Butler Florida Power & Light Company 700 Universe Blvd. Juno Beach, Florida 33408-0420	William C. Gardner Nabors, Giblin & Nickerson, P.A. 1500 Mahan Drive, Suite 200 Tallahassee, Florida 32308
Kenneth Wiseman/Mark Sundback Andrews Kurth LLP 13501 I Street N.W., Suite 1100 Washington, D.C. 20005	Vicki Gordon Kaufman Jon C. Moyle, Jr Moyle Law Firm, P.A. Perkins House 118 North Gadsden Street Tallahassee, Florida 32301
J.R. Kelly/Joe McGlothlin Office of Public Counsel 111 West Madison St., Room 812 Tallahassee, Florida 32399	John W. Hendricks 367 S. Shore Drive Sarasota, Florida 34234
Karen White Federal Executive Agencies AFLOA/JACL-ULFSC 139 Barnes Drive, Suite 1 Tyndall Air Force Base, Florida 32403	



By: \_\_\_\_\_