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Sent: Friday, January 25, 2013 4:55 PM
To: Filings@psc.state.fl.us
Subject: Electronic Filing/Docket 120015-EI/Hendricks' Response in Support of Saporito's Motion for Reconsideration
Attachments: Hendricks' Response in support of Reconsideration.docx

Electronic Filing

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b. Docket No. 120015-EI

c. The document is being filed on behalf of John W. Hendricks.

d. There are a total of 7 pages.

e. The document attached for electronic filing is Hendricks' Response in support of Reconsideration.

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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: January 24, 2013

HENDRICKS' RESPONSE IN SUPPORT OF SAPORITO'S MOTION FOR RECONSIDERATION

John W. Hendricks hereby responds to Thomas Saporito's Motion for Reconsideration ("Motion for Reconsideration") of the Commission's January 14th, 2013 Order ("the Order") Approving Revised Stipulation and Settlement Agreement ("Revised Settlement") and Motion for Further Hearing and Motion for Opportunity to Engage in Discovery, and to FPL'S Response ("FPL's Response") in Opposition to Thomas Sapoirito's Second Motion for Reconsideration.

BASIC POSITION

The Commission should reconsider the Order as requested in the Motion for Reconsideration because: (1) the Order provides an insufficient basis for concluding that the decision is in the public interest and (2) the non-signatories did not have sufficient opportunity to participate in settlement negotiations.

THE PUBLIC INTEREST

Both the original settlement offer and the Revised Settlement were supported only by FPL and parties that exclusively represent large industrial, commercial and governmental customers. Both offers were consistently opposed by the Public Counsel (representing all the citizens of Florida), the Retail Federation (representing a large number of small and some larger businesses), and other interveners.

When discussing the original settlement offer, Commission General Counsel Kiser described the importance of the Public Counsel in delineating the public interest:

> "...the normal standard for approving a settlement is it's in the public interest. Well, when you've got the Office of Public Counsel opposed, and assuming they stay opposed, you're fighting an uphill battle in my opinion. Not that you can't do it, but it makes it really difficult to try to argue on the public interest issue when a group representing the citizens of Florida and have been charged by the legislature with representing the broad interests of the public to argue on the public interest issues, so then you have a real problem meeting the standard to validate a settlement. " tr. 4641

The Order approves a Revised Settlement that was strongly opposed by the Public Counsel and supported only by parties that represent a very small number of organizations with members that will receive preferential rate reductions. The order does not reflect a credible case that the Revised Settlement is a fair and reasonable balancing of interests that is in the public interest. It certainly is far from being adequate for "fighting the uphill battle" described by Mr. Kiser.

I will not reiterate here the arguments made by the Public Counsel and other opposing parties, myself included, but will note that:

(a) The "Background" section[p. 1-2] in the Order briefly describes the original FPL rate request, but not the positions of the Public Counsel on the appropriate terms. The second section[p. 2-5] summarizes the changes that the original proposed settlement agreement makes to FPL's original rate request. The third section[P. 5-8] (Decision) summarizes the changes the Revised Settlement makes to the original settlement agreement and identifies them as being based on the Commissioners "extensive discussion" at the Agenda Conference. There is no attempt to relate or reconcile the terms of the Revised Settlement being approved to the position of the Public Counsel on what is in the public interest in this case.

(b) The Order specifically asserts that the Commission finds the GBRA and the incentive mechanism in the Revised Settlement in the public interest, and that "... as a whole the settlement is in the public interest" [p. 7]. The Order appears to assert an unfettered discretion for the Commission to define the public interest without any obligation to explain why they are so far away from the position of the Public Counsel on many issues carried over from the original FPL rate proposal as well as those originating in the settlement and Revised Settlement.

(c) The Order specifically identifies the reduction in the revenue increase provided by the Revised Settlement (from $378 million to$350 million) [p. 5] , but does not mention that FPL revenues will be increased by the GBRA (which short circuits rate case scrutiny and regulatory lag for billions of dollars of new rate base), a rich equity ratio of almost 60%, a complex new incentive mechanism with potentially large rewards and the accelerated depreciation of amortization reserves, which are all included in the settlement and the Revised Settlement. How can we know if a decision is in the public

interest if the substantial effects of these important elements of the Revised Settlement, all of which are opposed by Public Counsel, but deemed to be components in a choice that is in the public interest, are not estimated or even mentioned?

(d) If the Order as it stands is not reconsidered or overturned, it will set a dangerous precedent that the Public Service Commission can adopt a settlement agreement that is only supported by parties that represent a miniscule percentage of ratepayers and strongly opposed by the Public Counsel, and do so without providing any detailed analysis to support their calculation of how it is in the public interest, and why they accepted many elements that are very far from the Public Counsel's representation of the public interest.

SETTLEMENT NEGOTATIONS

Based on my own experience as an individual intervener in this case, I will state that I would have participated in settlement discussions if there was any meaningful opportunity to do so. I did make a substantial investment of time and effort to fully participate in all required meetings and teleconferences and file all required statements, positions, testimony, etc. in this case and endeavored to play a constructive role in the process. However, the first time I learned that a settlement agreement was being discussed was when an FPL representative called to inform me that they were in the process of filing the agreement. He inquired if I would like to support the settlement, but did not provide any information about its contents so I decided to wait, and eventually decided to oppose it. I did not attend the Special Agenda conference because of a misunderstanding about the process for this session, so cannot comment on access to the settlement discussion held at that time.

CONCLUSION

This assessment of the process and outcome in this case should not be interpreted as criticism of the conduct of any of the parties, witnesses, commissioners or commission staff. I have no reason to doubt that all are capable professionals, doing their job as they see it and generally pleasant even when dealing with contentious points.

However, the Order in this case does not rest on a sufficient basis of evidence and analysis to sustain the assertion that it is in the public interest. Yes, there were lengthy hearings. Yes, there are many assertions in the Order about the whole of the Revised Settlement and some of its elements being in the public interest, but there is no evidence that documents why the many specific provisions and parameters adopted with the Order are in the public interest. There is no identification and explanation of the pros and cons of the individual elements or the Order as a whole. There is no identification or explanation of why there are so many provisions and parameters in the Order that are substantially at odds with the recommendations of the Public Counsel.

If the Public Counsel, who is chartered to be the representative of all the citizens of Florida, were supporting the Revised Settlement that would provide an objective observer some confidence that Order taken as a whole was in the public interest. In this case, however, the Public Counsel strongly and consistently opposed the original and the Revised Settlement. The only parties supporting the settlements represent very narrow special interests – FPL and a small number of very large customers who negotiated rate reductions for themselves. Under these

circumstances only very detailed evidence of a robust and comprehensive analysis showing how the Revised Settlement is in fact in the public interest would be credible.

Please note that this is not a statement about the legal question of whether a settlement can be legally adopted without the support of the Public Counsel. This is an assertion that under the specific circumstances of this case, the Order should be reconsidered because as it stands it does not establish that it is in the public interest. It would not be a proper exercise of the Commission's broad ratemaking discretion. It would invite our elected representatives to consider whether the degree of latitude claimed in this case is consistent with the regulatory mission, and perhaps, if it is time to shrink the role of regulators and move to a more market based system for generation and transmission.

Respectfully submitted this 24th day or January 2013.

s/ John W. Hendricks
John W. Hendricks

CERTIFICATE OF SERVICE
DOCKET NO. 120012-EI

I HEREBY CERTIFY that a true copy of HENDRICKS' RESPONSE IN SUPPORT OF SAPORITO'S MOTION FOR RECONSIDERATION has been furnished to the following by electronic mail this 24th day of January, 2013:

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