

Eric Fryson

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Sent: Sunday, April 28, 2013 2:54 PM
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Subject: Docket No. 120015-EI Notice of Electronic Filing (SC13-144 Amicus Brief)
Attachments: 2013.04.27 Amicus Brief-2.pdf

Electronic Filing

a. Person responsible for this electronic filing:

Thomas Saporito

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b. Case No. SC13-144 - 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 7.

e. Brief description of documents being filed: Petition for Leave to File Amicus Brief and Amicus Brief of

Thomas Saporito.

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

s/Thomas Saporito

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IN THE SUPREME COURT OF FLORIDA

CITIZENS OF THE STATE OF
FLORIDA, ETC.,

Appellants(s),

Case No.: SC13-144

Lower Docket: 120015-EI

vs.

Date: 27 APR 2013

FLORIDA PUBLIC SERVICE
COMMISSION

Appellee(s).

PETITION FOR LEAVE TO FILE AMICUS BRIEF
AND AMICUS BRIEF OF THOMAS SAPORITO

NOW COMES, Thomas Saporito (Saporito), *pro se*, and hereby files his *Petition for Leave to File Amicus Brief and Amicus Brief of Thomas Saporito* (hereinafter "Brief") - in support of Citizens' Initial Brief filed in the above-captioned matter on or about April 17th, 2013. For the reasons stated below, the Supreme Court of Florida (Court) should issue a ruling in favor of the Citizens:

- 1. The Final Order Denied Saporito a Hearing on and Adjudication of Florida Power & Light's (FPL's) Request to Increase its Electric Rates.**

Following a March 19, 2012 petition filed by FPL (Docket: 120015-EI), Saporito was granted standing by the Florida Public Service Commission (Commission) to intervene as a private citizen – opposing FPL's request to raise

electric rates. Saporito participated at all of the service hearings, in discovery, and at the technical hearing – and submitted a post-hearing brief which clearly showed that the record evidence required the Commission to lower FPL's existing electric rates.

On August 15, 2012, the Signatories to a “secret settlement agreement” (hereinafter “Settlement”) - filed a Joint Motion to Suspend Procedural Schedule and a Joint Motion For Approval of Settlement Agreement. Saporito opposed the purported Settlement in its entirety. FPL intentionally and knowingly did not invite the Office of Public Counsel (OPC), and other intervenors, the Florida Retail Federation (FRF), Saporito, Hendricks, Larson, and Nelson to participate in the negotiations that led up to the illegal Settlement. Because both OPC and Saporito did not take part in the negotiations that led up to the illegal Settlement – Saporito had absolutely no representation in the matter. Indeed, the illegal Settlement contained language which allowed FPL to construct and operate three additional power plants – the Cape Canaveral plant – the Riviera plant – and the Port Everglades plant. The illegal Settlement took away Saporito's right and that of OPC to intervene in those matters and to oppose the particulars. The illegal

Settlement additionally authorized FPL to increase its earnings by amortizing up to \$209-million dollars of its accumulated fossil plant dismantlement reserve during the term of the illegal Settlement. Notably, neither Saporito nor OPC could intervene in this matter because of the illegal Settlement.

To the extent that the Commission's Final Order Denied Saporito and OPC a Hearing on and Adjudication of Florida Power & Light's (FPL's) Request to Increase its Electric Rates – the Commission violated Saporito's “due-process” rights and “civil rights” as a citizen to participate in the process. For this reason standing alone, this Court must vacate the Commission's Final Order and remand this matter to the Commission – requiring the Commission to rule on the original hearing (March 2012 petition) - as a matter of law.

2. The Commission Erred in Approving a New Settlement Document With Terms and Conditions Which Are Materially Different From Those Contained in the August 15, 2012 Illegal Settlement Document.

On December 13, 2012, the Commission held a proceeding to consider the illegal 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. Saporito renewed his objects to the illegal Settlement in agreeing with a written statement submitted by OPC objecting to the Settlement. The Executive Director for the Commission verbally announced certain and specific and material changes which FPL made to the Settlement – which were qualified by Staff counsel and by FPL. On advise of Staff's legal counsel, further material changes were made to the Settlement – in “secret” and behind closed doors between only the Commission, FPL and the Commission's Staff. Thereafter, a “New” illegal Settlement document was created and subsequently approved by the Commission.

However, the sole purpose of the December 15, 2012, proceeding noticed by the Commission was to decide whether or not to approve FPL's August 15, 2012 illegal Settlement document. Instead, the Commission, Staff and FPL illegally modified the terms and conditions of the illegal Settlement without allowing all parties – including Saporito – to engage in the process at a public hearing on the “New” and material issues posed in the “New” illegal Settlement. Indeed, the non-signatory parties were not involved in the “secret” negotiations held between FPL, the Commission and Staff which ultimately resulted in a the “New” illegal

Settlement document that contained material changes to the August 15, 2012, Settlement document.

Clearly, the Stipulation and Settlement document that the Commission approved on December 13, 2012 (Document Number Date 08123 DEC 13 12) is a "New" Settlement document – separate and apart – from the August 15, 2012 Settlement document which was the subject document for consideration by the Commission. The Commission erred as a matter of law – in allowing and "encouraging" FPL to materially modify the terms and conditions of the August 15, 2012 Settlement document – and by not allowing the non-signatory parties to intervene on the issues raised in the "New" Settlement document.

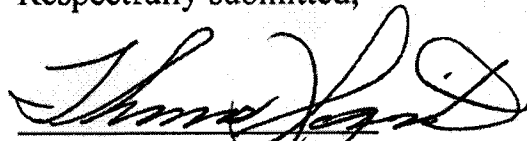
Clearly, Saporito and the other non-signatory parties have a "due-process" right under Chapter 120 and under Section 366 F.S. and under the rules before the Commission – to engage in the discovery process – and a "due-process" right to engage in further hearing to challenge the significant and material changes made to the August 15, 2012 illegal Settlement document – and entered into the "New" illegal Settlement document. Moreover, 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” illegal Settlement document are not “fair”, “just”, or “reasonable” - and therefore not in the Public Interest – as a matter of law.

CONCLUSION

To the extent that the Commission's Final Order effectively denied Saporito and OPC a hearing and adjudication of FPL's request to raise its electric rates; and to the extent that the Commission erred in approving an illegal Settlement document which also denied Saporito and OPC a hearing and adjudication of FPL's request to raise its electric rates; and to the extent that the illegal Settlement is clearly not in the Public Interest – this Court must vacate the Commission's Final Order and remand this matter back to the Commission to rule on FPL's original petition of March 2012 – as a matter of law.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing document was provided to the following by electronic mail on April 28, 2013:

Caroline Klance, Keino Young, Vickie Gordon Kaufman, Jon C. Moyle, Karen White, John W. Hendricks, Ken Hoffman, John T. Butler, Kenneth L. Wiseman, Mark F. Sundback, Robert Scheffel Wright, John T. LaVia, William C. Garner, Gregory J. Fike, Alvin B. Davis.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY, pursuant to Rule 9.100(1), Florida Rules of Appellate Procedure, that the undersigned's Amicus Brief was prepared using a Times New Roman 14-point font.