

Crystal Card

From: Betty Leland
Sent: Monday, February 09, 2015 12:43 PM
To: Commissioner Correspondence
Subject: Letter to General Counsel regarding Divesting Jurisdiction
Attachments: SKMBT_36315020912350.pdf

I recalled and earlier message and for that it would recall all of them. Here it is again.

Thanks.

Good Morning:

Please place the attached e-mail in docket correspondence consumers and their representatives in Docket No. 150001.

Thanks.

Terri Fleming

From: Truitt, John <TRUITT.JOHN@leg.state.fl.us>
Sent: Friday, February 06, 2015 3:05 PM
To: Charlie Beck
Cc: 'A. Danials'; Adria Harper; BKeating@gunster.com. (bkeating@gunster.com); 'Cheryl Martin (Cheryl_Martin@fpuc.com)'; Dianne M. Triplett (dianne.triplett@duke_energy.com); 'J. Jeffry Wahlen'; 'James D. Beasley'; 'James W. Brew'; 'Jeffrey A. Stone'; 'John Burnett (john.burnett@duke-energy.com)'; 'John Moyle (jmoyle@moylelaw.com)'; 'John T. Butler (John.Butler@fpl.com)'; 'John T. LaVia (jlavia@gbwlegal.com)'; 'Ken Hoffman (ken.hoffman@fpl.com)'; Kyesha Mapp; Martha Barrera; Matthew Bernier (Matthew.Bernier@duke-energy.com); Michael Barrett; Paula K. Brown (regdept@tecoenergy.com); Robert L. McGee Jr (rlmcgee@southernco.com); 'Russell Badders'; Samantha Cibula; 'Schef Wright (schef@gbwlegal.com)'; 'Steve Griffin'; Kelly, JR; Rehwinkel, Charles; Sayler, Erik
Subject: In re: Application of Florida Rules of Appellate Procedure 9.110 and 9.600 to pending Proposed Guidelines
Attachments: Letter to General Counsel regarding divesting jurisdiction.pdf

Mr. Beck,

Please see the attached letter concerning the application of Florida Rules of Appellate Procedure 9.110 and 9.600 to the pending Proposed Guidelines.

Regards,

John J. Truitt

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ANDY GARDINER
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STEVE CRISAFULLI
*Speaker of the House of
Representatives*



February 6, 2015

Charlie Beck, General Counsel
Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
Via email

Re: Docket No. 150001-EI

Dear Mr. Beck:

Upon reviewing the Commission's tentative schedule for Docket No. 150001-EI, I see the Proposed Guidelines portion of FPL's June 25th Petition are tentatively set to be considered at the March 3, 2015, agenda conference. Since the Office of Public Counsel appealed the threshold issue of subject matter jurisdiction regarding the Commission's ability to approve recovery of gas reserve investments as well as the Final Order approving part of FPL's June 25th Petition and the preceding Fuel Clause Order, as it relates to the Commission's approval of certain hedging provisions, OPC believes, pursuant to Florida Rules of Appellate Procedure 9.110 and 9.600, the appeals in Supreme Court Case Nos. SC15-95, SC15-113, and SC15-115 divest the Commission of jurisdiction to act on the Proposed Guidelines.

The Proposed Guidelines are not procedural matters, and therefore, do not fall within the exceptions in Rule 9.600 allowing the lower tribunal to render orders on procedural matters during the pendency of the appeal. Furthermore, "when a notice of appeal has been timely filed jurisdiction of the cause then vests absolutely in the appellate Court until such appeal has been finally disposed of," which has not occurred in the present appeals. See *Tel Service Co., v. General Capital Corp.*, 212 So. 2d 369, 382 (Fla. 2d DCA 1968).

In light of the plenary nature of the appeals taken including, but not limited to, the fundamental issue of the Commission's jurisdiction to act to approve FPL's June 25th Petition, the OPC suggests that the Commission, at a minimum, refrain from taking any further action in Dockets

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140001-EI and/or 150001-EI with respect to the petition or gas reserves investments or gas reserves investment guidelines. A complete cessation of activities by the Commission and its staff on this subject would be consistent with the Supreme Court's complete jurisdiction over the matter and would avoid the need for further litigation in the Court over the issuance of a writ or order directed toward the Commission.

Please advise us if the Commission intends to proceed with the Proposed Guidelines at the March 3, 2015, agenda conference so we can seek timely, appropriate appellate relief, if required. Thank you for your consideration of this matter.



John J. Truitt
Associate Public Counsel

CC: Parties of record via email