

**BEFORE THE PUBLIC SERVICE COMMISSION**

In Re: Petition for Approval of Electric Reliability  
Infrastructure Program and Associated Cost Recovery  
Mechanism by Florida Public Utilities Company

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Docket No.: 170033-EI

Filed: March 23, 2017

**CITIZENS' NOTICE OF FILING SUPPLEMENTAL AUTHORITY FOR ITS MOTION TO  
DISMISS FLORIDA PUBLIC UTILITIES COMPANY'S (FPUC) PETITION OR IN THE  
ALTERNATIVE TO REQUIRE FPUC TO COMPLY WITH COMMISSION RULES AND  
THEN SET THIS MATTER FOR A SECTION 120.57(1) HEARING**

Pursuant to Sections 366.04, 366.05, 366.06, and 366.076, Florida Statutes, and Citizens v. Wilson, 568 So. 2d 904 (1990), Citizens, by and through the Office of Public Counsel, hereby file their Notice of Filing Supplemental Authority for its Motion to Dismiss FPUC's Petition in this docket or in the Alternative to Require FPUC to Comply with Commission Rules and then Set This Matter for a Section 120.57(1) Hearing.

1. On February 14, 2017, FPUC filed its Petition for Approval of Electric Reliability Infrastructure Program and Associated Cost Recovery Mechanism (Petition). FPUC proposes to create a new surcharge mechanism for basic, garden-variety, traditional infrastructure and reliability projects which have been historically recovered in base rates.<sup>1</sup> FPUC calls its surcharge mechanism proposal the Electric System Transformation and Reliability (ESTAR) Program which would be adjusted annually for an estimated period of at least the next several years plus. FPUC is asking to collect revenue for multiple capital projects – to implement a Supervisory Control and Data Acquisition System (SCADA) computer software system for electronic process controls of the Company's distribution

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<sup>1</sup> See Attachment A of the stipulation and settlement in Order No. PSC-14-0517-S-EI, issued on September 29, 2014, in Docket No. 140025-EI (Stipulation).

system, to implement a smart meter replacement installation program, and to construct various distribution infrastructure projects.

2. On February 24, 2017, OPC filed its Motion to Dismiss FPUC's Petition in this docket or in the Alternative to Require FPUC to Comply with Commission Rules and then Set This Matter for a Section 120.57(1) Hearing (Motion).
3. On March 3, 2017, FPUC filed its Response to OPC's Motion (Response).
4. Subsequent to the filing of the Motion and Response, the Florida Supreme Court issued its Ruling in Citizens v. Graham, Docket No. SC16-141, issued March 16, 2017. This decision involved an appeal by OPC of Order No. PSC-15-0586-FOF-EI, issued December 23, 2015. In Order No. PSC-15-0586-FOF-EI, the Commission approved cost recovery through the Fuel Clause of costs related to an interconnection between FPUC and FPL. The Court overruled Order No. PSC-15-0586-FOF-EI on several grounds. First, the Court found that the Commission departed from the essential requirements of law by failing to properly consider and address the settlement agreement with regard to the FPUC's petition of recovery of costs associated with the transmission interconnection project. Id. at p. 31. The Court further found that the settlement agreement applied in this case and prohibited FPUC from petitioning the Commission for recovery of those costs thorough the fuel clause proceeding.
5. Second, the Court found that the Commission erred in concluding that such construction capital expenditures are capable of recovery through fuel clause proceedings. Id. The Court stated that:

if we were to allow recovery of these capital construction costs [interconnection costs] through the fuel clause simply because they may result in savings and are loosely linked to fuel and purchased power through transmission lines, the fuel clause exception would finally totally

swallow whole **the rule that capital costs should be recovered through base rates because they can be subject to adequate planning.**

Id. at 23 (Emphasis added). Moreover, the Court noted that FPUC's testimony suggested that "FPUC simply chose to pursue recovery through the fuel clause as a matter of convenience, rather than any necessity borne of unforeseen volatility." Id. In addition, the Court stated that "[w]e do not believe that the fuel clause is an end-all-be-all of cost recovery, but rather its history suggests its use should be limited to facilitating recovery of costs related to fuel and power purchases that are volatile, rendering them less than ideal for a base rate case." Id. at p. 24. The Court further noted that the FPUC case was not the first example of utilities "seeking to recover for items that are more properly base rate costs through the fuel clause in a practice that has become alarmingly frequent." Id.

6. Based on the rationale set forth by the Florida Supreme Court in the recently decided Citizens v. Graham case, FPUC's request for a proposed surcharge mechanism should be denied. While FPUC has not explicitly requested that these capital costs should be recovered as part of the fuel clause proceeding, the annual surcharge mechanism FPUC is requesting is essentially fuel clause-type recovery. Similar to the fuel clause issue in Citizens v. Graham, FPUC is seeking in this docket to recover capital costs through the establishment of an annual surcharge mechanism outside of a base rate proceeding. The type of capital costs FPUC is attempting to recover herein are the type of capital costs that should be recovered through base rates because they can be subject to adequate planning. Further, these types of capital costs are not volatile.

Wherefore, Citizens, by and through the Public Counsel, hereby request that the Commission acknowledge the Notice of Filing Supplemental Authority and grant its Motion to Dismiss FPUC's Petition, or in the Alternative to Require FPUC to Comply with Commission Rules and then Set This Matter for a Section 120.57(1) Hearing.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail to the following parties on this 23<sup>rd</sup> day of March, 2017

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