

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for temporary waiver of Rule 25-6.078(3), F.A.C. by Florida Power & Light Company

Docket No. 20220012-EI

Filed: March 11, 2022

**FLORIDA POWER & LIGHT COMPANY'S MOTION TO DISMISS PETITIONS**

Pursuant to Rules 28-106.201 and 28-106.204, Florida Administrative Code (“F.A.C”), Florida Power & Light Company (“FPL”) respectfully files this Motion to Dismiss Petitions filed by multiple petitioners<sup>1</sup> (collectively referred to as “Petitioners”) in this docket. FPL takes the concerns of its customers seriously and continues to assist customers in Northwest Florida who received higher-than-expected electric bills in January and/or February 2022. However, these customers’ bills were not impacted by FPL’s Petition for Temporary Waiver of Rule 25-6.078(3), which involves filing requirements related to the installation of underground facilities in new subdivisions. For the reasons set forth below, the Florida Public Service Commission (“Commission”) should dismiss the Petitioners’ protests in this docket. In support thereof, FPL states:

**I. BACKGROUND**

1. On January 7, 2022, FPL filed its Petition for Temporary Waiver of Rule 25-6.078(3).
2. On January 20, 2022, Commission Staff issued a recommendation to the Commission to approve FPL’s request.
3. At the February 1, 2022 Agenda Conference, the Commission voted unanimously to approve FPL’s petition after discussion. On February 17, 2022, the Commission issued its written Notice of Proposed Agency Action Order Granting Petition for Temporary Rule Waiver, Order No. PSC-2022-0062-PAA-EI (“0062 Order”).

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<sup>1</sup> Petitioners are 103 FPL customers who filed nearly identical documents titled as “Letter of Protest” on or before March 10, 2022. Any Letters of Protest or Petitions filed with the Commission Clerk after March 10 would be untimely and should also be dismissed on that basis.

4. As required, the 0062 Order stated that the proposed agency action would become final “upon the issuance of a Consummating Order unless appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Office of Commission Clerk” by close of business on March 10, 2022.

5. Petitioners each filed a document titled “Letter of Protest” with the Commission Clerk on or before March 10, 2022 (hereinafter referred to as “Petition” or “Petitions”). The Petitions are “boilerplate” forms, almost identical in content, with the only notable difference being that each contains a paragraph 4 that is unique to each of the Petitioners. Each of the Petitions contains a Paragraph 4 for the individual Petitioners to detail their “undue and substantial hardship.” However, they all describe an alleged hardship that relates to the Commission’s approval of the stipulation and settlement in Docket No. 20210015-EI, not to the Commission’s proposed agency action decision in this docket.

## **II. THE PETITIONERS DO NOT HAVE STANDING TO CHALLENGE THIS PROPOSED AGENCY ACTION**

6. Rule 28-106.201(2)(b), F.A.C., requires that a person wishing to challenge a proposed agency action must include in the petition an “explanation of how the petitioner's substantial interests will be affected by the agency determination.”

7. In addition, section 120.52(13), Florida Statutes, defines a party as:

(a) Specifically named persons whose substantial interests are being determined in the proceeding.

(b) Any other person who, as a matter of constitutional right, provision of statute, or provision of agency regulation, is entitled to participate in whole or in part in the proceeding, or whose substantial interests will be affected by proposed agency action, and who makes an appearance as a party.

8. Petitioners are not named persons whose substantial interests are being determined under subsection (13)(a). Therefore, they must articulate that their substantial interests will be affected by the proposed agency action under subsection (13)(b) in order to show they have standing.

9. As this Commission has articulated regarding standing in Order No. PSC-2015-0295-PCO-EI, there is a long-established two-prong test for standing:

To have standing, the intervenor must meet the two-prong standing test set forth in *Agrico Chemical Company v. Department of Environmental Regulation*, 406 So. 2d 478, 482 (Fla. 2nd DCA 1981). The intervenor must show (1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57 hearing, and (2) that this substantial injury is of a type or nature which the proceeding is designed to protect.

10. Rule 25-6.078, F.A.C., requires electric utilities to have a written policy for the installation of “underground facilities in new subdivisions” contained in its approved tariff. This policy is required to include an Estimated Average Cost Differential, if any, for underground installations. Rule 25-6.078(1), F.A.C. However, the policy, as required by the rule, is only applicable to installations of underground facilities in new subdivisions. *Id.*

11. Petitioners are customers whose Petitions are rooted in their dissatisfaction with their new electric bills since the beginning of the year. None of the Petitioners appear to be, nor have any alleged to be, a developer or builder. None of their complaints address how a one-year waiver of Rule 25-6.078(3) for FPL will adversely impact them or their rates. Unless any of the Petitioners are expected to build or develop a subdivision, which none have alleged, they will not be charged any costs detailed in FPL’s URD tariffs that are at issue in this docket. Nor will the Petitioners be impacted by a one-year extension for FPL to file its updated written policy and supporting data and analysis as outlined in its petition.

12. The Petitioners do not articulate how the one-year extension granted by the 0062 Order will affect their substantial interests. Instead, the Petitioners state the new rates approved by the

Commission in Docket No. 20210015-EI substantially affect them as customers<sup>2</sup>. That is wholly outside the scope of the Commission's proposed agency action as contained in the 0062 Order.

13. The Petitioners have failed to articulate how the proposed agency action will cause an injury in fact or that this proceeding will impact their substantial interests. Therefore, the Commission should dismiss the Petitions due to a lack of standing in this docket.

### **III. THE PETITIONS ARE AN IMPROPER COLLATERAL ATTACK ON THE COMMISSIONS ORDER IN DOCKET NO. 20210015-EI**

14. FPL petitioned for a base rate increase and for rate unification in Docket No. 20210015-EI. On October 26, 2021, the Commission approved the Stipulation and Settlement Agreement in that docket, and on December 2, 2021, the Commission issued its final order reflecting the approval of the Stipulation and Settlement Agreement.<sup>3</sup>

15. Petitioners did not intervene or otherwise attempt to participate in Docket No. 20210015-EI. Due to the appeals filed with the Florida Supreme Court, jurisdiction over the final order approving the Stipulation and Settlement Agreement resides with the Court and not with the Commission.

16. Paragraphs 1 through 3 of the Petitions largely focus on actions that occurred in the 20210015-EI docket. FPL's petition for temporary waiver of Rule 25-6.078(3), F.A.C., is not tied to FPL's Rate Case. FPL's petition is based upon a rule requiring a utility file, at least once every three years, a written policy regarding underground installations and supporting data. In its Petition, FPL detailed the timeline of events, including that FPL filed the written policy as part of its tariffs in Docket No. 20210015-EI. There no was no requirement for FPL to file the supporting data and analysis at that time, but FPL detailed that it had not as part of the petition in this docket for context for the Commission.

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<sup>2</sup> See paragraph 4 in each of the Petitions.

<sup>3</sup> See Commission Order No. PSC-2021-0446-S-EI and Amendatory Order No. PSC-2021-0446A-S-EI.

17. It also should be noted that and as was pointed out in FPL's Petition, the estimated average cost differential for the installation of underground facilities in new subdivisions was zero before the Rate Case, was zero in the tariffs approved in the Rate Case, and likely would be zero if FPL performed the calculations based upon the 2021 data. This cost differential did not change by virtue of the Commission's approval of the stipulation and settlement in the 20210015-EI docket.

18. Meanwhile, the heart of the Petitioners individual and collective filings really are complaints about their rates for their electric accounts, which are not impacted by the estimated average cost differential for the installation of underground facilities in new subdivisions that is the subject of Rule 25-6.078, F.A.C.

19. Petitioners cannot now use this unrelated docket to raise complaints or concerns with their electric rates, which is the subject matter of the issues addressed in Docket No. 20210015-EI. Such a collateral attack should not be permitted in this case, and the Petitions should be dismissed for that reason.

**IV. THE PETITIONS FAIL TO COMPLY WITH THE FILING REQUIREMENTS OF RULE 28-106.201, F.A.C.**

20. Pursuant to the Commission's 0062 Order, a petition to initiate formal proceedings had to be filed in compliance with Rule 28-106.201, F.A.C., by March 10, 2022.

21. The Letters of Protest filed by each of the Petitioners purports to be filed in accordance with the rule. However, each of the Petitions fails to conform with the rule and its filing requirements.

22. Rule 28-106.201(2), F.A.C., states:

(2) All petitions filed under these rules shall contain:

(a) The name and address of each agency affected and each agency's file or identification number, if known;

(b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; the name, address, and telephone number of the petitioner's

representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

(c) A statement of when and how the petitioner received notice of the agency decision;

(d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

(e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;

(f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and

(g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

23. First, all the Petitions fail to properly state how their substantial interests will be affected by Commission's decision in the 0062 Order as required in subsection (b) of Rule 28-106.201(2), F.A.C.

24. In each filing, the Petitioners state how the Commission's decision in Docket No. 20210015-EI has affected their substantial interests. They fail to articulate or state how the Commission's granting FPL's Petition in this docket, dealing with the estimated average cost differential for the installation of underground facilities in new subdivisions, has any impact or effect on their substantial interests.

25. The Petitioners fail to provide a statement of all disputed issues of material fact or if there are none, as require by subsection (d) of Rule 28-106.201(2), F.A.C.

26. While the Petitioners articulate complaints related to the Commission's decision in Docket No. 20210015-EI, they do not provide a statement as to what, if any, are disputed issues of material fact involved in this docket.

27. Petitioners also fail to provide a concise statement of the ultimate facts alleged as required under subsection (e) of Rule 28-106.201(2), F.A.C. Nor do they state which specific facts warrant a reversal or modification of the Commission's 0062 Order, as is required under the same subsection of the rule.

28. Finally, the Petitioners fail to state the specific rules or statutes that they contend require the reversal or modification of the Commission's decision in the 0062 Order. Neither do they provide an explanation of how the alleged facts relate to a specific rule or statute. All of which is required by Rule 28-106.201(2)(f), F.A.C.

29. As has been stated throughout this motion, the Petitioners are making allegations and complaints related to the decision of the Commission in Docket No. 20210015-EI guised as a challenge to the 0062 Order, but they fail to articulate how an order granting a one-year waiver of a filing a written policy and supporting data an analysis for the estimated average cost differential for the installation of underground facilities in new subdivisions will impact their substantial interests. Therefore, their Petitions should be dismissed for failing to comply with the filing requirements contained in Rule 28-106.201(2), F.A.C.

WHEREFORE, FPL respectfully requests that the Florida Public Service Commission dismiss the Petitions for all the grounds stated herein and grant such other relief as the Commission deems appropriate.

Respectfully submitted this 11th day of March, 2022.

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**CERTIFICATE OF SERVICE**  
**Docket No. 20220012-EI**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished via electronic delivery or \*U.S. Mail this 11th day of March, 2022, to the following:

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