

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for increase in rates by Florida
Power & Light Company.

DOCKET NO. 120015-EI
ORDER NO. PSC-12-0496-PCO-EI
ISSUED: September 26, 2012

ORDER DENYING THOMAS SAPORITO'S MOTION TO STRIKE
FLORIDA POWER & LIGHT COMPANY'S POST HEARING BRIEF
AND STATEMENT OF ISSUES AND POSITIONS

On March 26, 2012, Order No. PSC-12-0143-PCO-EI (Order Establishing Procedure) was issued, scheduling this docket for an administrative hearing on August 20-24 and 27-31, 2012, and setting September 21, 2012 as the date for the filing of post-hearing briefs. On August 17, 2012, Order No. PSC-12-0428-PHO-EI (Prehearing Order) was issued. Section XIII of the Prehearing Order, Post Hearing Procedures, states: “[p]ursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief shall together total no more than 150 pages and shall be filed at the same time.” On September 21, 2012, Florida Power & Light Company (FPL) filed its Post Hearing Brief and Statement of Issues and Positions (Brief). FPL's brief consisted of exactly 150 pages, with two Appendixes constituting an additional 16 pages, as well as a table of contents and certificate of service.

On September 24, 2012, Mr. Thomas Saporito, a *pro se* Intervenor, filed a Motion To Strike Florida Power & Light Company's Post Hearing Brief And Statement Of Issues And Positions (Motion). In the Motion, Mr. Saporito alleges that pursuant to the Prehearing Order, parties were allowed 150 pages only for their post hearing briefs. Mr. Saporito states that FPL's Brief consists of 189-pages, and since “FPL was represented by highly polished and well-seasoned attorneys with years of experience in litigation before the Commission . . . there can be no doubt that the (sic) FPL's violation of the Commission's Order No. PSC-12-0428-PHO-EI in filing a 189-page Brief was ‘deliberate’ and ‘intentional’ and was done to gain an improper advantage over the other parties in this matter and to affect a favorable ruling for FPL in this docket from the Commission.” Mr. Saporito goes on to allege that “[t]o the extent that FPL knowingly, willfully and deliberately violated the Commission's Order No. PSC-12-0428-PHO-EI in filing a 189-page Brief, FPL has (1) violated the ‘due-process’ rights of all other parties in this matter; and (2) inappropriately prejudiced the other party's (sic) ability to obtain a fair decision by the Commission in this docket.” Mr. Saporito requests that “FPL's Post Hearing Brief and Statement of Issues and Positions should be stricken from the record and disregarded in its entirety by the Commission as a matter of law.”

Also on September 24, FPL filed a Response to Mr. Saporito's Motion. In its Response, FPL asserts that its Brief complies with the 150 page limit specified in the Prehearing Order. FPL argues that Mr. Saporito misunderstands the requirements of the Prehearing Order, and that the two Appendixes “may not be properly counted toward the 150-page limit.” FPL asserts that its post-hearing brief in its last rate case (Docket No. 080677-EI) also contained Appendixes, and that inclusion of a table of contents and certificate of service comports with Florida Rule of

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Appellate Procedure 9.210(a)(5), and makes sense, since “they do not contain substantive argument.” FPL asserts that the Appendixes were separately attached and “simply show how certain figures reflected in FPL’s original filings were affected by the adjustments subsequently made in Exhibit 399 . . . and Exhibit 470. . . . They are for Staff’s and the parties’ convenience only and contain no substantive argument.”

After consideration of the Motion, FPL’s Response, and review of FPL’s Brief at issue, I find that Mr. Saporito’s Motion should be denied. First, review of FPL’s Brief clearly reveals that it consists of precisely 150 pages. While FPL does include two Appendixes, examination reveals, as represented by FPL, that they are merely summary tables, which are not argument or record evidence.

Based on the foregoing, it is

ORDERED by Chairman Ronald A. Brisé, as Presiding Officer, that Thomas Saporito’s Motion To Strike Florida Power & Light Company’s Post Hearing Brief And Statement Of Issues And Positions is DENIED for the reasons set forth in the body of this Order.

By ORDER of Chairman Ronald A. Brisé, as Presiding Officer, this 26th day of September, 2012.



RONALD A. BRISÉ
Chairman and Presiding Officer
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

LDH

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and

time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.