

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-12-0592-PCO-EI
ISSUED: October 31, 2012

ORDER DENYING PETITION TO INTERVENE

Background

On June 29, 2012, Mr. Larry Nelson (Mr. Nelson) filed a Petition to Intervene (Petition) in this docket in his individual capacity as a customer of Florida Power & Light Company (FPL). On July 12, 2012, the Prehearing Officer granted his Petition. At the start of the evidentiary hearing on August 20, 2012, Mr. Nelson or his representative failed to appear, and was dismissed as a party from the docket and his positions on the issues were stricken pursuant to Section VII(a) of Order No. PSC-12-0143-PCO-EI, the Order Establishing Procedure.¹ On August 15, 2012, FPL and three of the intervening parties filed a Motion to Approve Settlement Agreement (Settlement Agreement) and a Motion to Suspend the Procedural Schedule.² The Motion to Suspend the Procedural Schedule was denied by Order No. PSC-12-0430-PCO-EI, issued August 17, 2012.³ The hearing commenced as scheduled in the Order Establishing Procedure, Order No. PSC-12-0143-PCO-EI, on August 20, 2012.

On August 27, 2012, the Presiding Officer in Docket No. 120015-EI (the FPL Rate Case) issued the Second Order Revising Order Establishing Procedure Setting Procedural Schedule for Commission Consideration of the Settlement Agreement. The Order stated that upon conclusion of the evidentiary portion of the hearing, the Commission would announce the date and time set for the sole purpose of taking up the Settlement Agreement. On August 31, 2012, it was announced that the Commission would reconvene the hearing in the FPL Rate Case on September 27, 2012, at 1:00 p.m. and September 28, 2012, if necessary, to consider the Settlement Agreement. On September 27, 2012, the Commission voted to take additional testimony limited to specific issues that are part of the proposed settlement agreement, but supplemental to the issues in the rate case. Accordingly, in compliance with Sections 120.569 and 120.57, Florida Statutes (F.S.), the administrative hearing was continued until November 19-21, 2012, to take supplemental testimony on the specific issues that are a part of the settlement agreement. On October 3, 2012, the Presiding Officer issued the Third Order

¹ Section VII(a) of Order No. PSC-12-0143-PCO-EI, Order Establishing Procedure stated "Unless excused by the Presiding Officer for good cause shown, each party (or designated representative) shall personally appear at the hearing. Failure of a party, or that party's representative, to appear shall constitute waiver of that party's issues, and that party may be dismissed from the proceeding."

² FPL, Florida Industrial Power Users Group (FIPUG), Federal Executive Agencies (FEA), and South Florida Hospital and Healthcare Association (SFHHA) are the signatories to the Settlement Agreement. While party Algenol did not execute the Settlement Agreement or join in the motion, it did express its support for the Settlement Agreement.

³ It is noted that on August 16, 2012, Mr. Nelson filed a response in opposition to the Joint Motion for Approval of Settlement Agreement and Motion to Suspend Technical Hearing.

DOCUMENT NUMBER - DATE

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FPSC-COMMISSION CLERK

Revising Order Establishing Procedure (Third Revised OEP) pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code, (F.A.C.). Rule 28-106.211, F.A.C., provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case. The Third Revised OEP stated that the scope of the proceeding shall be based upon specific issues that are part of the proposed settlement agreement but supplemental to the issues set out in the Prehearing Order, Order No. PSC-12-0428-PHO-EI, issued August 17, 2012, unless modified by the Commission.

Petition to Re-Intervene

On October 19, 2012, Mr. Nelson filed another Petition to Intervene in this docket. Mr. Nelson contends that intervention is warranted and necessary to protect his due process rights and substantial interest in relation to the previously unidentified issues now being actively litigated in relation to the FPL settlement proposal. Mr. Nelson asserts that the Commission has created an entirely new proceeding by Order No. PSC-12-0529-PCO-EI, establishing a discovery schedule, Prehearing Conference, and evidentiary hearing, on issues completely beyond the issues of the rate case. Mr. Nelson argues that the very premise of the hearing is to hear only issues beyond the already litigated issues in the rate case. Mr. Nelson contends that the settlement agreement purports to "settle" the FPL rate case on terms far beyond the scope of the original rate case and further shifts "revenue requirements" from the three minor parties who wish to settle with FPL to other FPL customers, including all residential customers, which includes him. Therefore, he is entitled to intervene to protect his substantial interests affected by hearing on the purported "settlement agreement," which has the same effect as an entirely new rate case. Additionally, Mr. Nelson asserts that although he was dismissed from the original rate case, it was not "with prejudice," and even under the strained interpretation that this additional proceeding, on the "settlement agreement" issues which are by definition beyond the scope of the rate case, is still the same proceeding as the rate case. Moreover, Mr. Nelson argues that it is still more than five days before the "final hearing" and he therefore can intervene as of right under the statute.

Standard for Intervention

Pursuant to Rule 25-22.039, F.A.C., persons, other than the original parties to a pending proceeding, who have a substantial interest in the proceeding, and who desire to become parties, may petition for leave to intervene. Petitions for leave to intervene must be filed at least five days before the evidentiary hearing, conform with Rule 28-106.201(2), F.A.C., and include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to Commission rule, or that the substantial interests of the intervenor are subject to determination or will be affected by the proceeding. Intervenors take the case as they find it.

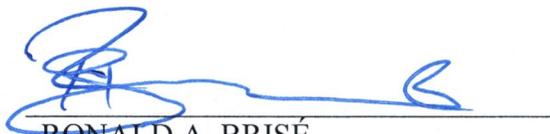
Analysis & Ruling

Having reviewed and analyzed Mr. Nelson's Petition to Intervene, I find that his Petition is denied as untimely. This is not a new rate case, but a continuation of the existing FPL rate case filed on March 19, 2012. The Third Revised OEP stated that the purpose of the November 19-21, 2012, evidentiary hearing is to take additional testimony limited to specific issues that are part of the proposed settlement agreement, but supplemental to the issues in the rate case. Mr. Nelson was a party to the original proceeding and was subsequently dismissed for his failure to appear at the start of the August 20, 2012, evidentiary hearing. Similarly, the nature of this proceeding does not allow a new point of entry because the administrative hearing was continued until November 19-21, 2012, to take supplemental testimony on the specific issues that are a part of the settlement agreement. Therefore, Mr. Nelson's Petition to Intervene shall be denied.

It is, therefore,

ORDERED by Chairman Ronald A. Brisé, as Prehearing Officer, that Larry Nelson's Petition to Intervene in Docket No. 120015-EI is hereby denied.

By ORDER of Chairman Ronald A. Brisé, as Presiding Officer, this 31st day of October, 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.

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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.