

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-12-0652-PCO-EI
ISSUED: December 12, 2012

The following Commissioners participated in the disposition of this matter:

RONALD A. BRISÉ, Chairman
LISA POLAK EDGAR
ART GRAHAM
EDUARDO E. BALBIS
JULIE I. BROWN

ORDER DENYING SUMMARY FINAL ORDER

On November 19-21, 2012, the Commission held a supplemental hearing to consider the Settlement Agreement that Florida Power & Light Company (FPL), the Florida Industrial Power Users Group (FIPUG), the South Florida Hospital and Healthcare Association (SFHHA), and the Federal Executive Agencies (FEA) proposed to resolve FPL's petition for a rate increase. Testimony was submitted by the signatories to the Settlement Agreement, as well those opposed to it, including the Office of Public Counsel (OPC), the Florida Retail Federation (FRF), and other intervenors. Supplemental posthearing briefs were filed on November 30, 2012, and the Commission will consider whether to approve the Settlement Agreement on December 13, 2012.

Mr. Thomas Saporito, an intervenor who opposes approval of the Settlement Agreement, filed a Motion for Summary Final Order Denying Joint Motion for Approval of Settlement Agreement on December 3, 2012. Mr. Saporito asserted that the Commission should issue a summary final order denying the Settlement Agreement since there are no disputed issues of material fact that remain to be resolved:

In thorough review and consideration of the record testimony and evidence; and in review and consideration of the post-hearing briefs filed in the instant action – all genuine issues of material fact have been resolved in favor of the non-signatory parties to the Settlement. Therefore, there is no genuine issue as to any material fact remaining before the Commission to consider and rule.

(Saporito Motion p.2)

On December 4, 2012, the signatories to the Settlement Agreement, FPL, FIPUG, SFHHA, and FEA, filed a Joint Response to Thomas Saporito's Motion for Summary Final Order, asserting that Mr. Saporito's motion was procedurally improper and untimely pursuant to Rule 28-106.204, Florida Administrative Code (F.A.C.). They stated that the motion was untimely because it was filed after the hearing on the issues had already been held, and

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procedurally improper because it did not and could not show the absence of genuine issues of material fact. The signatories stated:

The extensive cross-examination and briefing sufficiently demonstrates – without the need to restate the parties’ opposing positions – the existence of disputed material facts regarding each issue; the generation base rate adjustments, amortization of depreciation and dismantlement reserve, deferral of the depreciation and dismantlement studies, the proposed incentive mechanism and whether the Proposed Settlement as a whole is in the public interest. Thus summary final order is inappropriate.

(Joint Response p.2)

Analysis and Ruling

Section 120.57(1)(h), F.S., provides that a summary final order shall be granted if it is determined from the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, that (1) no genuine issue as to any material fact exists, and (2) the moving party is entitled as a matter of law to the entry of a final summary order. Rule 28-106.204(4), F.A.C., states that “[a]ny party may move for summary final order whenever there is no genuine issue as to any material fact.” The purpose of a summary final order is to avoid the expense and delay of trial when no dispute exists concerning the material facts.

A summary final order is not appropriate in this case because the administrative hearing has already been held and a summary final order would be untimely. Further, as the joint signatories to the Settlement Agreement point out, it is clear that several genuine issues of material fact remain for the Commission to resolve. Therefore, Mr. Saporito’s Motion for Summary Final Order is denied.

Based on the foregoing, it is

ORDERED by Chairman Ronald A. Brisé, as Presiding Officer, that Mr. Saporito’s Motion for Summary Final Order is denied.

By ORDER of Chairman Ronald A. Brisé, as Presiding Officer, this 12th day of
December, 2012.



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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.