

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by Erika Alvarez, Jerry  
Buechler, and Richard C. Silvestri against  
Florida Power & Light Company.

DOCKET NO. 150185-EI  
ORDER NO. PSC-15-0387-PCO-EI  
ISSUED: September 14, 2015

ORDER DENYING ORAL ARGUMENT AND  
REQUEST FOR EXPEDITED PROCESS

On August 17, 2015, pursuant to Rule 28-106.204, Florida Administrative Code (F.A.C.), Erika Alvarez, Jerry Buechler, and Richard C. Silvestri (Petitioners) filed a formal complaint against Florida Power & Light Company (FPL), alleging FPL violated Commission Statutes, Rules and Orders in its administration of its 2015 solar pilot rebate program reservation.<sup>1</sup>

On August 25, 2015, Mr. Silvestri filed a motion for oral argument and request for expedited decision on Petitioners' Complaint. In his motion, Mr. Silvestri specifically requests the opportunity to present oral argument, by telephone, at the Commission's September 15, 2015 Conference Agenda, on his request for expedited decision.<sup>2</sup> In addition, Mr. Silvestri requests a decision by the Commission on Petitioners' Complaint "no later than October 2015" because the solar rebate program is set to expire on December 31, 2015.<sup>3</sup> Finally, Mr. Silvestri requests that Petitioners' Complaint be heard in Melbourne, Florida.

On September 1, 2015, pursuant to Rule 28-106.204, F.A.C., FPL filed a Motion to Dismiss Complaint and Response to Motion for Oral Argument. In its response to Mr. Silvestri's motion for oral argument, FPL argues that Mr. Silvestri's motion should be denied as the request for oral argument does not comply with Rule 25-22.0022, F.A.C., for requesting oral argument, and the request for expedited decision does not comply with Rule 25-106.204, F.A.C.<sup>4</sup> Specifically, FPL argues that Mr. Silvestri (1) failed to file a separate written request for expedited consideration of Petitioners' Complaint or a waiver of any timeframes that would apply with the motion for oral argument; (2) failed to identify why oral argument is necessary to aid the Commission in understanding and evaluating the issues; and (3) failed to request an amount of time for oral argument.<sup>5</sup>

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<sup>1</sup> Document No. 05144-15, Complaint by Erika Alvarez, Jerry Buechler, and Richard C. Silvestri against Florida Power & Light Company.

<sup>2</sup> Document No. 05277-15, Silvestri letter requesting oral argument and expedited process, filed August 25, 2015, in Docket No. 150185-EI, In Re: Complaint by Erika Alvarez, Jerry Buechler, and Richard C. Silvestri against Florida Power & Light Company.

<sup>3</sup> FPL's solar pilot programs are set to expire on December 31, 2015. See, Order No. PSC-14-0632-FOF-EG, issued on October 31, 2014, in Docket No. 140002-EG, In re: Energy conservation cost recovery clause.

<sup>4</sup> Document No. 05465-15, FPL's Motion to Dismiss Complaint and Response to Oral Argument, filed September 1, 2015, in Docket No. 150185-EI.

<sup>5</sup> Id., pgs. 5-6.

On September 8, 2015, Mr. Silvestri and Ms. Alvarez filed a joint response to FPL's Motion to Dismiss Complaint and Oral Argument.<sup>6</sup> Mr. Buechler was granted an extension of time, until September 25, 2015, to respond to FPL's Motion to Dismiss by Order No. PSC-15-0366-PCO-EI. In their response, Mr. Silvestri and Ms. Alvarez state the reason for seeking an expedited decision on Petitioners' Complaint "is to ensure a determination by the full commission" on their Complaint "before the Solar Rebate Programs ends on December 31, 2015."<sup>7</sup>

#### Motion for Oral Argument

Rule 25-22.0022(3), F.A.C., states that granting or denying a request for oral argument is within the sole discretion of the Commission or the Prehearing Officer, whichever presides over the matter to be argued. Rule 25-22.0022(7)(a), F.A.C., provides that oral argument at an Agenda Conference will only be entertained for recommended orders or dispositive motions, such as a motion to dismiss or motion for reconsideration of final orders. Further, Rule 25-22.0021(1), F.A.C., provides for oral argument before the Commission as follows:

Oral argument must be sought by separate written request filed concurrently with the motion on which argument is requested, or no later than ten (10) days after exceptions to a recommended order are filed. Failure to timely file a request for oral argument shall constitute waiver thereof. Failure to timely file a response to the request for oral argument waives the opportunity to object to oral argument. The request for oral argument shall state with particularity why oral argument would aid the Commissioners, the Prehearing Officer, or the Commissioner appointed by the Chair to conduct a hearing in understanding and evaluating the issues to be decided, and the amount of time requested for oral argument.

Upon reviewing the filings of both parties on the motion, I find that Mr. Silvestri's motion for oral argument does not appear to meet the requirements of Rule 25-22.0022(1) and (7)(a), F.A.C. Specifically, Mr. Silvestri's motion for oral argument was not filed as a separate written request from his request for expedited process, does not state why oral argument would aid the Commission in understanding or evaluating the issues to be decided, and does not request an amount of time for oral argument. However, while Mr. Silvestri's motion to present oral argument on request for expedited hearing does not appear to meet the requirements of Rule 25-22.0022, F.A.C., I find that the filings made by the Parties on this matter contain sufficient information for me to render a fair and complete evaluation of the merits of the request for expedited decision without the necessity of oral argument. Accordingly, I hereby deny Mr. Silvestri's request for oral argument.

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<sup>6</sup> Document No. 05605-15, Silvestri-Alvarez Response to FPL's Motion to Dismiss Complaint and Response to Oral Argument, filed September 8, 2015, in Docket No. 150185-EI.

<sup>7</sup> Id. at p. 14.

Motion for Expedited Hearing

Petitioners' Complaint was docketed on August 17, 2015, and I was assigned Prehearing Officer on August 20, 2015. Pursuant to Rule 28-106.204, F.A.C., FPL's response to Petitioners' Complaint was due on or before, September 9, 2015. On August 25, 2015, Mr. Silvestri filed his request for expedited decision on Petitioners' Complaint. FPL's response to Mr. Silvestri's motion was due on or before September 1, 2015, pursuant to Rule 28-106.204, F.A.C. On September 1, 2015, FPL filed a Motion to Dismiss Complaint in response to Petitioners' Complaint.

Mr. Silvestri requests an expedited decision on Petitioners' Complaint by the Commission no later than October 2015, in Melbourne, Florida "to ensure a determination by the full commission before the Solar Rebate Programs ends on December 31, 2015." Petitioners' concern that FPL's solar rebate program may expire prior to a determination by the Commission on their Complaint is reasonable. However, Chapter 120, F.S., Commission rules of practice and procedure, as well as principals of due process require that a determination must be made on FPL's Motion to Dismiss Petitioners' Complaint before a determination may be made on Petitioners' Complaint.<sup>8</sup> At this time, FPL's Motion to Dismiss Complaint and Oral Argument is scheduled to go before the full Commission for consideration at the Commission's Agenda Conference on October 13, 2015.

Therefore, Mr. Silvestri's request for expedited decision by the Commission in October 2015 in Melbourne, Florida is hereby denied. Should FPL not prevail on its Motion to Dismiss, the Commission will process Petitioners' Complaint as expeditiously as possible in accordance with applicable Statutes and Commission Rules. Finally, should Petitioners' Complaint proceed to hearing, a determination on the hearing venue will be made at the appropriate time.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Richard C. Silvestri's Motion for Oral Argument on his Request for Expedited Decision is hereby denied. It is further

ORDERED that Richard C. Silvestri's Request for Expedited Decision by October 2015 in Melbourne, Florida is hereby denied. Should FPL not prevail on its Motion to Dismiss, however, the Commission will process Petitioners' Complaint as expeditiously as possible in accordance with applicable Commission Statutes and Rules. It is further

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<sup>8</sup> See, Section 120.569, F.S., which provides in part: "The provisions of this section apply in all proceedings in which the substantial interests of a party are determined by an agency, unless the parties are proceeding under s. 120.573 or s. 120.574. Unless waived by all parties, Section 120.57(1) applies whenever the proceeding involves a disputed issue of material fact."; and Section 120.57(1)(b), F.S., which states "All parties shall have an opportunity to respond, to present evidence and argument . . .";

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ORDERED that, should this matter proceed to hearing, a determination on a hearing venue will be made at a later date.

By ORDER of Commissioner Lisa Polak Edgar, as Prehearing Officer, this 14th day of September, 2015.

  
LISA POLAK EDGAR  
Commissioner and Prehearing Officer  
Florida Public Service Commission  
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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.