

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 160021-EI

In re: Petition for approval of 2016-2018 storm hardening plan, by Florida Power & Light Company.

DOCKET NO. 160061-EI

In re: 2016 depreciation and dismantlement study by Florida Power & Light Company.

DOCKET NO. 160062-EI

In re: Petition for limited proceeding to modify and continue incentive mechanism, by Florida Power & Light Company.

DOCKET NO. 160088-EI  
ORDER NO. PSC-16-0323-PCO-EI  
ISSUED: August 9, 2016

ORDER GRANTING INTERVENTION AND GRANTING  
FLORIDA POWER & LIGHT COMPANY'S MOTION TO STRIKE

On January 15, 2016, Florida Power & Light Company (FPL) filed a test year letter, as required by Rule 25-6.140, Florida Administrative Code (F.A.C.), notifying this Commission of its intent to file a petition between March 15 and March 31, 2016, for an increase in rates effective 2017. Pursuant to the provisions of Chapter 366, Florida Statutes (F.S.), and Rules 25-6.0425 and 25-6.043, F.A.C. The hearing for the FPL rate case is scheduled on August 22 through September 2, 2016.

On July 22, 2016, Daniel R. Larson and Alexandria Larson (Larsons), filed a Petition to Intervene (Petition). The Larsons state that they are residential customers of FPL and therefore will be directly and substantially affected by the rate increase FPL is proposing over a four year period in this proceeding. Specifically, the Larsons are contesting the necessity for any rate increase at this time and the Return on Equity (ROE) requested by FPL.

FPL filed its Response in Opposition to Larsons' Petition to Intervene (Objection) on July 29, 2016. In its Objection, FPL argues several points. First, that the Larsons have alleged no substantial interests that are unique to them or are not otherwise being addressed, i.e., different in any way from that of other residential ratepayers. [Objection at 1-2] Second, that the Office of Public Counsel (OPC), the entity authorized by statute to represent FPL's ratepayers, is actively litigating this case and through its prefiled testimony has addressed every primary issue raised by the Larsons in the rate case. [Objection at 2] Third, that in addition to OPC, the American Association of Retired Persons (AARP), Federal Executive Agencies (FEA) and Florida Industrial Power Users Group (FIPUG) have also intervened and filed testimony in this case likewise addressing all of the issues raised by the Larsons. [Objection at 2] Fourth, the Larsons, taking the case as they now find it, are unable to file any testimony. Further, FPL points out that each of the Larsons testified at the customer service hearings held in West Palm

Beach and expressed their concerns. [Objection at 3] Finally, FPL contends that the Larsons' participation "may result in the waste of time and resources of the parties and the Commission by raising and debating duplicative issues." The net result, according to FPL, being higher rate case expense costs than would otherwise be the case. [Objection at 3] On August 1, 2016, the Larsons filed a Reply to FPL's Response in Opposition to Larsons' Petition to Intervene and filed a "corrected" copy of this same document on August 2, 2016. On August 4, 2016, FPL filed its Motion to Strike Larsons' Unauthorized Replies (Motion).

### MOTION TO STRIKE

In its Motion, FPL argues that Rule 28-106.204, F.A.C., does not contemplate supplemental filings beyond a motion and response. FPL further states that the Commission has consistently disallowed subsequently filed "replies" in its proceedings since "the pleadings cycle must stop at a reasonable point."<sup>1</sup> I agree. Therefore, FPL's Motion to Strike Larsons' Unauthorized Replies is granted and the Larsons' replies will not be addressed in this order.

### INTERVENTION

#### Standards 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 the presiding officer for leave to intervene. Petitions for leave to intervene must be filed at least five (5) days before the final hearing, must conform with Uniform subsection 28-106.201(2), F.A.C., and must 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 through the proceeding....

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 that (1) he will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57, F.S., hearing, and (2) this substantial injury is of a type or nature which the proceeding is designed to protect. The first prong of the test addresses the degree of injury. The second addresses the nature of the injury. The "injury in fact" must be both real and immediate and not speculative or conjectural. International Jai-Alai Players Assn. v. Florida Pari-Mutuel Commission, 561 So. 2d 1224, 1225-26 (Fla. 3rd DCA 1990). See also, Village Park Mobile Home Assn., Inc. v. State Dept. of Business Regulation,

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<sup>1</sup> Order No. PSC-11-0359-PCO-TP, issued on August 26, 2011, in Docket No. 110056-TP, In re Complaint against Verizon Florida, LLC and MCI Communications services, Inc. d/b/a/ Verizon Business Services for failure to pay intrastate access charges for the origination and termination of intrastate interexchange telecommunications service, by Bright House Networks Information Services (Florida), LLC., at p. 1, n. 2.

506 So. 2d 426, 434 (Fla. 1st DCA 1987), rev. den., 513 So. 2d 1063 (Fla. 1987) (speculation on the possible occurrence of injurious events is too remote).

### Analysis & Ruling

It appears that the Larsons meet the two-prong standing test in Agrico, since they are customers of FPL whose interests may be substantially affected by this proceeding. Additionally, this Commission has a long history of granting intervention to residential customers of utilities subject to its regulation.<sup>2</sup> I do not find it necessary for the Larsons to specifically allege which of their specific interests OPC or other intervenors may or may not represent. Therefore, because the Larsons meet the two-prong standing test established in Agrico, the Larsons' petition for intervention shall be granted.

Pursuant to Rule 25-22.039, F.A.C., the Larsons take the case as they find it. This includes, but is not limited to, the timelines established in the First Order Revising Order Establishing Procedure and Order Granting Motion to Consolidate<sup>3</sup> as outlined below:

- |     |  |                             |
|-----|--|-----------------------------|
| (1) | Discovery deadline for direct and intervenor testimony | August 12, 2016             |
|     | Discovery deadline for rebuttal testimony              | August 16, 2016             |
| (2) | Hearing  | August 22-September 2, 2016 |
| (3) | Briefs   | September 16, 2016          |

I note that although the discovery deadlines have not yet passed, the late filing of the petition for intervention will limit the Larsons' ability to conduct discovery through the issuance of interrogatories and requests for production of documents. Further, since most, if not all, notices and cross notices of taking depositions have been issued, any desired depositions must be noticed by close of business the date after the issuance of this Order.

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<sup>2</sup> Order No. PSC-11-0148-PCO-EU, Issued March 3, 2011, in Docket No. 110018-EU, In re: Joint petition for modification to determination of need for expansion of an existing renewable energy electrical power plant in Palm Beach County by Solid Waste Authority of Palm Beach County and Florida Power & Light Company, and for approval of associated regulatory accounting and purchased power agreement cost recovery (granting Larsons intervention based on standing as residential customers); Order No. PSC-10-0137-PCO-EM, Issued March 8, 2010, in Docket No. 090451-EM, In re: Joint petition to determine need for Gainesville Renewable Energy Center in Alachua County, by Gainesville Regional Utilities and Gainesville Renewable Energy Center, LLC. (granting intervention to residential customer of electric utility); Order No. PSC-01-1121-PCO-WU, Issued May 16, 2001, in Docket No. 010503-WU, In re: Application for increase in water rates for Seven Springs System in Pasco County by Aloha Utilities, Inc. (granting intervention to residential customer based on possibility of higher rates); Order No. PSC-12-0221-PCO-EI, issued on April 26, 2012, in Docket No. 120015-EI, In re: Petition for increase in rates by Florida Power & Light Company (granting Larsons intervention as residential customers of utility).

<sup>3</sup> Order No. PSC-16-0182-PCO-EI, issued on May 4, 2016, in Docket No. 160021-EI, In re: Petition for rate increase by Florida Power & Light Company; Docket No. 160061-EI, In re: Petition for approval of 2016-2018 storm hardening plan, by Florida Power & Light Company; Docket No. 160062-EI, In re: 2016 depreciation and dismantlement study by Florida Power & Light Company; Docket No. 160088-EI, In re: Petition for limited proceeding to modify and continue incentive mechanism, by Florida Power & Light Company.

Based on the foregoing, it is

ORDERED by Commissioner Lisa Polak Edgar, as Prehearing Officer, that the Petition to Intervene filed by Daniel R. and Alexandria Larson, is hereby granted as set forth in the body of this Order. It is further

ORDERED that Florida Power & Light Company's Motion to Strike Larsons' Unauthorized Replies is hereby granted. It is further

ORDERED that all parties to this proceeding shall furnish copies of all testimony, exhibits, pleadings and other documents which may hereinafter be filed in this proceeding to:

Nathan A. Skop  
420 NW 50<sup>th</sup> Blvd.  
Gainesville, Florida 32607  
Phone: (561) 222-7455  
E-mail: [n\\_skop@hotmail.com](mailto:n_skop@hotmail.com)

By ORDER of Commissioner Lisa Polak Edgar, as Prehearing Officer, this 9th day of August, 2016.



LISA POLAK EDGAR  
Commissioner and Prehearing Officer  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
[www.floridapsc.com](http://www.floridapsc.com)

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.