

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-12-0529-PCO-EI  
ISSUED: October 3, 2012

THIRD ORDER REVISING ORDER ESTABLISHING PROCEDURE

**I. Background**

This docket was opened to consider Florida Power & Light Company's (FPL) petition for a base rate increase. Eleven parties were granted intervention in the docket. By the Order Establishing Procedure, Order No. PSC-12-0143-PCO-EI, issued March 26, 2012, the hearing was set to commence on August 20, 2012. On August 15, 2012, FPL and three of the eleven intervening parties filed a Motion to Approve Settlement Agreement (Settlement Agreement) and a Motion to Suspend the Procedural Schedule.<sup>1</sup> The Motion to Suspend the Procedural Schedule was denied by Order No. PSC-12-0430-PCO-EI, issued August 17, 2012. The hearing commenced as scheduled in the Order Establishing Procedure.

On August 27, 2012, in my capacity as the Presiding Officer in Docket No. 120015-EI (the FPL Rate Case), I 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, I 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 Section 120.569 and 120.57, Florida Statutes, (F.S.), the administrative hearing will be continued on November 19-21, 2012, to take supplemental testimony on the specific issues that are a part of the settlement agreement.

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code, (F.A.C.), which 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.

<sup>1</sup> 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.

DOCUMENT NUMBER-DATE

06707 OCT-3 2012

FPSC-COMMISSION CLERK

The scope of this 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. The hearing will be conducted according to the provisions of Chapter 120, F.S., and all administrative rules applicable to this Commission.

## **II. General Filing Procedures**

In accordance with Rule 25-22.028, F.A.C., parties filing documents shall submit the original document and the appropriate number of copies to the Office of Commission Clerk for filing in the Commission's docket file. Filings may be made by mail, hand delivery, courier service, or in some instances electronically. To the extent possible, all filings made electronically shall be provided in Microsoft Word format. Filings pertaining to this docket should identify the assigned docket number and should be addressed to:

Office of Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

## **III. List of Issues**

Attached (Appendix A) is a list of specific issues that the Commission will take supplemental testimony on. Issues outside the scope of these specific issues will not be considered.

## **IV. Prefiled Testimony and Exhibits**

Each party shall file, in writing, all testimony and exhibits that it intends to sponsor, pursuant to the schedule set forth in Section IX of this Order. An original and 15 copies of all testimony and exhibits shall be filed with the Office of Commission Clerk, by 5:00 p.m. on the date due. A copy of all prefiled testimony and exhibits shall be served by regular mail, overnight mail, electronically or hand delivery to all other parties and staff no later than the date filed with the Commission. Failure of a party to timely prefile exhibits and testimony from any witness in accordance with the foregoing requirements may bar admission of such exhibits and testimony.

Testimony shall be typed on 8 ½ inch x 11 inch transcript-quality paper, double-spaced, with 25 numbered lines, on consecutively numbered pages, with left margins of at least 1.25 inches. All pages shall be filed on three-holed paper and unbound.

Each exhibit sponsored by a witness in support of his or her prefiled testimony shall be:

- (1) Attached to that witness' testimony when filed;
- (2) On three-holed paper and unbound;

- (3) Sequentially numbered beginning with 1 (any exhibits attached to subsequently filed testimony of the same witness shall continue the sequential numbering system);
- (4) Identified in the upper right-hand corner of each page by the docket number, a brief title, and the witness' initials followed by the exhibit's number; and
- (5) Paginated by showing in the upper right-hand corner of each page the page number followed by the total number of pages in the exhibit.

An example of the information to appear in the upper right-hand corner of the exhibit is as follows:

Docket No. 012345-EI  
Foreign Coal Shipments to Port of Tampa  
Exhibit BLW-1, Page 1 of 2

After an opportunity for opposing parties to object to introduction of the exhibits and to cross-examine the witness sponsoring them, exhibits may be offered into evidence at the hearing.

**V. Discovery Procedures**

**A. General Requirements**

Discovery shall be conducted in accordance with the provisions of Chapter 120, F.S., and the relevant provisions of Chapter 366, F.S., Rules 25-22, 25-40, and 28-106, F.A.C., and the Florida Rules of Civil Procedure (as applicable), as modified herein or as may be subsequently modified by the Prehearing Officer.

Unless subsequently modified by the Prehearing Officer, the following shall apply:

- (1) Discovery shall be completed by November 14, 2012.
- (2) Discovery requests shall be served by electronic mail.
- (3) Sets of interrogatories, requests for admissions, requests for production of documents, or other forms of discovery shall be numbered sequentially in order to facilitate their identification.
- (4) Within each set, discovery requests shall be numbered sequentially, and any discovery requests in subsequent sets shall continue the sequential numbering system.
- (5) Discovery responses shall be served within 10 calendar days (inclusive of mailing) of receipt of the discovery request. Discovery responses for interrogatories and requests for admission shall be served by electronic mail, hand delivery, or overnight mail. Parties are encouraged to serve discovery responses to requests for production electronically to all parties when possible. For discovery requests related to matters addressed in a utility's rebuttal testimony, the utility shall serve its responses to the requesting party within 4 days of the date of the request.

- (6) Each page of every document produced pursuant to requests for production of documents shall be identified individually through the use of a Bates Stamp or other equivalent method of sequential identification. Parties shall number their produced documents in an unbroken sequence through the final hearing.
- (7) Copies of discovery requests and responses shall be served on all parties and staff. In addition, copies of all responses to requests for production of documents shall be provided to the Commission staff at its Tallahassee office unless otherwise agreed.

Unless subsequently modified by the Prehearing Officer, the following shall apply:

- (1) Interrogatories, including all subparts, shall be limited to 150.
- (2) Requests for production of documents, including all subparts, shall be limited to 150.
- (3) Requests for admissions, including all subparts, shall be limited to 150.

When a discovery request is served and the respondent intends to seek clarification of any portion of the discovery request, the respondent shall request such clarification within 4 days of service of the discovery request. Further, any specific objections to a discovery request shall be made within 4 days of service of the discovery request. When a discovery request is served related to matters raised in the utility's rebuttal testimony and exhibits, and the respondent intends to seek clarification of any portion of the discovery request, the respondent shall request such clarification within 2 days of service of the discovery request. Further, any specific objections to a discovery request related to matters raised in the utility's rebuttal testimony and exhibits shall be made within 2 days of service of the discovery request. These procedures are intended to reduce delay in resolving discovery disputes.

**B. Confidential Information Provided Pursuant to Discovery**

Any information provided to the Commission staff pursuant to a discovery request by the staff or any other person and for which proprietary confidential business information status is requested pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 366.093, F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

When a person provides information that it maintains as proprietary confidential business information to the Office of Public Counsel pursuant to a discovery request by the Office of Public Counsel or any other party, that party may request a temporary protective order pursuant to Rule 25-22.006(6)(c), F.A.C., exempting the information from Section 119.07(1), F.S.

When a party other than the Commission staff or the Office of Public Counsel requests information through discovery that the respondent maintains as proprietary confidential business information, or when such a party would otherwise be entitled to copies of such information requested by other parties through discovery (e.g., interrogatory responses), that party and respondent shall endeavor in good faith to reach agreement that will allow for the exchange of such information on reasonable terms, as set forth in Rule 25-22.006(7)(b), F.A.C.

## **VI. Prehearing Procedures**

### **A. Prehearing Statements**

All parties in this docket and the Commission staff shall file a prehearing statement pursuant to the schedule set forth in Section IX of this Order. Each prehearing statement shall be filed with the Office of Commission Clerk by 5:00 p.m. on the date due. A copy of the prehearing statement shall be served on all other parties and staff no later than the date it is filed with the Commission.

Each party's prehearing statement shall set forth the following information in the sequence listed below:

- (1) The name of all known witnesses whose testimony has been prefiled or who may be called by the party listed in the order the witnesses will be called at the hearing, along with subject matter of each such witness' testimony in the order that the witnesses shall be presented at hearing;
- (2) A description of all prefiled exhibits and other exhibits that may be used by the party in presenting its direct case (including individual components of a composite exhibit) and the witness sponsoring each;
- (3) A statement of the party's basic position in the proceeding;
- (4) A statement of issues to which the parties have stipulated;
- (5) A statement of all pending motions or other matters the party seeks action upon;
- (6) A statement identifying the party's pending requests or claims for confidentiality;
- (7) Any objections to a witness' qualifications as an expert. Failure to identify such objection will result in restriction of a party's ability to conduct voir dire absent a showing of good cause at the time the witness is offered for cross-examination at hearing; and
- (8) A statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefore.

Failure of a party to timely file a prehearing statement shall be a waiver of the parties' positions on the issues as determined by the Presiding Officer in this proceeding. In addition, such failure shall preclude the party from presenting testimony in support of its position on each such issue.

**B. Attendance at Prehearing Conference**

Pursuant to Rule 28-106.209, F.A.C., a Prehearing Conference will be held November 15, 2012, at the Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, Florida. Unless excused by the Prehearing Officer for good cause shown, each party (or designated representative) shall personally appear at the Prehearing Conference. Failure of a party (or that party's representative) to appear shall constitute waiver of that party's positions on the issues, and that party may be dismissed from the proceeding.

**C. Motions to Strike Prefiled Testimony and Exhibits**

Motions to strike any portion of the prefiled testimony and related portions of exhibits of any witness shall be made in writing no later than the Prehearing Conference. Motions to strike any portion of prefiled testimony and related portions of exhibits at hearing shall be considered untimely, absent good cause shown.

**D. Demonstrative Exhibits**

If a party wishes to use a demonstrative exhibit or other demonstrative tools at hearing, such materials must be identified by the time of the Prehearing Conference.

**E. Official Recognition**

Parties seeking official recognition of materials pursuant to Section 120.569(2)(i), F.S., shall notify all other parties and staff in writing no later than two business days prior to the first scheduled hearing date. Such notification shall identify all materials for which the party seeks official recognition, and to the extent such materials may not be readily available to all parties, such materials shall be provided along with the notification.

**VII. Hearing Procedures**

**A. Attendance at Hearing**

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 positions on the issues, and that party may be dismissed from the proceeding.

Likewise, all witnesses are expected to be present at the hearing unless excused by the Presiding Officer upon the staff attorney's confirmation prior to the hearing date of the following:

- (1) All parties agree that the witness will not be needed for cross examination.
- (2) All Commissioners assigned to the panel do not have questions for the witness.

In the event a witness is excused in this manner, his or her testimony may be entered into the record as though read following the Commission's approval of the proposed stipulation of that witness' testimony.

**B. Cross-Examination**

The parties shall avoid duplicative or repetitious cross-examination. Further, friendly cross-examination will not be allowed. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Any party conducting what appears to be a friendly cross-examination of a witness should be prepared to indicate why that witness's direct testimony is adverse to its interests.

**C. Use of Confidential Information at Hearing**

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, F.S., at the hearing shall adhere to the following:

- (1) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- (2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such information is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidentiality filed with the Commission, the source of the information must file a request for confidential

classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

**VIII. Post-Hearing Procedures**

If the Commission (or assigned panel) does not render a bench decision at the hearing, it may allow each party to file a post-hearing statement of issues and positions pursuant to the schedule set forth in Section IX of this Order. In such event, a summary of each position of no more than 75 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the Prehearing Order, the post-hearing statement may simply restate the prehearing position. However, the position must be reduced to no more than 75 words. If a post-hearing statement is required and a party fails to file in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant 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 50 pages, including appendices, and shall be filed at the same time, unless modified by the Presiding Officer.

**IX. Controlling Dates**

The following dates have been established to govern the key activities of this case:

- |                                                   |                      |
|---------------------------------------------------|----------------------|
| (1) Utility's direct testimony and exhibits       | October 12, 2012     |
| (2) Intervenor's direct testimony and exhibits    | November 2, 2012     |
| (3) Staff's direct testimony and exhibits, if any | November 2, 2012     |
| (4) Rebuttal testimony and exhibits               | November 8, 2012     |
| (5) Prehearing Statements                         | November 8, 2012     |
| (6) Discovery deadline                            | November 14, 2012    |
| (7) Prehearing Conference                         | November 15, 2012    |
| (8) Hearing                                       | November 19-21, 2012 |
| (10) Briefs                                       | November 30, 2012    |

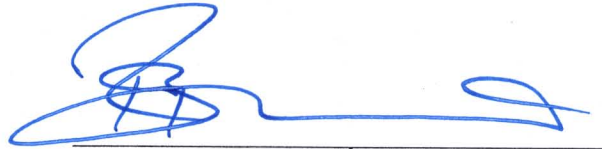
In addition, all parties shall be on notice that the Prehearing Officer may exercise the discretion to schedule additional Prehearing Conferences or meetings of the parties as deemed appropriate. Such meetings will be properly noticed to afford the parties an opportunity to attend.



Based on the foregoing, it is

ORDERED by Chairman Ronald A. Brisé that the provisions of this Order shall govern this proceeding to take supplemental testimony on the specific issues that are a part of the settlement agreement but supplemental to the issues in the rate case, unless modified by the Commission.

By ORDER of Chairman Ronald A. Brisé, as Presiding Officer, this 3rd 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.

**Settlement Issues**

1. Are the generation base rate adjustments for the Canaveral Modernization Project, Riviera Beach Modernization Project, and Port Everglades Modernization Project, contained in paragraph 8 of the Stipulation and Settlement, in the public interest?
2. Is the provision contained in paragraph 10(b) of the Stipulation and Settlement, which allows the amortization of a portion of FPL's Fossil Dismantlement Reserve during the Term, in the public interest?
3. Is the provision contained in paragraph 11 of the Stipulation and Settlement, which relieves FPL of the requirement to file any depreciation or dismantlement study during the Term, in the public interest?
4. Is the provision contained in paragraph 12 of the Stipulation and Settlement, which creates the "Incentive Mechanism" including the gain sharing thresholds established between customers and FPL, in the public interest?
5. Is the Settlement Agreement in the public interest?