

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-12-0588-PCO-EI
ISSUED: October 30, 2012

ORDER DENYING PETITION TO RE-INTERVENE

Background

On April 13, 2012, Mrs. Alexandria Larson with her husband Mr. Daniel R. Larson (the Larsons) filed a Joint Petition to Intervene (Petition) in this docket in their individual capacity as customers of Florida Power & Light Company (FPL). On April 26, 2012, the Prehearing Officer granted their Petition. At the start of the evidentiary hearing on August 20, 2012, the Larsons or their representative failed to appear, and were dismissed as a party from the docket and their positions on the issues were stricken pursuant to Section VII(a) of Order No. PSC-12-0143-PCO-EI, the Order Establishing Procedure.¹ Subsequently, the Larsons filed a Motion for Reconsideration of the Presiding Officer's decision to dismiss them from the hearing. That Motion was denied. 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 Section 120.569

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 17, 2012, the Larsons filed a response in opposition to the Joint Motion for Approval of Settlement Agreement and Motion to Suspend Technical Hearing.

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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 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 16, 2012, Mrs. Larson filed a Petition to Re-Intervene in this docket. Mrs. Larson contends that re-intervention is warranted and necessary to protect her due process rights and substantial interest in relation to the previously unidentified issues now being actively litigated in relation to the FPL settlement proposal. Mrs. Larson also asserts that the procedure adopted by the Commission creates a new point of entry under Chapter 120, F.S. She contends that the point of entry is separate and distinct from any point of entry associated with FPL's original rate case filing in this docket because the Commission is now allowing new issues to be introduced and litigated with respect to FPL's proposed settlement agreement. Mrs. Larson asserts that unlike the rate case pending before the Commission, the proposed settlement agreement seeks approval of four different rate increases exceeding one billion dollars over a term that is years beyond the test year filed in this docket. Moreover, FPL did not file the required test year letter or MFRs for these additional rate increases as required by Commission rules. She contends that the new issues are not supplemental to the issues in the rate case, they are entirely new rate cases for the reasons stated above.

Mrs. Larson argues that the Third Revised OEP does not merely change dates, but establishes a completely separate evidentiary proceeding providing for five new issues relating to the proposed settlement agreement. She asserts that the Third Revised OEP set the procedure for additional discovery related to the five issues, a separate prehearing conference relating to said issues, separate evidentiary hearing dates to litigate the five issues, and the filing of post hearing briefs. Thus, the Petition to Re-Intervene should be granted and she takes the case as she finds it because the Commission has materially changed the character, nature, and subject matter of the proceeding thereby creating a new point of entry under Chapter 120, F.S. No party has filed an objection to Mrs. Larson's Petition to Re-Intervene, and the time for doing so has expired.

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 Mrs. Larson's Petition to Re-Intervene, I find that her 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. Mrs. Larson was a party to the original proceeding and was subsequently dismissed for her 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, Mrs. Larson's Petition to Re-Intervene shall be denied.

It is, therefore,

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

By ORDER of Chairman Ronald A. Brisé, as Presiding Officer, this 30th 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.

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.