BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida Power & Light Company.	DOCKET NO.: 20250011-EI FILED: September 22, 2025

CUSTOMER MAJORITY PARTIES' JOINT MOTION FOR RECONSIDERATION

The Citizens of the State of Florida, by and through the Florida Office of Public Counsel ("OPC"), Florida Rising, Inc., LULAC Florida, Inc., better known as the League of United Latin American Citizens of Florida, Environmental Confederation of Southwest Florida, Inc. (collectively "FEL"), and Floridians Against Increased Rates, Inc. ("FAIR"),[1] pursuant to Rule 25-22.0376, Florida Administrative Code (F.A.C.), hereby request the Florida Public Service Commission ("Commission") reconsider its decision in non-final Order No. PSC-2025-0345-PCO-EI, issued on September 12, 2025 ("Non-Final Order") to dismiss the Customer Majority Parties' Joint Motion to Approve Stipulation and Settlement Agreement (the "Joint Motion"). In support, the CMPs provide the following:

I. Standard of Review for Motion for Reconsideration

The standard of review for a motion for reconsideration of a Prehearing Officer's order is whether the motion identifies a point of fact or law that the Prehearing Officer overlooked or failed to consider in rendering the order.[2] When alleged legal errors first appear in an order, it is necessary to provide the Commission a fair opportunity to address the alleged errors.[3]

[1] OPC, FEL, and FAIR shall collectively be referred to as the "Customer Majority Parties" or "CMPs."
[2] Order No. PSC-2004-0849-PCO-EI, Docket No. 20031033-EI, p. 2, *In re: Review of Tampa Electric Company's 2004-2008 waterborne transportation contract with TECO Transport and associated benchmark. See Stewart Bonded Warehouse, Inc. v. Bevis,* 294 So. 2d 315 (Fla. 1974); *Diamond Cab Co. v. King,* 146 So. 2d 889 (Fla. 1962); and *Pingree v. Quaintance,* 394 So. 2d 162 (Fla. 1st DCA 1981).
[3] *Citizens of State v. Clark,* 373 So. 3d 1128, 1132 (Fla. 2023).

Additionally, the Public Counsel has the statutory power, "to appear, in the name of the state or its citizens, in any proceeding or action before the commission or the counties and urge therein any position which he or she deems to be in the public interest, whether consistent or inconsistent with positions previously adopted by the commission." § 350.0611, Fla. Stat. (2025). Accordingly, the CMPs assert that the Commission practice of applying the same review standard when the full Commission reviews the decision of a single Commissioner is neither in the public interest nor just. The Non-Final Order was issued by an individual Commissioner sitting as pre-hearing officer in the docket. This means that the majority of the Commission has not reviewed, considered, or ruled upon the specific matters in the CMPs' Joint Motion in any public deliberations. The ordinary standard for reconsideration does not fit this scenario because the matters for which the CMPs seek review have not been previously considered by a majority of the Commission nor have they been the subject of any hearing or public deliberation. For this reason, the CMPs ask that the full Commission apply a *de novo* standard of review to this motion and the issues raised herein. To the extent that the CMPs may pursue further review of the issues in the Joint Motion, this motion, or any other matters in the Non-Final Order, the CMPs maintain and do not waive any appellate rights regarding the merits of these matters as well as the standards of review that the agency applies, even if this motion does not expressly address such other matters here.

II. Background

On December 30, 2024, Florida Power & Light Company ("FPL") filed a test year notification letter informing the Commission that FPL would be filing a request for a rate increase on or about February 28, 2025. On January 7, 2025, OPC intervened in this docket on behalf of all of FPL's customers. On February 28, 2025, FPL filed a Petition for Base Rate Increase ("Petition").

During the pendency of this litigation, the following parties have been granted intervention (subject to proof of standing or appropriate stipulations to establish standing) in this docket: FEL, FAIR, the Florida Industrial Power Users Group ("FIPUG"), the Florida Retail Federation ("FRF"), Florida Energy for Innovation Association, Inc. ("FEIA"), Walmart Inc. ("Walmart"), EVgo Services LLC ("EVgo"), Americans for Affordable Clean Energy, Inc., Circle K Stores, Inc., RaceTrac, Inc., Wawa, Inc., (collectively referred to as "Fuel Retailers"), Electrify America LLC, Federal Executive Agencies ("FEA"), Armstrong World Industries, Inc. ("AWI"), and Southern Alliance for Clean Energy ("SACE").

On March 14, 2025, the Commission issued Order No. PSC-2025-0075-PCO-EI ("OEP"), which, in part, scheduled a hearing on FPL's Petition for August 11-22, 2025. The CMPs engaged in thorough written discovery and depositions to explore and prepare to challenge FPL's Petition at hearing. Each of the CMPs filed multiple sets of intervenor testimony on June 9, 2025. On July 9, 2025, FPL filed rebuttal testimony, and the CMPs conducted further extensive written discovery and depositions to explore and challenge, at hearing, the rebuttal assertions made by FPL.

On August 8, 2025, less than one business day before the hearing was scheduled to begin, FPL, FIPUG, FRF, FEIA, Walmart, EVgo, the Fuel Retailers, Electrify America, FEA, AWI, and SACE (collectively the "Special Interest Parties," "SIP," or "SIPs") filed a "Notice of Settlement in Principle and Joint Motion to Suspend Schedule and Amend Procedural Order," which OPC, FEL, and FAIR opposed. On August 11, 2025, the Commission granted the motion to suspend the hearing and allowed the SIPs until August 20, 2025, to draft and file their Joint Motion for Approval of Settlement Agreement ("SIPP"), which they did. As used in this motion, SIPP includes the August 20, 2025 Stipulation and Settlement Agreement. On August 22, 2025, the Prehearing Officer issued Order No. PSC-2025-0323-PCO-EI, which established a hearing

schedule for the SIPP.

In response to the SIPP and without waiving their rights to a full hearing on FPL's February 28th petition, the CMPs filed the Joint Motion on August 26, 2025. FPL filed a response ("Response") on August 29, 2025. In the Response, the only affirmative relief requested was for the Commission to deny the Joint Motion.[4] No reply was allowed or filed to the Response. To date, no party has filed a motion to dismiss the Joint Motion.

On September 2, 2025, the Commission issued a notice of a prehearing conference scheduled for September 8, 2025. The notice listed the various purposes of the meeting as follows:

> The purposes of this prehearing conference on settlement are to: (1) simplify the issues and major elements; (2) identify the positions of the parties on the issues and major elements; (3) consider the possibility of obtaining admissions regarding facts and documents which will avoid unnecessary proof; (4) discuss exhibits and prehearing submissions; (5) discuss an order of witnesses; and (6) consider such other matters as may aid in the disposition of the action, including but not limited to the Joint Motion to Approve Stipulation and Settlement Agreement (filed August 26, 2025) and the Response in Opposition (filed August 29, 2025).

On September 4, 2025, FPL submitted a letter with a list of issues that it believed the Commission needed to rule upon when deciding whether to approve the SIPP. On September 5, 2025, OPC submitted six additional issues that it believed also needed to be ruled upon by the Commission when determining whether to approve the SIPP. OPC submitted two additional issues, for a total of eight issues, at the prehearing conference that took place on September 8, 2025.

At that prehearing conference, the Prehearing Officer heard argument on OPC's eight additional issues and took them under advisement. Next, the Prehearing Officer heard argument

[4] Document No. 08523-2025, Docket No. 20250011-EI, p. 11, *In re: Petition for rate increase by Florida Power & Light Company.*

from the parties on the Joint Motion and FPL's Response. At no point during the prehearing conference did FPL or any other party move to dismiss the Joint Motion, nor did the Prehearing Officer ever indicate that he was considering dismissal of the Joint Motion. On September 12, 2025, after hearing argument on the Joint Motion and Response where no SIP asked for relief in the form of dismissal, the Prehearing Officer issued the Non-Final Order, which, in part, dismissed the Joint Motion and rejected every single issue proposed by OPC. The issuance of the Non-Final Order was the first time that the CMPs were made aware that dismissal of the Joint Motion was at issue.

III. Argument

a. The Prehearing Officer overlooked or failed to consider three points of law in dismissing the Joint Motion.

The first point of law that the Prehearing Officer overlooked or failed to consider when dismissing the Joint Motion is that the Prehearing Officer cites no statute, caselaw, or other legal authority for the ruling that, "[i]n this docket, FPL is an indispensable party to any settlement."[5] To the contrary, the only relevant legal authority for whether the Commission can approve non-unanimous settlement agreements in electric investor-owned utility base rate cases contradicts this finding. The Non-Final Order cites *Citizens of State v. Florida Public Serv. Comm'n*, 146 So. 3d 1143 (Fla. 2014), and states that this Florida Supreme Court case, "confirmed the legal validity of a non-unanimous settlement agreement, such as the [SIPP], that does not include OPC."[6] While the CMPs agree that *Citizens* does approve the validity of non-unanimous settlement agreements, the CMPs seek reconsideration of the Non-Final Order because it overlooks the point of law that

[5] Non-Final Order, p. 6.
[6] Non-Final Order, p. 8.

no statute, caselaw, or other legal authority requires the utility to be a party to a settlement agreement that is subject to evaluation under the public interest standard. Whether a settlement can be considered and approved as being in the public interest without the signature of the petitioning utility has never been presented to the Court, either in *Citizens* or any other case. *Citizens* explicitly states:

> [T]he plain language of the statutes clearly provides that the Commission **independently** determines rates of public utilities subject to the conditions set forth in chapter 366; the Commission's authority to fix fair, just, and reasonable rates pursuant to section 366.06(1), Florida Statutes, is not conditioned on the OPC's approval or absence of the OPC's objections.

Citizens at 1150. (Emphasis added.)

Since the Commission "independently" determines rates, it must be true that the Commission's authority to fix fair, just, and reasonable rates pursuant to section 366.06(1), Florida Statutes, is not conditioned on **any** party's approval or absence of objection, including FPL. Indeed, throughout its history, the Commission has regularly made decisions determining a utility's rates and prescribing terms and conditions for its services that were opposed by the utility. In a case of first impression such as this one, the lack of precedent cannot form the basis for dismissal of the Joint Motion. Therefore, the Non-Final Order's assertion that "[i]n this docket, FPL is an indispensable party to any settlement" is inconsistent with Florida law, and the CMPs request the Commission to reconsider this aspect of the Non-Final Order.

The second point of law that the Prehearing Officer overlooked or failed to consider when he dismissed the Joint Motion was that the Commission may not dismiss a pleading in the absence of a motion to dismiss and adequate notice and opportunity to be heard on the motion. The CMPs

note, preliminarily, that motions are not pleadings;[7] therefore, the Joint Motion should have either been granted or denied rather than dismissed. To the extent that the Commission treats the Joint Motion as a pleading, the Prehearing Officer nevertheless erred when he dismissed the Joint Motion without notice that dismissal was under consideration.

Pursuant to *Kim v. Galasso*, 348 So. 3d 1183, 1190 (Fla. 2d DCA 2022), "[i]t is well established that it is improper for a trial court to dismiss a claim when the parties have not received notice or an opportunity to be heard." Further, *Lawson v. Frank*, 197 So. 3d 1269, 1271 (Fla. 2d DCA 2016) held that the trial court erred in dismissing an amended complaint as legally insufficient where "there was no motion to dismiss pending before the court, no indication from the record that any kind of hearing had been set, and no motion, objection, or defense ever raised as to the sufficiency of the pleading or [petitioner's] standing."

Additionally, Rule 28-106.204(1), Florida Administrative Code (F.A.C.) requires the following regarding administrative motion practice:

> **All requests for relief shall be by motion. All motions shall be in writing unless made on the record during a hearing, and shall fully state the action requested and the grounds relied upon.**
> . . . .
> The presiding officer shall conduct such proceedings and enter such orders as are deemed necessary to dispose **of issues raised by the motion.**

(Emphasis added.)

In fact, the Commission has recently recited the standard of review for motions to dismiss as follows:

> A motion to dismiss raises **as a question of law** the sufficiency of the facts alleged to state a cause of action. **In order to sustain a**

[7] Order No. PSC-2002-0799-PCO-TP, Docket No. 20001305-TP, p. 1, *In re: Petition by Bellsouth Telecommunications, Inc. for arbitration of certain issues in interconnection agreement with Supra Telecommunications and Information Systems, Inc.*

> **motion to dismiss, the moving party** must show that, accepting all allegations as true, the petition still fails to state a cause of action for which relief may be granted. **The moving party must specify the grounds for the motion to dismiss, and all material allegations must be construed against the moving party in determining if the petitioner has stated the necessary allegations.** A sufficiency determination should be confined to the petition and documents incorporated therein, and the grounds asserted **in the motion to dismiss.**[8]

To date, no party has moved to dismiss the Joint Motion. The only relief requested in FPL's Response is that "the Commission deny the [Joint Motion] consistent with this Response."[9] The CMPs acknowledge that all parties were allowed to present argument on September 8, 2025, concerning the sufficiency of the Joint Motion and whether the full Commission should grant or deny the Joint Motion. The CMPs also acknowledge that the notice of the prehearing conference stated that one of the stated purposes of the prehearing conference was "to consider such other matters as may aid in the disposition of the action, including but not limited to the Joint Motion to Approve Stipulation and Settlement Agreement (filed August 26, 2025) and the Response in Opposition (filed August 29, 2025)." However, the Florida Administrative Code and Commission precedent require more specific notice when the issue of dismissal is being considered.

All requests for relief shall be by motion, and all motions, including motions to dismiss, must be in writing unless made on the record during a hearing, and shall fully state the action requested and the grounds relied upon.[10] When a party moves for dismissal, the moving party must show

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[8] Order No. PSC-2025-0250-PCO-WS, Docket Nos. 20250038-WS; 20250043-WS; 20250047-WS; 20250052-WS, p. 4, *In re: Petition for an Acquisition Adjustment for a non-viable utility, by CSWR-Florida Utility Operating Company, LLC; In re: Petition for an Acquisition Adjustment for a non-viable utility, by CSWR-Florida Utility Operating Company, LLC; In re: Petition for an Acquisition Adjustment for a non-viable utility, by CSWR-Florida Utility Operating Company, LLC.; In re: Application for increase in water and wastewater rates in Brevard, Citrus, Duval, Highlands, Marion, and Volusia Counties by CSWR-Florida Utility Operating Company*. (Emphasis added.) (footnotes omitted).

[9] Document No. 08523-2025, Docket No. 20250011-EI, p. 11, *In re: Petition for rate increase by Florida Power & Light Company*.

[10] Rule 28-106.204(1), F.A.C.

that, "accepting all allegations as true, the petition still fails to state a cause of action for which relief may be granted." Also, the moving party must "specify the grounds for the motion to dismiss" and "all material allegations must be construed against the moving party."[11] There is no written motion to dismiss, or even a moving party, in this case. The only reference to dismissal in all of FPL's Response was to state that in civil litigation, "[l]awsuits can be dismissed for failing to include an indispensable party to the litigation." Nowhere in the Response did FPL specify grounds for dismissal of the Joint Motion, or indeed even move for its dismissal. Furthermore, the Non-Final Order made no findings that "accepting all allegations as true," the Joint Motion failed to state a claim of action for which relief may be granted. To the contrary, the Non-Final Order itself describes the Joint Motion as "a new and different request for affirmative relief."[12] The Non-Final Order also lacks any findings that "all material allegations" were "construed against the moving party in determining if the petitioner has stated the necessary allegations," which would have been impossible in the absence of a motion to dismiss or even a moving party. Although the presiding officer has the authority to enter such orders as are deemed necessary to dispose of issues raised by the motion, no motion, written or otherwise, raises the issue of dismissal of the Joint Motion. The Prehearing Officer overlooked or failed to consider this point of law, and the CMPs respectfully request that the Commission reconsider this ruling in the Non-Final Order.

The third point of law that the Prehearing Officer overlooked or failed to consider when he dismissed the Joint Motion is whether, with regard to the assertion in the Non-Final Order that

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[11] Order No. PSC-2025-0250-PCO-WS, Docket Nos. 20250038-WS; 20250043-WS; 20250047-WS; 20250052-WS, p. 4, *In re: Petition for an Acquisition Adjustment for a non-viable utility, by CSWR-Florida Utility Operating Company, LLC; In re: Petition for an Acquisition Adjustment for a non-viable utility, by CSWR-Florida Utility Operating Company, LLC; In re: Petition for an Acquisition Adjustment for a non-viable utility, by CSWR-Florida Utility Operating Company, LLC.; In re: Application for increase in water and wastewater rates in Brevard, Citrus, Duval, Highlands, Marion, and Volusia Counties by CSWR-Florida Utility Operating Company.* (Emphasis added.) (footnotes omitted).

[12] Non-Final Order, p. 6.

"[i]n this docket, FPL is an indispensable party to any settlement," the Prehearing Officer failed to consider that the premise for the claim is faulty. In the first instance, the assertion that FPL is an indispensable party has never been presented to or decided by the Florida Supreme Court. Further, it appears that, by dismissing the Joint Motion, the Prehearing Officer has pre-judged the legal sufficiency of the Joint Motion while treating the SIPP as being legally sufficient. Significant legal challenges to the SIPP remain in the matters of standing, capacity to contract or enter into a contract, validity of the agreement, and other defects. The SIPP was submitted under cover of a motion by the SIPPs, and the CMPP under cover of the Joint Motion; the Commission's approval of either the SIPP or the CMPP/Joint Motion would resolve all issues in the case. Again, the Prehearing Officer cites no applicable authority for the proposition that FPL is an indispensable party, nor any assertion that the Commission cannot set FPL's rates, terms, and conditions resolving all matters in this docket pursuant to its jurisdiction and powers under Chapter 366. The asymmetry of the summary dismissal of the Joint Motion in contrast to the preferential treatment of the SIPP is arbitrary and capricious and is *prima facie* evidence of prejudice in the form of denial of due process to the CMPs. It should be noted that the CMPs consider the dismissal of the Joint Motion to be tantamount to dismissal of the Customer Majority Parties' Stipulation and Settlement Agreement ("CMPP") on the merits. The CMPs insist on a contemporaneous determination of the legal sufficiency of both the SIPP and the CMPP. The Prehearing Officer overlooked or failed to consider this point of law regarding the unfair asymmetrical treatment of the SIPP and CMPP in the ruling, and for this reason, the CMPs respectfully request that the Commission reconsider this ruling in the Non-Final Order.

b. The Prehearing Officer overlooked or failed to consider a point of fact in dismissing the Joint Motion.

The first point of fact that the Prehearing Officer overlooked or failed to consider when he dismissed the Joint Motion was that granting the Joint Motion and approving the CMPP would end the proceeding to the same extent that approval of the SIPP would end the proceeding. If the Joint Motion is flawed in that regard, which the CMPs dispute, then the SIPP is equally flawed. On this issue, the Non-Final Order states:

> Short of a full hearing on disputed factual and legal issues, the parties to an administrative proceeding may enter into a settlement. In its most basic terms, a "settlement" is "[a]n agreement ending a dispute or lawsuit." By extension, **a settlement of a proceeding must be an agreement that ends that proceeding.** As evidenced by the record activity in this docket, an agreement among parties that does not include the party that commenced the proceeding with a request for affirmative relief will not end that proceeding. Such a settlement, as the Alternate SSA in this proceeding, constitutes a new and different request for affirmative relief, which is not agreed to by the party who has requested relief. Therefore, by definition, such a proposal is not a settlement.

Non-Final Order, p. 6 (Emphasis added.) (footnotes omitted).

The CMPs do not dispute that parties to an administrative proceeding may enter into settlement agreements. In fact, OPC and FEL have both proven that they are more than capable of reasonable compromise as evidenced by the fact that they were among a group who reached an unopposed settlement agreement with Duke Energy Florida, LLC, the second-largest electric utility in Florida after FPL, as recently as last year.[13] Even more recently, OPC was a signatory among a group that just last month achieved a reasonable, unanimous settlement agreement to resolve the 2025 rate

[13] Order No. PSC-2024-0472-AS-EI, Docket No. 20240025-EI, *In re: Petition for rate increase by Duke Energy Florida, LLC.* The CMPs note that in that docket, the Environmental Confederation of Southwest Florida was not an intervenor, so Florida Rising, Inc. and LULAC Florida, Inc. were collectively referred to as "LULAC." FAIR was not a party in either docket.

case of People's Gas System, Inc., a large, investor-owned natural gas utility.[14] The CMPs have not and do not challenge the Commission's authority to approve settlement agreements.

However, the Non-Final Order then relies upon the Black's Law Dictionary definition of "settlement," which the Non-Final Order describes as "[a]n agreement ending a dispute or lawsuit." The Non-Final Order then states that, by extension, "a settlement of a proceeding must be an agreement that ends the proceeding." When FPL filed its Petition on February 28, 2025, its ultimate request was for a multi-billion-dollar base rate increase. Both the SIPP and the CMPP would authorize FPL to collect over $5 billion of additional revenues from customers over the next four years.

In simple terms, this general rate case is not civil litigation in which there are directly adverse parties asserting claims based on civil law. This case involves all of the complex issues of utility rate-setting, including issues of fact, policy, and law, with the Commission having plenary authority and jurisdiction to establish FPL's rates, and the terms and conditions of its service, at the conclusion of the proceeding, based on all of the evidence before it, including the CMPP as well as the SIPP and all of the materials submitted before August 20, 2025. The Commission has effectively acknowledged as much by its insufficient invitation to the CMPs to submit their proposals as a position paper or policy statement; the CMPs stand on their integral CMPP as their positions that would resolve this case and respectfully request the Commission to accord the CMPP equal weight and consideration in deciding the case.

If the Commission were to find that the terms of the CMPP were in the public interest, and that the CMPP would result in fair, just, and reasonable rates, then the Commission would have just as much authority to approve it without FPL's consent or over FPL's objection, as argued *supra*. If

[14] Document No. 07879-2025, Docket No. 20250029-GU. This settlement agreement is currently pending Commission review. Also, neither FEL nor FAIR were parties in that docket.

approved as a whole, either the SIPP or the CMPP would end this proceeding by granting FPL's ultimate requested relief—a multi-billion-dollar base rate increase. As noted above, due process and fairness require that the legal sufficiency of the SIPP and the CMPP be adjudicated contemporaneously after a full hearing on the validity and merits of both along with the record of FPL's originally filed case. The Prehearing Officer overlooked or failed to consider this when he ruled that the CMPP was not a settlement that would end this proceeding.

IV. Conclusion

For all of the reasons stated above, the CMPs ask the Commission to reconsider the Non-Final Order and reverse its decision to dismiss the Joint Motion. The CMPs conferred with the Special Interest Parties regarding this motion. EVgo takes no position, and all other Special Interest Parties oppose the motion.

DATED this 22nd day of September, 2025.

Respectfully submitted,

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