

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of:

DOCKET NO. 100410-EI

REVIEW OF FLORIDA POWER & LIGHT
COMPANY'S EARNINGS.

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 4

COMMISSIONERS
PARTICIPATING: CHAIRMAN ART GRAHAM
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER RONALD A. BRISÉ
COMMISSIONER EDUARDO E. BALBIS
COMMISSIONER JULIE I. BROWN

DATE: Tuesday, October 18, 2011

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporter
(850) 413-6732

P R O C E E D I N G S

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2 **CHAIRMAN GRAHAM:** Next is Item Number 4.

3 **MS. BARRERA:** My name is Martha Barrera with
4 the General Counsel's Office.

5 And this item addresses the Larson's motion
6 to intervene for reconsideration and petition for
7 formal hearing. I would like, at this time, to note
8 for the record that Ms. Sullivan filed a withdrawal of
9 her petition, and staff is ready to answer any
10 questions from the Commission. And I believe Ms.
11 Larson should be on the phone.

12 **MS. LARSON:** I am.

13 **CHAIRMAN GRAHAM:** Okay. Ms. Larson, welcome.

14 **MS. LARSON:** Thank you.

15 **CHAIRMAN GRAHAM:** We have you scheduled for
16 about five minutes. So please tell us what it is that
17 you have to say, ma'am.

18 **MS. LARSON:** Good morning, Commissioners.

19 Notwithstanding the staff recommendation, the
20 Commission clearly made an administrative error which
21 adversely affected the public point of entry and
22 ability to participate and be heard in this proceeding.
23 Both FIPUG and the Public Counsel raised similar
24 concerns regarding the Commission's actions.

25 The real question is whether FPL overearned

1 during the period in question. The staff
2 recommendation states there were no overearnings. In
3 January 2011, Commission staff requested the ability to
4 continue to monitor FPL's apparent overearnings. The
5 Commission denied the staff's request. The lesson to
6 be learned is that there is no harm allowing the staff
7 to continue to monitor FPL's apparent overearnings in
8 the first place.

9 The one thing missing in the Florida Public
10 Service Commission today is the public. Generally,
11 Commissioners, you don't have to deal with a lot of the
12 public. They don't travel to Tallahassee. It is very
13 difficult. And in this economy -- I don't know when
14 the number was picked out for FPL that they could have
15 a 10 percent earnings every year, but in this economy
16 that is a very large obscene number. No one is
17 guaranteed a 10 percent return not in any avenue that I
18 can think of.

19 The public is really hurting, and I think the
20 Public Service Commissioner truly needs to try to take
21 that into consideration. I can only speak about Palm
22 Beach County, because that is where I live, but there
23 are 100,000 foreclosures. And by the numbers that are
24 put out by the realtors, there is another 100,000 ready
25 to go into foreclosure. This is the economy, so maybe

1 it's time to go back and look at what is allowed for
2 earnings for any company, any utility in the state of
3 Florida. Thank you.

4 **CHAIRMAN GRAHAM:** Was what it, Ms. Larson?

5 **MS. LARSON:** Uh-huh.

6 **CHAIRMAN GRAHAM:** Okay. Thank you. Mr.
7 Butler.

8 **MR. BUTLER:** Thank you. Good morning, Mr.
9 Chairman and Commissioners. First, briefly on a
10 personal note I will say that I strongly considered
11 bringing a bright pink shirt that I have and wearing it
12 today, and now I am regretting that I went with caution
13 rather than my instinct. I should have done that. So
14 my apologies for not having my pink shirt.

15 FPL supports the staff's thorough and
16 well-reasoned recommendation to deny the Larson
17 petition. This docket was opened for the Commissioners
18 to decide whether to conduct an earnings review
19 addressing the potential that FPL might earn outside
20 the allowed ROE range for the year ending March 2011.
21 Based on concerns expressed by FPL and OPC about the
22 implications of an earnings review, and FPL's
23 commitment to use the rate case settlement mechanism to
24 stay within the allowed ROE range, the Commission
25 declined to initiate the earnings review.

1 As it has turned out, FPL has not earned
2 outside the ROE range for the year ending March 2011,
3 and each successive surveillance report we have filed
4 has shown that FPL's ROE remains within that range. We
5 have filed earnings surveillance reports up through
6 August 2011 at this point.

7 The Larson petition is based on a
8 fundamentally flawed premise. Earnings reviews are a
9 form of Commission investigation. No one may compel
10 the Commission to conduct an investigation, much less
11 compel a particular outcome to the investigation.
12 Thus, the Larsons are not entitled to force a hearing
13 on the Commission's discretionary decision not to
14 initiate an earnings review, nor do the Larsons have
15 standing to challenge the Commission's decision.
16 Standing must be based on more than a mere speculative
17 interest in a proceeding. Here the Larson's lack even
18 a speculative interest.

19 FPL has not earned outside the authorized ROE
20 range. Nothing would have turned out any differently
21 for the Larsons regardless of whether the Commission
22 did or did not initiate the earnings review. They
23 simply have no substantial interest in the outcome of
24 that decision.

25 Finally, intervenors take cases as they find

1 them. What the Larsons find here is a closed case.
2 Intervention at this point would be inappropriate and
3 pointless. In sum, staff has properly recommended that
4 the Larson petition be denied. FPL respectfully
5 requests that you approve that recommendation. Thank
6 you, and I would be happy to answer any questions.

7 **CHAIRMAN GRAHAM:** Thank you, sir.

8 Staff, anything?

9 **MS. BARRERA:** No, sir.

10 **CHAIRMAN GRAHAM:** Thanks.

11 Commission board? Commissioner Balbis.

12 **COMMISSIONER BALBIS:** Thank you, Mr.

13 Chairman.

14 I just want to make a few comments.

15 Obviously, we all remember the decision we made when
16 this came before us. I believe it was in January of
17 this year. And we had a -- I will call it a fairly
18 tense discussion with Florida Power and Light and the
19 other parties as to the tools that are available to
20 Florida Power and Light to make sure that any potential
21 overearnings, as they are monitoring it, they could use
22 some of those tools, whether investing in
23 infrastructure, et cetera, to make sure that the
24 ratepayers receive any benefit of any potential
25 overearnings. And Ms. Larson's premise that we do not

1 monitor FPL or other utilities' earnings I think is
2 incorrect. I know it's incorrect, because we do
3 receive earnings surveillance reports for each month,
4 and the latest being in August. So we do monitor it
5 closely.

6 I'm glad to see that Florida Power and Light,
7 as expected in using the tools of the settlement
8 agreement did not overearn. So I don't see where this
9 is really an issue at this time. But before us today
10 specifically is the request -- excuse me, it is not
11 really the merits of the case, but really the
12 procedural aspects of it, so I can fully support
13 staff's recommendation on this item.

14 **CHAIRMAN GRAHAM:** Thank you, sir.

15 Commissioner Brown.

16 **COMMISSIONER BROWN:** Thank you.

17 And I actually have a question for OPC, if
18 they are willing to come up to the bench, the table.
19 Thank you.

20 **MR. McGLOTHLIN:** Good morning. Joe
21 McGlothlin with the Office of Public Counsel.

22 **COMMISSIONER BROWN:** Thank you.

23 In the staff recommendation it noted that OPC
24 requested that the Commission explain the
25 circumstances, which I believe it did, under which a

1 Commission ruling during an agenda conference will or
2 will not lead to the issuance of a PAA. I wanted to
3 make sure that the Office of Public Counsel is
4 comfortable with the staff recommendation on that
5 particular matter.

6 **MR. McGLOTHLIN:** Yes. I believe in the
7 course of the staff recommendation there was some
8 explanation and clarification of what happened in this
9 particular case that gives guidance for the parties.

10 **COMMISSIONER BROWN:** Thank you.

11 **CHAIRMAN GRAHAM:** Commissioner Brisé.

12 **COMMISSIONER BRISÉ:** Thank you, Mr. Chairman.

13 With regard to the issue at hand, I think
14 Commissioner Balbis hit it right on the head that this
15 is more procedural than what we are looking at it in
16 terms of the actual content or the merits of it. And I
17 think there is another premise that Ms. Larson is going
18 from that within this time frame that the ROE at this
19 moment shouldn't be what it is. And just for the
20 record, we can't retroactively go back and look at the
21 ROE that is set and determine that because of the
22 economic conditions that the company cannot earn what
23 has been agreed upon for them to earn at this juncture.

24 So I think that that is something that if
25 that was part of the intent of what the Larsons would

1 like to have us address, we are unable to address that
2 at this particular time. There will be other
3 opportunities to address ROE in the future, and at that
4 time we can look at a variety of factors.

5 **CHAIRMAN GRAHAM:** Was that a motion?

6 **COMMISSIONER BRISÉ:** Sure. I can move staff
7 recommendation on all issues.

8 **CHAIRMAN GRAHAM:** It has been moved and
9 seconded, staff recommendation on Item 4 on all issues.

10 Any further discussion? Seeing none. All in
11 favor say aye.

12 (Unanimous affirmative vote.)

13 **CHAIRMAN GRAHAM:** Any opposed?

14 By your action, you approved staff
15 recommendation on Item Number 4.

16 **MR. BUTLER:** Thank you, Commissioner.
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STATE OF FLORIDA)
:
COUNTY OF LEON)


CERTIFICATE OF REPORTER

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS ^{25th} ~~21st~~ day of October, 2011.



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