

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-12-0430-PCO-EI
ISSUED: August 17, 2012

ORDER DENYING JOINT MOTION TO SUSPEND PROCEDURAL SCHEDULE

On August 15, 2012, Florida Power & Light Company (“FPL”), the Florida Industrial Power User’s Group (“FIPUG”), the South Florida Hospital and Healthcare Association (“SFHHA”) and the Federal Executive Agencies (“FEA”) (together, the “Joint Movants”) filed a Joint Motion to Suspend Procedural Schedule (“Joint Motion”). On August 16, 2012, the Office of Public Counsel (“OPC”) and the Florida Retail Federation (“FRF”) filed a Joint Initial and Preliminary Response to Motion to Suspend Hearing (“Joint Response”). Also on August 16, 2012, Mr. Thomas Saporito, a *pro se* Intervenor, filed an Opposition to the Motion to Suspend (“Response in Opposition”); later that day, Mr. Saporito filed an additional “Emergency Motion Requesting Expedited Ruling on Joint Motion to Suspend Procedural Schedule.” In addition, another *pro se* Intervenor, Mr. John Hendricks, filed an Initial And Preliminary Response To The Motion To Suspend Hearing on August 16, 2012, wherein Mr. Hendricks states he concurs with and adopts the position of the Office of Public Counsel. On August 17, 2012, the Village of Pinecrest filed a Response.

Joint Motion to Suspend

In the Joint Motion, the Joint Movants request that the Commission “temporarily suspend all remaining events and due dates scheduled to occur in this docket.” The Joint Movants assert this filing is “in anticipation of avoiding the need for a full technical hearing in this matter if the Commission grants the Joint Motion to Approve Settlement” filed along with the Joint Motion to Suspend.¹ The Joint Movants further suggest a proposed hearing schedule in the event that the Commission does not approve the Settlement Agreement; those proposed dates include significantly less hearing days and dramatically decreased time for our staff to provide a recommendation.

Joint Response

In the Joint Response, OPC and FRF state “they do not oppose the [Joint Motion] at this time only to the extent that it requests the Commission to suspend the hearing currently scheduled to begin on August 20, 2012.” OPC and FRF state they “vigorously” oppose the Settlement Agreement, and will be responding in opposition by a separate pleading. OPC and FRF maintain that “the practical impact of the ‘settlement’ filing... is that the hearing cannot

¹ The Joint Movants entered into a Settlement Agreement, which they submitted to this Commission for approval as resolution of all matters in this docket. None of the other intervenors in the docket are signatories to the proposed Settlement Agreement, and several, including OPC, FRF, and Messrs. Nelson and Saporito, object to our approval of the proposed Settlement Agreement.

DOCUMENT NUMBER-DATE

05688 AUG 17 12

FPSC-COMMISSION CLERK

proceed without the Commission first conducting a full analysis of the impact of the filing...” and their “statement [of no opposition] is a recognition of the reality that the hearing cannot practically go forward on its current schedule.”

Thomas Saporito’s Opposition to Joint Motion and Emergency Motion.

In his Response in Opposition, Mr. Saporito avers that he has expended significant amounts of time and money in securing travel and lodging in Tallahassee for the more than two weeks currently scheduled for this hearing (including the Prehearing Conference), which is non-refundable. Mr. Saporito further maintains that the time and expense of having to return to Tallahassee and secure new travel and lodging arrangements for a rescheduled hearing would pose a significant financial hardship.

In his Emergency Motion to Expedite Ruling, Mr. Saporito reiterates the financial hardship he would face if the evidentiary hearing were rescheduled. In addition, Mr. Saporito alleges a family medical issue, which will impair his ability to participate in the hearing if scheduled later in September, and avers that any continuance of the hearing beyond the currently scheduled dates “would necessarily disenfranchise Saporito from further participation in this matter and certainly impinge on Saporito’s ‘due-process’ rights in this matter as a lawful citizen of the United States of America.”

Village of Pinecrest’s Response

In its Response, the Village of Pinecrest (“Village”) states that the Joint Motion to Suspend should be granted “to the limited extent” that it affords parties the opportunity to respond to the Joint Motion to Approve Settlement, and that each party may have adequate time to prepare for the hearing. The Village further maintains that it opposes specific portions of the Joint Motion to Suspend, including the reduction in number of hearing days, and requests that, if the Commission grants the Joint Motion, it do so in such a way that “does not reduce the time that would have otherwise been available to intervenors.”

Analysis and Ruling

This docket has been open since January, 2012, and the Joint Motion was filed less than three working days before the start of the ten day hearing. Hearing dates have been established since March, 2012. At this point, over 36 separate witnesses are scheduled to appear, and travel and accommodation arrangements made. It appears that the dates proffered in the Joint Motion are untenable and alternate dates may raise due process concerns. Furthermore, this Commission has carefully crafted a procedural schedule which will allow post hearing activities and a final agency decision within the statutory time frame required by Section 366.06(3), Florida Statutes.

There is no requirement that a ruling on the Motion to Approve Settlement be made prior to the taking of witness testimony and the development of a hearing record. Given the significant time, effort, and expense that has been expended to date, as well as the monumental task of re-scheduling such a complex hearing (if the Commission does not approve a Settlement

Agreement and a later evidentiary hearing is required), I find that the Joint Motion to Suspend shall be denied.

Based on the foregoing, it is

ORDERED by Chairman Ronald A. Brisé, as Presiding Officer that the Joint Motion to Suspend Procedural Schedule is DENIED. It is further

ORDERED that this hearing shall commence, as previously scheduled, at 9:30 AM on Monday, August 20, 2012, and that all parties shall be prepared to proceed as set forth in the Prehearing Order. It is further

ORDERED that to the extent that I am denying the Joint Motion to Suspend Procedural Schedule, Mr. Saporito's Emergency Motion for Expedited Ruling is moot.

By ORDER of Chairman Ronald A. Brisé, as Presiding Officer, this 17th day of August, 2012.



RONALD A. BRISE
Chairman and Presiding Officer
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
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.

LDH

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.