Eric Fryson

From: Roberts, Brenda [ROBERTS.BRENDA@leg.state.fl.us]

Sent: Wednesday, September 05, 2012 8:50 AM

To: Filings@psc.state.fl.us

Cc: Algenol; Brian Armstrong; Caroline Klancke; Charles Milsted; John Moyle (jmoyle@moylelaw.com); John T. Butler (John.Butler@fpl.com); John T. LaVia (jlavia@gbwlegal.com); John W. Hendricks; Keino Young; Ken Hoffman (Ken.Hoffman@fpl.com); Kenneth L. Wiseman; Linda S. Quick; Lisa M. Purdy; Maria J. Moncada; Mark F. Sundback; Peter Ripley; Schef Wright (schef@gbwlegal.com); Thomas Saporito; Vickie Gordon Kaufman (vkaufman@moylelaw.com); W. Rappolt; Wade Litchfield; White, Karen; William C. Garner, Esq.

Subject: e-filing (Dkt. No. 120015-EI)

Attachments: Letter to Moncada-FPL regarding 8-28-12 Interrogatories.revised.pdf

Electronic Filing

a. Person responsible for this electronic filing:

Joseph A. McGlothlin, Associate Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400
(850) 488-9330
McGlothlin.Joseph@leg.state.fl.us

b. Docket No. 120015-EI

In re: Petition for rate increase by Florida Power & Light Company

c. Documents being filed on behalf of the Office of Public Counsel

d. There are a total of 4 pages.

e. The document attached for electronic filing is: Letter to Maria Moncada Regarding 8-28-12- Interrogatories.revised.

Thank you for your attention and cooperation to this request.

Brenda S. Roberts
Office of Public Counsel
Telephone: (850) 488-9330
Fax: (850) 488-4491

DOCUMENT NUMBER-DATE
05993 SEP -5 ≌
FPSC-COMMISSION CLERK

MIKE HARIDOPOLOS
President of the Senate

J.R. Kelly
Public Counsel

STATE OF FLORIDA
OFFICE OF PUBLIC COUNSEL

C/O THE FLORIDA LEGISLATURE
111 WEST MADISON ST.
ROOM 812
TALLAHASSEE, FLORIDA 32399-1400
1-800-540-7039

EMAIL: OPC_WEBSITE@LEG.STATE.FL.US
WWW.FLORIDAOPC.GOV

DEAN CANNON
Speaker of the House of Representatives

Filed: September 4, 2012
Corrected: Sepember 5, 2012

Maria J. Moncada, Principal Attorney
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408

Re: Docket No. 120015—FPL's submittal to OPC dated August 28, 2012

Dear Ms. Moncada:

After 7:00 p.m. on Tuesday, August 28, 2012, Florida Power & Light Company purported to serve interrogatories on the Office of Public Counsel (OPC). In this letter, OPC will provide its response to FPL's August 28 document.

1. FPL's interrogatories are unauthorized and of no effect. The Order Establishing Procedure, dated March 26, 2012, established discovery rights pertaining to the proceeding on FPL's March 2012 petition. The discovery cutoff date established by the Order Establishing Procedure has passed, and the discovery process established by the March 26, 2012 order did not pertain to the August 15, 2012 Joint Motion For Approval of FPL's purported settlement with FIPUG, FEA, and SFHHA in any event.

2. On August 27, 2012, the Prehearing Officer issued a Second Order Revising the Order Establishing Procedure (Second Order). This Second Order does address the Joint Motion For Approval. Among other things, it authorizes Staff and parties to serve "data requests." The phrase "data request" has become a term of art for an informal inquiry directed by the Commission, through its staff, to a utility that is subject to the Commission's regulatory jurisdiction. The Commission has no jurisdiction over OPC for the purpose of authorizing "data requests" to be served on OPC. Data requests are not discovery, and the Second

DOCUMENT NUMBER-DATE
05993 SEP-5 ≌
FPSC-COMMISSION CLERK

Order did not authorize FPL to serve interrogatories. Further, OPC has no burden or obligation to become a source of information that could be used to support or bolster a party's burden of proof related to the purported settlement agreement[1]. Accordingly, OPC believes that implicit in the references to "data requests" in the Second Order is the underlying assumption that the data requests authorized therein would be served by the Staff and non-participating parties on the signatories, for the purpose of obtaining information from the signatories concerning the terms of the purported settlement.

3. OPC intends to object to the Second Order on the grounds that it continues to require OPC to devote time and resources to the purported settlement agreement at the same time OPC must meet the concurrent procedural requirements established for the proceeding on FPL's March 2012 petition, including the post-hearing brief that is due on September 21, 2012, as well as prepare for the Nuclear Cost Recovery Clause hearings that begin on September 5, 2012. However, recognizing that OPC's objections to the Second Order will not be ruled on for some time, and notwithstanding the additional objections outlined above, OPC will respond generally to the aspects of the document that FPL captioned as interrogatories that pertain to certain of the substantive objections to the Joint Motion For Approval that OPC outlined in its Response to Joint Motion For Approval. While OPC's first and most fundamental objection to the "settlement" provisions is that many of them were not part of FPL's March 2012 petition, and cannot be injected at this point without triggering all of the procedural requirements (including, but not limited to, MFRs, testimony, notice to customers, and resetting of statutory clock) associated with an amended or new petition, OPC regards the questions pertaining to the "generation base rate adjustment," the treatment of West County Energy Center 3 ("WCEC3"), and the proposed amortization of $200 million of dismantlement reserve as falling within the categories of substantive objections to which I referred above.[2] However, with the exception to the treatment of WCEC3 within the purported settlement, OPC's positions on these subjects are the subject of detailed expositions that are part of the public record.

4. With respect to the subject of "generation base rate adjustments," see OPC's response to the Joint Motion For Approval and OPC's post-hearing brief in Docket No. 080677-EI, the docket in which FPL included in its petition a request for a generation base rate adjustment mechanism analogous to the provision in the purported settlement agreement. In that

[1] OPC objects in particular to questions that purport to seek information from OPC but that in reality seek to argue FPL's position.

[2] In light of the evidentiary proceeding on FPL's March 2012 petition, there can be no doubt regarding the basis for OPC's opposition to the ROE that is the subject of the purported settlement agreement.

docket, the issue was joined in the issue identification phase, the evidentiary hearing, and the post-hearing briefs on FPL's petition. In its decision, the Commission rejected FPL's request for a generation base rate adjustment mechanism. In its post-hearing brief, OPC set forth its arguments against the "generation base rate adjustment" that FPL proposed in the docket. This link is to OPC's post-hearing brief in Docket No. 080677-EI[3].

5. FPL's proposal to amortize $200 million of dismantlement reserve during the term of the purported settlement similarly was not part of its March 2012 petition. In its Response to the Joint Motion For Approval, OPC observed that the $200 million has not been shown to be appropriate for any purpose, and the proposed treatment does not apply what FPL presumably must regard as a reserve surplus to lower revenue requirements or rates paid by customers. Unlike the proposal contained within the purported settlement agreement, in consolidated Docket Nos. 080677-EI (petition to increase rates) and 090130-EI (proceeding on FPL's most recent depreciation study), the Commission evaluated competing presentations regarding the status of FPL's depreciation reserve. At OPC's urging, the Commission addressed the appropriate treatment of an enormous reserve surplus (following a depreciation study and related litigation) in the context of achieving intergenerational equity and reflecting credits to depreciation expense in reduced revenue requirements in the base rate proceeding. In addition to OPC's Response to Motion For Approval, please see the testimony and post-hearing brief that OPC submitted in FPL's last base rate/depreciation study proceeding[4].

6. Curiously, within the unauthorized interrogatories FPL asks OPC whether OPC believes the purported settlement would result in overrecovery of the revenue requirements associated with WCEC3, when FPL and the signatories did not address the subject in the Joint Motion For Approval. The revenue requirements of WCEC3 definitely were built into, and are a component part of, the $516.5 million base rate-related revenue request that FPL filed in March 2012. To quantify the size of the effective increase in revenues that would be associated with approval of the purported settlement agreement, the $161 million of annual revenues associated with the unit that, by the terms of the purported settlement, would be transferred to the capacity cost recovery clause must therefore be added to the $378 million base rate increase that is identified in the purported settlement document. Whether the differential between the $516.5 million identified in FPL's March 2012 petition and the total $539 million that FPL would realize through the terms of the purported settlement agreement is depicted as an overrecovery of WCEC3 costs or simply

---

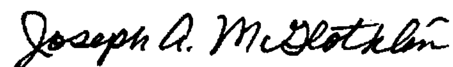
[3] http://floridapsc.com/library/FILINGS/09/09167-09/09167-09.pdf
[4] http://floridapsc.com/library/FILINGS/09/11340-09/11340-09.pdf

as an atrocious and untenable settlement agreement, the effect of the purported settlement would be a net increase in revenues that exceeds the amount of increase that FPL originally sought.

7. FPL's unauthorized interrogatories refer to the settlement among Progress Energy Florida, OPC, and other parties in Docket No. 120022-EI. The agreed return on equity was one aspect of a very complex, multi-faceted overall settlement. As such, it is particularly irrelevant to the establishment of a return on equity for FPL in Docket No. 120015-EI, either in the proceeding on the March 2012 petition or through the purported settlement. However, OPC's positions and related comments on the settlement agreement in which it was a participant in Docket No. 120022-EI are a matter of public record, and may be found with this link http://floridapsc.com/library/FILINGS/09/11340-09/11340-09.pdf.

8. The unauthorized interrogatories that purport to question OPC about the manner in which the office approaches potential stipulations and otherwise carries out its statutory function, including references to provisions of the Florida Bar's Rules of Professional Conduct, constitute harassment. OPC will not comment on them, other than to register OPC's objection to the manner in which FPL chose to abuse the process, and OPC's disappointment in FPL's vituperative reaction to a principled and substantive position regarding the purported settlement agreement that OPC has formulated and advanced in good faith.

Yours truly,



Joseph A. McGlothlin
Associate Public Counsel

JAM:bsr

cc: All parties of record