

**Eric Fryson**

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**From:** White, Jordan [Jordan.White@fpl.com]  
**Sent:** Friday, September 07, 2012 5:04 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** Electronic Filing / Dkt 120015-EI / FPL's First Data Request to Office of Public Counsel Regarding Proposed Settlement Agreement

**Attachments:** 9.7.12 - FPL's 1st Data Request to OPC re Settlement.pdf  
Electronic Filing

a. Person responsible for this electronic filing:

Jordan A. White  
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b. Docket No. 120015 - EI  
In re: Petition for rate increase by Florida Power & Light Company

c. The Document is being filed on behalf of Florida Power & Light Company.

d. There are a total of 4 pages

e. The document attached for electronic filing is Florida Power & Light Company's First Data Request to the Office of Public Counsel Regarding Proposed Settlement Agreement.

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9/10/2012

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September 7, 2012

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**FPL'S FIRST DATA REQUEST**

**Re: Docket No. 120015-EI – Petition for increase in rates by Florida Power & Light Company.**

By this letter, Florida Power and Light Company (“FPL” or “Company”) requests, pursuant to Order PSC-12-0440-PCO-EI, that the Office of Public Counsel (“OPC”) provide responses to the following data requests within five days or less.

1. Referring to the Response of Office of Public Counsel to the Motion for Approval of the Proposed Settlement Agreement by FPL/FIPUG/SFHHA/FEA (hereinafter “Response”), does OPC contend that its support or joinder is required for the Commission to approve a settlement? If so, please provide citations to all statutory or other authority for OPC’s position.

2. In view of OPC’s position in Paragraph 1 of the Response that the Florida Legislature created OPC “to represent the interests of all ratepayers in Commission proceedings,” does OPC agree that opposing a proposed settlement agreement that is supported by some of the customers represented in a rate proceeding (such as the Proposed Settlement Agreement in this docket by FPL/FIPUG/SFHHA/FEA) would be a violation of Rule 4-1.7 of the Florida Bar’s Rules of Professional Conduct concerning conflicts of interest? If not, please provide citations to all decisions of court and/or the Florida Bar supporting OPC’s position that such representation would not violate Rule 4-1.7.

3. Regarding Paragraph 2 of its Response, does OPC contend that settlements may not be approved unless they benefit all customer classes equally? If so, please provide citations to all Commission orders and/or court decisions supporting OPC’s position.

4. Regarding Paragraph 3 of the Response, which states that a 10.7% ROE is “far higher than is warranted by the current conditions of capital markets.”

- a. Why did OPC agree to a settlement with Progress Energy Florida (PEF) in Docket No. 120022-EI that authorizes that same ROE once Crystal River Unit 3 returns to service?

- b. Did the Commission act improperly in approving that settlement?
- c. Why was a 10.7% ROE appropriate for PEF but not for FPL?

5. Regarding Paragraph 4(a) of the Response where OPC observes that the Proposed Settlement Agreement would provide a GBRA for the Canaveral, Riviera and Everglades Modernization Projects, does OPC contend that GBRA cost recovery for those projects would increase FPL's earned ROE above the authorized mid-point of 10.7%? If so, please provide a detailed calculation demonstrating how the GBRA(s) would lead to this result.

6. Regarding Paragraph 4(b) of the Response, does OPC contend that allowing FPL to continue recovering the revenue requirements for WCEC-3 through the capacity clause under the Proposed Settlement Agreement would result in FPL double-recovering those revenue requirements? If so, please provide a detailed calculation – referring to any aspect of FPL's filed case or evidence elicited in the technical hearing – demonstrating how the Proposed Settlement Agreement would lead to this result.

7. Regarding Paragraph 6 of the Response, please explain in detail why OPC opposes accelerated amortization of depreciation and dismantlement reserves up to a limit of \$400 million over four years as disadvantaging customers when it supported the amortization of up to \$776 million over three years under the 2010 settlement agreement.

8. Regarding Paragraph 6 of the Response, please explain in detail what, if any, harm to customers OPC believes would occur if FPL did not file a depreciation study or dismantlement study during the term of FPL's Proposed Settlement Agreement.

9. Regarding Paragraph 7 of the Response, does OPC contend that it would be against customers' interest to provide incentives to FPL to generate additional gains on power and fuel-related transactions that would flow in whole or part to customers? If so, please explain in detail the harm to customers that OPC anticipates.

- a. Using the data available in the fuel and capacity clause dockets, what is the total savings to customers under the existing wholesale incentive framework?

10. Regarding Paragraph 8 of the Response, please cite all prior electric utility rate cases, over the last 20 years, in which OPC has taken a position regarding the allocation of a rate increase among customer classes.

11. For instances in which OPC did not oppose a settlement in which rate increases have been allocated on the basis of a settled outcome, explain why OPC did not oppose such positions. As part of your answer, please explain why OPC took no position on that issue in:

- a. Progress Energy Florida's 2012 rate settlement, Docket No. 120022-EI
- b. Gulf Power Company's Petition for increase in rates, Docket No. 110138-EI, decision memorialized in Order No. PSC-12-0179-FOF-EI.

12. Regarding Paragraph 8 of the Response, does OPC believe that it would be consistent with OPC's obligations under Rule 4-1.7 of the Florida Bar's Rules of Professional Conduct for OPC to take a position on rate-allocation issues that benefit one class of customers at the expense of another class of customers? If so, please explain in detail the basis for OPC's belief.

13. Regarding Paragraph 8 of the Response, does OPC believe that its obligations under Rule 4-1.7 of the Florida Bar's Rules of Professional Conduct do not apply, or apply differently, to large commercial and industrial customers? If so, please explain in detail the basis for OPC's belief.

14. Regarding Paragraph 8 of the Response, would OPC agree that having the benefit of evidence from the parties on FPL's rate request adduced over two weeks of hearing provides the Commission with a robust basis to properly evaluate and make a decision on the Proposed Settlement Agreement?

- a. If OPC does not agree, please explain in detail the basis for OPC's disagreement.
- b. Please state whether OPC has a statutory obligation to effectively represent those customers and customer groups who support the Proposed Settlement Agreement.

15. Regarding Paragraph 8 of the Response:

- a. Please explain in detail why holding a hearing on FPL's rate increase request would render FPL's Proposed Settlement Agreement "moot" when the Commission reviewed and approved the 2010 settlement agreement after the Commission not only had concluded the hearing but had entered a purportedly final order.
- b. Please also explain why OPC did not oppose the Commission's consideration and approval of the 2010 settlement agreement as moot, but in fact joined FPL and other parties in seeking its approval.

16. Regarding Paragraph 9 of the Response, does OPC contend that the Commission may not include elements in an approved settlement that were not pled in the original rate case petition? If so, please provide legal citation to any support for that proposition and state whether OPC believes that the Commission erred in approving the following:

- a. FPL's 2002 settlement agreement (Docket No. 001148-EI), which among other things substituted a revenue sharing mechanism for the Commission's review of FPL's earnings levels during the term of the agreement, which mechanism was not mentioned in FPL's rate filing.
- b. FPL's 2005 settlement agreement (Docket No. 050045), which continued to substitute a revenue sharing mechanism for the Commission's review of

FPL's earnings levels during the term of the agreement and also approved the original GBRA, for all PPSA-sited power plants that came into service during the term of the agreement; neither mechanism was mentioned in FPL's rate filing.

- c. FPL's 2010 settlement agreement (Docket No. 080677-EI), which among other things provided an interim storm cost recovery mechanism and authorized flexible amortization of depreciation reserve surplus, neither of which was mentioned in FPL's rate filing.

17. Please also explain in detail why OPC agreed to join in each of the settlement agreements identified in Data Request No. 16 (subparts a-c) if it felt that the Commission did not have authority to approve provisions that had not been included in FPL's rate case filings.

18. Can OPC explain why it agreed to a \$150 million base rate increase for PEF without even the filing of a test year letter, an application for increase, or Minimum Filing Requirements (MFRs), but objects to a base rate increase for FPL of \$378 million in January 2013 following the filing of MFRs, a petition, prefiled testimony and responses to hundreds of discovery requests.

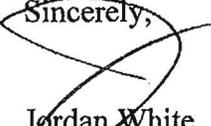
19. Does OPC agree that the \$150 million base rate increase it supported for PEF equates to a \$436 million base rate increase for FPL if one increases the PEF base rate increase by a percentage commensurate with FPL's number of customers?

20. Does OPC agree that base rates should be increased to fully recover the prudently incurred costs and annualized revenue requirements for an electric power plant for which the Commission has issued an affirmative need determination?

21. If OPC contends that it is a necessary party to any settlement agreement, does OPC believe that it has a commensurate obligation to initiate settlement negotiations in a rate case filed a public utility? If not, why not?

Please feel free to call me at (561) 304-5802 if you have any questions.

Sincerely,

  
Jordan White  
Senior Attorney

JW:ps

cc: Office of Commission Clerk  
All Parties in Docket No. 120015-EI