

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear cost recovery clause.

DOCKET NO. 120009-EI  
ORDER NO. PSC-12-0438-PCO-EI  
ISSUED: August 24, 2012

ORDER DENYING FLORIDA POWER & LIGHT COMPANY'S MOTION TO STRIKE  
PORTIONS OF THE TESTIMONY OF PUBLIC COUNSEL WITNESS JACOBS

On August 3, 2012, Florida Power & Light Company (FPL) filed a motion to strike portions of Office of Public Counsel (OPC) witness William Jacob's testimony. FPL asserts that the legal substance of OPC's request has been litigated and decided in two prior Commission orders where the Commission determined that it must follow the nuclear cost recovery statute and rule, and cannot order a "risk sharing" mechanism.

On August 10, 2012, OPC responded to FPL's motion to strike stating that the passages referred to by FPL were taken in isolation and out of context. OPC asserts that the testimony relates to new evidence submitted by FPL in updating its prior estimates. OPC asserts that Section 120.57(1)(b), Florida Statutes, permits it to present evidence and argument on all issues involved. OPC states that it has raised issues regarding the quality of FPL's management of its Turkey Point uprate project, the feasibility study that FPL submitted in support of its petition, the cost-effectiveness of the Turkey Point uprate project, and the action the Commission should take in light of OPC's position that FPL's management was imprudent. OPC contends that the testimony of its witness Jacobs is directed to those issues.

At the prehearing conference, I permitted additional oral argument regarding FPL's motion to strike. Based upon my review of the motion, response, and the oral arguments, FPL's motion to strike is denied. Section 120.569(2), Florida Statutes, allows an agency to only exclude irrelevant, immaterial, or unduly repetitious evidence in a proceeding. The Commission may hear the testimony and give it the weight it is due.

Based on the foregoing, it is

ORDERED by Commissioner Eduardo E. Balbis, as Prehearing Officer, that Florida Power & Light Company's Motion to Strike Portions of the Testimony of Public Counsel Witness Jacobs is hereby denied.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

By ORDER of Commissioner Eduardo E. Balbis, as Prehearing Officer, this 24th day of August, 2012.



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EDUARDO E. BALBIS  
Commissioner and Prehearing Officer  
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

LCB

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.