

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-12-0495-PCO-EI
ISSUED: September 26, 2012

ORDER DENYING MOTION TO DISMISS

On September 4, 2012, Mr. Thomas Saporito filed a Motion to Dismiss the Joint Motion for Approval of Settlement (Joint Motion) filed August 15, 2012, by Florida Power & Light Company (FPL), the South Florida Hospital and Healthcare Association (SFHHA), the Florida Industrial Power Users Group (FIPUG), and the Federal Executive Agencies (FEA). The parties to the Joint Motion did not respond to the motion to dismiss.

Relying on Rule 12(b)(6) of the Federal Rules of Civil Procedure, and several federal court cases that established a standard for dismissing a claim, Mr. Saporito asserts that the Joint Motion should be dismissed because it fails to state a cause of action upon which relief can be granted.

Upon review of the motion to dismiss, and the legal authority on which it is based, I deny the motion. Federal Rules of Civil Procedure are not applicable to administrative proceedings in Florida. More importantly, the standard Mr. Saporito invokes does not apply to the Joint Motion because the Joint Motion is not cognizable as a distinct claim or separate cause of action. It is simply a motion to accept a particular resolution of the underlying rate proceeding presently before the Commission. Mr. Saporito will have the opportunity to present oral argument against the Joint Motion at the Commission's conference on September 27-28, 2012.

Based on the foregoing, it is

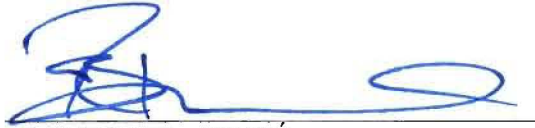
ORDERED by Robert Brisé, as Chairman and Presiding Officer, that the Motion to Dismiss the Joint Motion for Approval of Settlement is denied.

DOCUMENT NUMBER-DATE

06469 SEP 26 2012

FPSC-COMMISSION CLERK

By ORDER of Chairman Ronald A. Brisé, as Presiding Officer, this 26th day of
September, 2012.



RONALD A. BRISÉ
Chairman and Presiding Officer
Florida Public Service Commission
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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.

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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.