IN THE SUPREME COURT OF FLORIDA

FLORIDA INDUSTRIAL POWER USERS GROUP,

Appellant,

vs.

ART GRAHAM, ETC., ET AL.,

Appellees.
_____/

CASE NO.: SC15-2146

L. T. NO.: 150075-EI

ON APPEAL FROM THE FLORIDA PUBLIC SERVICE COMMISSION

ANSWER BRIEF OF APPELLEE FLORIDA PUBLIC SERVICE COMMISSION

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PRELIMINARY STATEMENT

Appellees, the Florida Public Service Commission and Commissioners Art Graham, Lisa Polak Edgar, Ronald A. Brisé, Julie I. Brown, and Jimmy Patronis, are collectively referred to as the "Florida Public Service Commission" or the "Commission." Appellant, Florida Industrial Power Users Group, is referred to as "FIPUG." Appellee, Florida Power & Light Company, is referred to as "FPL." Appellee, the Office of Public Counsel, is referred to as "OPC." References to FIPUG's Initial Brief are designated "Initial Brief pg. [Page number]."

References to the record on appeal are designated "R. pg. [Page Number]." References to the transcript of the July 28, 2015, hearing are designated "Tr. Vol. [Volume Number], Pg. [Page Number]. Chapter 90, Fla. Stat., is referred to as the "Florida Evidence Code" or "Evidence Code."

STATEMENT OF THE CASE AND FACTS

I. Statement of the Case

This is an appeal of Florida Public Service Commission (Commission) Final Order No. PSC-15-0401-AS-EI (Final Order) approving, under the Commission's ratemaking authority, a joint settlement agreement between Appellee, Florida Power & Light Company (FPL), and Appellee, the Office of Public Counsel (OPC). The approval of the settlement agreement was the resolution of a petition filed by FPL in which FPL sought approval of an

arrangement to mitigate the impact of the unfavorable Cedar Bay power purchase obligation. (R. pg. 696-697) The Commission found that the settlement agreement was in the public interest because it was reasonable for all parties, created customer savings, included additional protections for customers, and avoided the long-term costs of a purchased power agreement. (R. pg. 697)

Appellant, Florida Industrial Power Users Group (FIPUG), challenges the Commission's Final Order on procedural grounds, arguing in essence that the Commission erred when it denied its motion to sequester all witnesses during the cross examination of the witnesses on their prefiled testimony at the administrative hearing. Initial Brief pg. 8, 13. This Court has jurisdiction pursuant to Article V, § 3(b)(2), Fla. Const., and §§ 350.128(1) and 366.10, Fla Stat., because the order relates to the rates and service of a public utility providing electric service.

I. Statement of the Facts

On March 6, 2015, FPL filed at the Commission a petition for approval of an arrangement to mitigate the impact of the unfavorable Cedar Bay power purchase obligation. (R. pg. 27- 37) The Commission scheduled the petition for a July 28, 2015, administrative hearing to be conducted pursuant to Chapter 120, Fla. Stat. (R. pg. 92-93) The Commission issued an order establishing the procedure for the hearing, which required all the witnesses' direct testimony to be prefiled prior to

the administrative hearing. (R. pg. 58) FPL prefiled its witnesses' direct testimony on March 6, June 17, and July 9, 2015. (R. pg. 27, 87) OPC and FIPUG prefiled their witnesses' direct testimony on June 8, 2015. (R. pg. 87) Prehearing statements identifying each parties' witnesses who would be testifying at the hearing and specifying the issues on which the witnesses would be testifying were also filed and served on all parties in accordance with the order establishing the procedure for the hearing. (R. pg. 95, 107, 120) The prefiled testimony was a public record available on the Commission's website. (R. pg. 27, 87)

Four days prior to the commencement of the hearing, FPL and OPC filed a joint motion seeking the Commission's approval of a settlement agreement between FPL and OPC, which they offered to resolve all issues in regard to the Cedar Bay petition. (R. pg. 508-522) FIPUG objected to the terms of the settlement agreement and objected to the motion being considered at the July 28 administrative hearing. (R. pg. 9-11; 554-557; 677-682)

The Commission did not consider FPL and OPC's motion to approve the settlement agreement at the hearing, nor did the Commission and parties discuss the merits of the proposed settlement agreement at the hearing. (R. pg. 90, 696) Instead, a public meeting was scheduled for a date after the conclusion of the hearing to consider the motion and the merits of the settlement agreement. (R. pg. 531)

The administrative hearing proceeded as planned on July 28, 2015. At the commencement of the hearing, FIPUG requested, pursuant to Section 90.616, Fla. Stat., that all witnesses be sequestered during the cross examination of the witnesses. (Tr. Vol 1, pg.16) FIPUG also requested that the Commission direct the witnesses who were going to testify to "not in any way, shape, or form listen to the testimony of the other witnesses." (Tr. Vol 1, pg.16)

FPL objected to FIPUG's request, arguing that, due to the nature of the testimony, it was unnecessary to sequester witnesses so that they do not hear the other witnesses' testimony and that such a procedure would be cumbersome, inappropriate, and unnecessary. (Tr. Vol. 1, pg. 16) In support of its argument, FPL asserted that FIPUG's counsel attempted to invoke the rule of sequestration in a prior Commission proceeding involving CPV Gulf Coast and that the Commission denied the request in that case and that the Commission's ruling was appealed to the Florida Supreme Court in Case No. SC03-66. (Tr. Vol. 1, Pg. 32)

In response to FPL's arguments, FIPUG argued that "the basis of the rule is so that witnesses, you know, don't hear the answers of other witnesses" and "it gives them an opportunity to match up their testimony or dovetail their testimony." (Tr. Vol. 1, Pg. 33) It also stated that sequestration of witnesses is "not typically the practice" at the Commission, but that FIPUG was in a unique posture in the

case. (Tr. Vol. 1, pg. 34) FIPUG stated that FPL "is right, this was raised previously at one point in time." (Tr. Vol. 1, Pg. 33)

The Commission's Presiding Officer also consulted with the Commission's counsel on the issue. (Tr. Vol. 1, pg. 34) Commission counsel stated that, although she thought that "the most conservative approach is to the follow the rule," she pointed out that the Cedar Bay petition was a quasi-legislative proceeding, not a proceeding where the Commission was taking away a license or looking at the violation of a regulation where invoking the rule of sequestration "may be appropriate from the perspective of making sure that there is no coloring of the facts by witnesses." (Tr. Vol. 1, pg. 35)

After considering all the arguments, the Commission's Presiding Officer denied FIPUG's request to sequester the witnesses during their cross examinations. (Tr. Vol. 1, pg. 35) She stated that it was her opinion that she had the discretion to deny the request in this administrative proceeding. (Tr. Vol. 1, pg. 36)

The hearing then proceeded with the witness testimony. (Tr. Vol. 1, pg. 36) When each witness took the stand, the witnesses' prefiled direct testimony was entered in the record as though it was read at the hearing. (Tr. Vol.1, pg. 37, 47; Tr. Vol. 2, 172, 182, 240, 253; Tr. Vol. 3, pg. 409, 431, 459, 469, 478; Tr. Vol. 4, pg. 686) Attorneys were then allowed to cross examine each witness on their prefiled

direct testimony. (Tr. Vol. 1, pg. 66, 106, 131; Tr. Vol. 2, pg. 200, 264, 277, 295, 376, 403)

Approximately a month after the conclusion of the administrative hearing, the Commission held a public meeting to consider FPL and OPC's joint motion to approve their settlement agreement. **(**R. pg. 531) The Commission heard FPL's, OPC's, and FIPUG's oral arguments on the motion and the merits of the settlement agreement. (R. pg. 671-676; 676; 677-682)

After reviewing the testimony and exhibits from the July 28, 2015, administrative hearing and the terms of the settlement agreement, the Commission approved FPL and OPC's motion and the settlement agreement at the public meeting. (R. pg. 696-706) In Final Order No. PSC-15-0401-AS-EI, memorializing its decision, the Commission found that, based upon the record evidence, the settlement agreement was in the public interest because it was reasonable for all parties, created customer savings, included additional protections for customers, and avoided the long-term costs of the purchased power agreement. (R. pg. 697)

FIPUG appealed Final Order No. PSC-15-0401-AS-EI. This Brief addresses the arguments raised in FIPUG's Initial Brief.

SUMMARY OF ARGUMENT

The Florida Evidence Code is not controlling in administrative proceedings and, thus, the Commission was not required to apply § 90.616, Fla. Stat.,

pertaining to the sequestration of witnesses, in the Commission proceeding. The Administrative Procedure Act provides an exception from the Evidence Code for administrative proceedings. Section 120.569(2)(g), Fla. Stat., sets forth the evidentiary standards for administrative proceedings.

The Commission acted within its discretion when it denied FIPUG's request to sequester witnesses because the hearing testimony was prefiled and the Commission was acting in its quasi-legislative capacity. Moreover, any error that may have occurred when the Commission denied FIPUG's request for sequestration of witnesses is harmless.

FIPUG has failed to show that the Commission committed a material error in procedure or abused its discretion. The Commission's Final Order should be affirmed.

STANDARD OF REVIEW

"[O]rders of the Commission come before this Court clothed with the statutory presumption that they have been made within the Commission's jurisdiction and powers, and that they are reasonable and just and such as ought to have been made." *General Tel. Co. v. Carter*, 115 So. 2d 554, 557 (Fla. 1959). The Court's "duty is to examine the record to determine whether the Commission's order is in accord with the essential requirements of law." *Id.* "A party challenging an order of the Commission on appeal has the burden of showing a departure from

the essential requirements of law and the legislation controlling the issue." *Southern Alliance v. Graham*, 113 So. 3d 742, 752 (Fla. 2013).

FIPUG's Initial Brief raises arguments that require the Court to review the Commission order on appeal under two different standards of review. Initial Brief pg. 8, 13. In accordance with Fla. R. App. P. 9.210(b)(5), the applicable standard of review for each point raised in FIPUG's Initial Brief will be included in each argument below.

ARGUMENT

I. THE FLORIDA EVIDENCE CODE IS NOT REQUIRED TO BE FOLLOWED IN COMMISSION PROCEEDINGS; THEREFORE, THE COMMISSION WAS NOT REQUIRED TO APPLY THE RULE OF SEQUESTRATION.

Standard of Review

FIPUG argues that the Evidence Code applies in administrative proceedings and, thus, the Commission was required to apply § 90.616, Fla. Stat., pertaining to witness sequestration, in the administrative proceeding below. Initial Br pg. 13; § 120.68(7)(d), Fla. Stat. The Court will uphold the Commission's interpretation of a statute unless it is clearly erroneous. *See Fla. Hospital (Adventist Health) v. Agency for Healthcare Administration*, 823 So. 2d 844 (Fla. 1st DCA 2002) The issue of whether the Florida Evidence Code applies in administrative proceedings is a pure question of law subject to *de novo* review. *See D'Angelo v. Fitzmaurice*,

863 So. 2d 311, 314 (Fla. 2003)(the standard of review for pure questions of law is *de novo*).

Argument in Response to Point II of FIPUG's Initial Brief

The Cedar Bay hearing was held pursuant to §§ 120.569 and 120.57(1), Fla. Stat. (R. pg. 93), which fall under Chapter 120, Fla. Stat., the "Administrative Procedure Act." The Administrative Procedure Act at § 120.569(2)(g), Fla. Stat., sets forth the standard for the admissibility of evidence in administrative hearings, and states:

> Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible *whether or not such evidence would be admissible in a trial in the courts of Florida.*

(emphasis added). Because the plain language of § 120.569(2)(g), Fla. Stat., unambiguously states that evidence that would not normally be admissible in the trial courts of Florida may be admitted in an administrative hearing, it is clear that the Evidence Code is not required to be followed in administrative hearings. *See Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984)(holding that when the language of the statute is clear and unambiguous and conveys a clear and definite meaning, the statute must be given its plain and obvious meaning).

Florida courts have also definitively stated that administrative agencies are not required to follow the Evidence Code in administrative hearings. *See Jones v.*

Hialeah, 294 So. 2d 686, 688 (Fla. 3d DCA 1974) ("Adjudicatory proceedings before administrative boards are not required to adhere to strict rules pertaining to the exclusion of evidence required in trials in a court of law."); *Forman v. State Bd. of Accountancy*, 243 So. 2d 4, 6 (Fla. 3d DCA 1971) ("In such proceedings held before administrative boards they are allowed considerable leeway in attempting to arrive at the truth of the matter, and the rules of exclusion of evidence are not applied therein with that strictness which is required in trials in courts of law."); *McFall v. Fla. State Bd. of Dental Exam'rs*, 173 So. 2d 458, 460 (Fla. 2d DCA 1965) ("As a general rule, administrative tribunals are not bound by the strict or technical rules of evidence governing jury trials."); and *Agner v. Smith*, 167 So. 2d 86, 91 (Fla. 1st DCA 1964)(holding that the strict rules of evidence applied in formal court proceedings do not govern hearings before an administrative board).

FIPUG incorrectly argues that the Evidence Code required that the Commission grant its request to sequester the witnesses because § 90.103(1), Fla. Stat., states that the Evidence Code applies to the same proceedings that the general law of evidence applied to before the effective date of this code. Initial Brief pg. 13. However, prior to the effective date of the Evidence Code, the court denied an appeal based on an alleged witness sequestration violation in *Sauls v. DeLoach*, 182 So. 2d 304 (Fla. 1st DCA 1966). In denying the appeal, the court

stated, “It is fundamental that the strict rules of evidence followed in formal court actions do not govern in proceedings before administrative bodies.” *Id.* at 304.

FIPUG also argues that the Evidence Code applies to Commission proceedings because § 90.103(1), Fla. Stat., states that a statute must expressly exempt a proceeding from the Evidence Code. Initial Brief pg. 13. However, FIPUG fails to consider § 120.569(2)(g), Fla. Stat., which expressly exempts administrative hearings from the Evidence Code. In this regard, § 120.569(2)(g), Fla. Stat., states that “all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible *whether or not such evidence would be admissible in a trial in the courts of Florida*.” (emphasis added)

Although the Commission has looked to the Evidence Code as a guide in making its decisions, the Commission has consistently and correctly stated that §120.569(2)(g) Fla. Stat., is the evidentiary standard in its proceedings. *See In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*, Order No. PSC-14-0666-PCO-EI, 2014 Fla. PUC LEXIS 650, at *5, *6 (November 19, 2014)(holding that Chapter 90, Fla. Stat., not strictly binding in Commission proceedings and that § 120.569(2)(g), Fla. Stat., controls); *In re: Petition for approval of Special Gas Transportation Service agreement with Florida City Gas by Miami-Dade County through Miami-Dade Water and Sewer*

Department, Order No. PSC-11-0228-PCO-GU, 2011 Fla PUC LEXIS 161, at *17 (May 20, 2011)(holding that § 120.569(2)(g), Fla. Stat., provides the standard for the admissibility of evidence in administrative hearings and that Chapter 90, while informative, is not controlling); *In re: Application for original certificates for proposed water and wastewater systems, in Hernando and Pasco Counties, and request for initial rates and charges, by Skyland Utilities, LLC*, Order No. PSC-10-0431-PCO-WS, 2010 Fla. PUC LEXIS 505, at *8 (July 6, 2010)(stating that evidence not admissible under the Evidence Code would still be admissible in a proceeding before the Commission); *In re: Petition for determination of need for electrical power plant in Taylor County by Florida Municipal Power Agency, JEA, Reedy Creek Improvement District, and City of Tallahassee*, Order No. PSC-07-0033-PCO-EU, 2007 Fla. PUC LEXIS 24, at *6 (January 9, 2007)(stating that the rules of evidence in administrative hearings are liberal); and *In re: Petition on behalf of Citizens of the State of Florida to require Progress Energy Florida, Inc. to refund customers $143 million*, Order No. PSC-07-0270-PCO-EI, 2007 Fla. PUC LEXIS 156, at *6 (March 30, 2007)(stating that Chapter 90, Fla. Stat., is not strictly binding, and that § 120.569(2)(g), Fla. Stat., controls admissibility of evidence in administrative hearings.).

FIPUG's argument that the rule governing applications for qualified representatives in administrative hearings, Fla. Admin. Code R. 28-106.106,

demonstrates that the Evidence Code applies to administrative hearings is misplaced. Initial Brief pg. 9-11. Chapter 90, Fla. Stat., is nowhere cited in Fla. Admin. Code R. 28-106.106. Moreover, because an administrative rule may not expand the authority of the statute that it implements, *see* §120.536, Fla. Stat., Fla. Admin. Code R. 28-106.106 cannot adopt the Evidence Code when §120.569(2)(g), Fla. Stat., expressly sets forth a different standard for the admissibility of evidence in an administrative hearing. Furthermore, the requirement in Fla. Admin. Code R. 28-106.106(4)(c) that a presiding officer consider the applicant's knowledge of the concept of hearsay in administrative proceedings supports the conclusion that the Evidence Code is not applicable in administrative proceedings because it indicates that a qualified representative must know that a different standard of evidence is applicable in administrative proceedings.

As discussed at the administrative hearing below (Tr. Vol. 1, pg. 32), the issue of whether the Evidence Code, and in particular § 90.616, Fla. Stat., is strictly applied in Commission's proceedings was before this Court in SC03-66 when the Commission denied a request to sequester witnesses in the case. *CPV Gulfcoast, LTD v. Jaber*, 2004 Fla. LEXIS 1710 (Fla. 2004). In a decision without a published opinion, this Court stated that it had considered all the argument of the parties and affirmed the Commission's order. *Id.*

As illustrated above, the Evidence Code is not required to be followed in administrative proceedings. The Commission's interpretation of §§ 120.569 and 90.616, Fla. Stat., is based on the plain language of the statutes and is not clearly erroneous. Thus, the Commission was not required to invoke the rule of sequestration.

II. THE COMMISSION ACTED WITHIN ITS DISCRETION IN DECLINING TO SEQUESTER THE WITNESSES DURING THE CROSS EXAMINATION ON THEIR PREFILED TESTIMONY.

Standard of Review

FIPUG argues that the Commission should not have denied FIPUG's request to sequester the witnesses and that this denial was a departure from the essential requirements of law. Initial Brief pg. 8. The Court reviews a lower tribunal's decision on evidentiary matters under the abuse of discretion standard. *Victorino v. State*, 23 So. 3d 87, 98 (Fla. 2009)(holding that a court will not disturb a trial court's determination that evidence is relevant and admissible absent an abuse of discretion). Discretion is abused only "when the judicial action is arbitrary, fanciful, or unreasonable, which is another way of saying that discretion is abused only where no reasonable [person] would take the view adopted by the trial court." *Gosciminski v. State*, 132 So. 3d 678, 693-695, (Fla. 2013). The burden is on the party asserting error to demonstrate that an abuse of discretion occurred. *Spencer v. State*, 133 So. 2d 729, 731 (Fla. 1961).

Argument in Response to Point I of FIPUG's Initial Brief

As explained above, the Commission did not erroneously conclude that it had the discretion to deny FIPUG's request to invoke the rule of sequestration because the Evidence Code, and hence § 90.616, Fla. Stat., is not controlling in Commission proceedings. Indeed, the Commission acted within its discretion in declining to sequester the witnesses.

The rationale for the rule on witness sequestration is to help ensure a fair trial by avoiding the coloring of a witness's testimony by that which he has heard from other witnesses. *Hilton v. State*, 117 So. 3d 742, 751 (Fla. 2013); *Booker v. State*, 773 So. 2d 1079, 1094 (Fla. 2000). The rationale for the rule is totally at odds with the conduct of Commission proceedings and this case in particular.

The Commission order governing the conduct of the proceeding below required all parties to prefile their direct testimony a number of months prior to the date of the administrative hearing, and in accordance with the order, all parties did so. (R. pg. 27, 87, 482, 484) When each witness took the stand, the witness's prefiled testimony was entered into the record as though it was read at the hearing. (Tr. Vol.1, pg. 37; Tr. Vol. 2, 172, 240; Tr. Vol. 3, pg. 409, 431, 459, 469, 477; Tr. Vol. 4, pg. 683) Attorneys were then allowed to cross examine each witness on their prefiled testimony. (Tr. Vol. 1, pg. 66, 106, 131; Tr. Vol. 2, pg. 200, 264, 277, 295, 376, 403)

FIPUG argued that the witnesses should be sequestered to prevent the witnesses from matching up or dovetailing their testimony at the hearing (Tr. Vol. 1, pg. 33, Initial Brief, pg. 8). However, because all witnesses knew what the other witnesses were testifying to long-prior to the administrative hearing, there was no need to sequester the witnesses based on FIPUG's rationale. Any danger of witnesses listening to other testimony and coloring their testimony based on another witness's testimony, *see Hilton*, 117 So. 3d at 751; *Booker*, 773 So. 2d at 1094, was absent or minimal because the direct testimony was prefiled.

Moreover, the nature of the proceeding below also made the sequestration of witnesses unnecessary. The Commission was considering the Cedar Bay petition under its ratemaking authority. (Tr. Vol. 1, pg. 35; R. pg. 697) Ratemaking is a quasi-legislative function, *see Citizens v. Fla. Pub. Serv. Comm'n,* 146 So. 3d 1143, 1150 (Fla. 2014); *United Tel. Co. v. Mayo*, 345 So. 2d 648, 654 (Fla. 1977); *South Florida Natural Gas Company v. Public Service Commission*, 534 So. 2d 695 (Fla. 1988); *Legal Envtl. Assistance Found. v. Clark*, 668 So. 2d 982, 985, 986 (Fla. 1996), not a quasi-judicial disciplinary function where more strict adherence to the Evidence Code may be necessary to protect due process rights, *see Cherry Communications v. Deason*, 652 So. 2d 803 (Fla. 1995).

As discussed in Point I of this Brief, the Commission looks to the Evidence Code as a guide in making evidentiary decisions. *See* Order No. PSC-14-0666-

PCO-EI, 2014 Fla. PUC LEXIS 650, at *5, *6 (November 19, 2014); Order No. PSC-11-0228-PCO-GU, 2011 Fla PUC LEXIS 161, at *17 (May 20, 2011); Order No. PSC-10-0431-PCO-WS, 2010 Fla. PUC LEXIS 505, at *8 (July 6, 2010); Order No. PSC-07-0033-PCO-EU, 2007 Fla. PUC LEXIS 24, at *6 (January 9, 2007); Order No. PSC-07-0270-PCO-EI, 2007 Fla. PUC LEXIS 156, at *6 (March 30, 2007). Consistent with this practice, the Commission considered the Evidence Code in this instance as well. Based on the fact that all the witnesses' direct testimony was prefiled months before the hearing, coupled with the fact that the Commission was acting in its quasi-legislative capacity of ratemaking, it is reasonable that the Commission would decide it was unnecessary to impose the Evidence Code's rule of witness sequestration in this instance.

The Commission had a reasonable basis on which it concluded that FIPUG's due process rights would not be violated if the witnesses were not sequestered during the cross examination on their prefiled testimony. Thus, the Commission's decision to deny FIPUG's request to sequester the witnesses was not "arbitrary, fanciful, or unreasonable," *Gosciminski*, 132 So. 3d at 693-695, and should be affirmed.

III. EVEN IF THE COMMISSION ERRED BY NOT SEQUESTERING THE WITNESSES, ANY ERROR IS HARMLESS.

Standard of Review

In administrative proceedings, the harmless error standard is set out in § 120.68(8), Fla. Stat. *See Dep't of Prof'l Regulation v. Wise*, 575 So. 2d 713, 715, 716 (Fla. 1st DCA 1991)("Where unfairness has not otherwise infected the fact-finding process, findings which are founded solely upon evidence which is both competent and substantial will not be disturbed on appeal").

Argument in Response to Points I and II of FIPUG's Initial Brief

Assuming for the sake of argument that the Commission erred in not sequestering the witnesses, any error would be harmless. Even if the witnesses' cross examination testimony was not considered, there still is competent, substantial evidence in the prefiled testimony and the settlement agreement which support the Commission's findings. *See* § 120.68(7)(c), Fla. Stat. (requiring appellant to show that a material error in procedure occurred); *Wise*, 575 So. 2d at 715-716 (Fla. 1st DCA 1991). The prefiled testimony and the terms of the settlement agreement support the Commission's conclusion that approval of the settlement agreement is in the public interest. (Tr. Vol.1, pg. 38-46, 47-56; Tr. Vol. 2, 173-181, 183-199, 242-252, 254-263; Tr. Vol. 3, pg. 410-430, 433-458, 460-468, 470-475, 480-680; Tr. Vol. 4, pg. 686) FIPUG does not challenge the sufficiency of the evidence supporting the Commission's factual findings in this

appeal, or cite to any instances of witnesses corroborating their cross-examination testimony to FIPUG's detriment. *Tillery v. Fla. Dep't. of Juvenile Justice*, 104 So. 3d 1253, 1255-1256 (Fla. 1st DCA 2013)(holding that "an argument not raised in an initial brief is waived").

CONCLUSION

FIPUG has failed to show that the Commission's statutory interpretations were clearly erroneous or that the Commission abused its discretion. *See* § 120.68, Fla. Stat. Moreover, if an error had occurred, the error is harmless. Thus, the Commission's Final Order should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the individuals listed below by electronic mail this 11th day of April, 2016:

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY, pursuant to Rule 9.210(a)(2), Florida Rules of Appellate Procedure, that this brief was prepared using Times New Roman 14-point typeface, a font that is proportionally spaced.

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