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October 5, 1989

Steve Tribble, Director
Records and Reporting
Florida Public Service Commission
Fletcher Building
101 E. Gaines Street
Tallahassee, FL 32399-0850

RE: Docket No. 890148-EI

Dear Mr. Tribble:

Enclosed for filing in the above-captioned proceeding on behalf of the Citizens of the State of Florida are an original and twelve copies of Brief of the Citizens of the State of Florida.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

Janice Johnson

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of the Florida Industrial Power Users Group to Discontinue Florida Power and Light Company's Oil Backout Cost Recovery Factor.	)	Docket No. 890148-EI Filed: October 5, 1989

BRIEF OF THE CITIZENS OF
THE STATE OF FLORIDA

The areas of concern for the Office of Public Counsel as stated at the August 22, 1989 hearing, are whether FPL should be allowed to retain monies collected as accelerated depreciation because of claimed net savings from the purported deferral of Martin Units #3 and 4 and whether FPL's investment in the Oil Backout Project should be calculated using a 13.6% rate of return on equity. This brief is therefore limited to those issues and to the issue whether Southern System UPS capacity costs should be recovered through base rates

Issue 2: Should FPL be required to refund past collected backout revenues associated with accelerated depreciation?

> Position: Yes. Since the Commission has no evidentiary basis to conclude that the Martin Units would have been in service on the dates used by FPL that they would have cost as much as FPL contends, FPL should be required to refund past collections of accelerated depreciation.

Discussion: This issue is more easily reviewed from another perspective. What must the Commission conclude from the evidence

adduced in this proceeding so that it might not order refunds? Public Counsel submits it must conclude all of the following:

1. The Martin #3 coal fired unit would have had an in-service date of June 1987 but for the 500 KV transmission project;

2. The Martin #3 unit would have cost as must as FPL assumed and included in its net savings calculation;

3. The Martin #4 coal-fired unit would have had an in-service date of December 1988 but for the 500 KV transmission project; and

4. The Martin #4 unit would have cost as much as FPL assumed and included in its net savings calculation.

If any of these four statements are not accurate, or if the Commission is not sure, it must order refunds. In fact, all four have been shown to be either untrue or unsubstantiated in the record of this proceeding or any other held for that purpose. If the Commission agrees, but decides it cannot order refunds, it should restructure the entire process by which it considers and approves cost recovery factors for fuel, conservation and oil backout purposes. This latter conceptual point sets the tone for the remainder of this brief, so it merits some consideration before the specific issues are considered.

FPL's 500 KV transmission line from the Georgia-Florida state line to the Martin and Midway substations in Martin and St. Lucie counties was qualified as an oil-backout project in 1982. At that time, the Commission found that its primary purpose was the economic displacement of oil-fired generation and that it was "expected" to generate positive net savings over the first ten years. The Citizens no longer quarrel with the original

qualifications. But neither do they believe that the expectation of net savings was ever meant to be a self-fulfilling prophesy.

A decision could have been made in 1982 that FPL could, in 1987, 1988 and 1990 (for the unsited unit) start taking two-thirds of net savings quantified in 1982 on accelerated depreciation in those later years. FPL actually sought such approval.

FPL's proposal was rejected, and it was rejected because the Commission decided it would be imprudent to saddle FPL's customers with "net savings" that might not eventuate. Qualification under the rule was based on "expected" net savings based on the best information available at the time. Actual cost recovery, however, would be based on whether FPL could show that net savings were actually being achieved at a future date. The possibility that the expectation would be unfulfilled was recognized from the beginning. It might develop that FPL would never be able to recover its transmission line investment more rapidly through accelerated depreciation.

Thus, the Commission, and other parties whose interests are adverse to FPL, could expect that FPL would identify the quantification of its net savings as a specific issue for resolution when it first sought to claim accelerated depreciation. Certainly FPL had been placed on notice that the Commission would make a specific determination on the issue at some future date. Instead, FPL's perspective seems to be that FIPUG or Public Counsel should have caught the fact that the company's January 1987 filing for the April-September recovery period, although there were no net

savings identified, included calculations based on deferred Martin capacity. Implicitly, the company's position must be that the Commission itself, or its staff, should also have caught the claim for accelerated depreciation. FPL's inclusion of the "deferred" Martin units, however, gave the impression that the Commission had already granted its approval. FPL knew that was not the case.

The Citizens are not suggesting duplicity on FPL's part. The utility no doubt, based on its understanding of prior proceedings, thought it could include net savings, whenever they occurred, as additional depreciation to be recovered through its oil-backout factor. However, when a utility has not sought specific approval for an issue that might arise at anytime (or never) of the magnitude at issue here, it is in no position to thwart scrutiny later by saying no one objected before.

The Public Counsel would suggest that, if FPL is correct in its characterization (e.g. in its position on issue 2 in the prehearing order), then the cost recovery procedures must be revised. Specifically, the Commission should, by rule or order, put utilities on notice that all charges and issues that could reasonably be expected to lead to disallowance must be identified in advance. The fuel cost, conservation, purchased gas and oil-backout proceedings involve complex issues and decisions that turn on information under the utilities' control. They cannot have both an expedited process that guarantees recovery and the ability to claim the opportunity for proof is gone because something slipped by unchallenged.

In spite of the Commission's decision to evaluate any net savings if and when they arose, FPL took the position in 1987 (and today) that net savings exist <u>because</u> of its 1982 projections. It is difficult to imagine, though, that FPL would not have claimed two-thirds of any net savings as accelerated depreciation if they developed <u>before</u> 1987. The specifics are dealt with elsewhere in this brief, but implicitly, the Commission's decision to review the calculations later doesn't mesh with FPL's assertions of no changes in the meantime. FPL's first coal-fired units purportedly would not have been affected by emerging technology, the transition from a sellers' to a buyers' market, or the economic delay of the second unit independently of the first. Everyone else knows his projections are going to be wrong. FPL knows, on the other hand, its were right, after minor adjustments for actual inflation and "actual" cost of capital (as it defines the term).

If the Commission considers all the evidence introduced in this proceeding, it should conclude that it has never had before it sufficient information to make reasoned decisions. The Commission knows it did not give FPL carte blanche to include the Martin units in the computation of net savings in 1987 and 1988. The Commission does not have reason to expect that, in the absence of the transmission project, Martin Unit #3 would have actually entered service in 1987 instead of at a later date. There is no reasoned basis to expect that market conditions and evolving technology would not have depressed the originally projected costs. There is certainty, however, that market conditions would have

reduced the cost of equity on the units. But even at the reduced return level, FPL has not made any showing that it had the financial wherewithal to build coal-fired units at the same time it was finishing St. Lucie #2.

Even if FPL's assumptions for Martin unit #3 are accepted, there is no reason to consider unit #4 in tandem. They were originally scheduled for completion eighteen months apart. Conditions affecting unit 4's construction, its cost of construction and the economies of further deferral (without the transmission project) could therefore be vastly different from those affecting unit #3. FPL however, has construction of the units moving in lockstep from 1982 forward without revision or analysis of changed circumstances as they might affect each unit independently.

The best the Commission can say about the four issues at the beginning of this discussion is that it is not reasonably sure whether net savings would have been realized in 1987, 1988 and 1989. Without that assurance, refunds should be ordered.

Issue 5: Has the time come to require FPL to collect the capacity charges for the Southern System UPS charges through base rate mechanisms?

Public Counsel: No. Since the actual qualification of the project is not being challenged, the costs, including Southern System UPS charges, should continue to be recovered through the oil backout factor.

Discussion: The obvious reasons, the Citizens' interests diverge from FIPUG's on this issue. This issue goes to whether the project should continue as an oil-backout project. Since that is no longer in dispute, all the costs and benefits should continue to be recognized. The UPS capacity charges are costs of the project. In fact, these charges are the reason for the project's qualification in the first place. The transmission lines were built and qualified for oil-backout because the purchase of coal-fired capacity and energy from the Southern Companies would displace coal-fired generations on FPL's system.

If this were just a matter of policy, FIPUG might, upon a proper showing (not made here) convince the Commission by an evidentiary presentation that its policy lacked convincing wisdom and should be changed. McDonald v. Dept. of Banking and Finance, 346 So.2d 569 (Fla.1st DCA 1977); Occidental Chemical Co. v. Mayo, 351 So.2d 336, 341 (Fla.1977) ("It is difficult for us to overturn a decision of the Commission to continue a rate structure previously found to be fair and reasonable, absent a clear showing in the record that the earlier structure was arbitrary or that changed circumstances have made it unreasonable.) However, inasmuch as the Commission's decision to originally include UPS capacity charges was made pursuant to rule, there is no evidentiary showing that can justify deviation. Section 120.68(12)(b), Florida Statutes.

Issue 6: Is FPL justified in charging a 15.6% return on the equity portion of its capital invested in the 500 KW transmission lines?

> Position: No. Rule 17.016(4)(e), Florida Administrative code, requires the utility to use its actual cost of capital. The use of 15.6% is unsupported and unjustified.

Discussion: Rule 25-17.06(4)(e), Florida Administrative Code, provides that:

> The Oil-Backout Cost Recovery Factor applicable to a qualified oil-backout project shall be estimated every six months in conjunction with the Fuel and Purchased Power cost Recovery Clause, commencing with the first six-month period in which the qualified oil-backout project is placed into commercial service. The estimate shall be based on the most current projections of oil and non-oil fuel prices, other operation and maintenance expenses, taxes, and kilowatt-hour sales and on the actual cost of capital for the qualified oil-backout project. A true-up adjustment, with interest, shall be made at the end of each six-month period to reconcile differences between estimated and actual data.

As stated in Late Filed Exhibit 216, "FPL used the incremental cost of long-term debt and preferred stock incurred during the actual or assumed construction period, and the mid-point of the then currently allowed return on common equity in calculating the AFUDC rates applied to the Project or the deferred [Martin] units." The AFUDC rates used for the oil-backout project, and the deferred coal units Martin 3 and 4, are each different from the utility's authorized AFUDC rates during those years. (Exhibit 216, Attachments III, IV, V, VIII). Section (5)(c) of the rule provides that "in capitalizing any cost of capital on a project, the allowance for funds used during construction rate shall be computed

using the cost of capital used to fund the project." FPL has interpreted this to mean the incremental cost of debt and equity.

The Citizens believe this is and has been inappropriate. A utility's overall capital structure is used to fund capital projects. Although an initial loan may be provided for projected capital expenditures on specific investments, once secured and combined with other sources of funds, those funds cannot be traced. [T. 462]. The Commission authorizes AFUDC rates for the individual utilities frequently. FPL's AFUDC rates have been set annually to recognize the changes in overall embedded cost of debt and changes in the authorized cost of equity. (See Exhibit 214, Attachment VIII.) A utility's AFUDC rate is applied to all qualified construction work in progress. Separate AFUDC rates are not determined by the Commission for individual capital projects. The use of an incremental cost of capital for determining AFUDC rates for the oil-backout project and deferred capacity costs is unreasonable.

In Docket No. 870890-EI, FPL, in concert with Tampa Electric Company and Gulf Power Company, voluntarily proposed the use of a more current equity return for the application of the tax savings rule (13.6% for FPL and TECO; 13.75% for GP). Commission Order No. 18340, Docket No. 870890-EI accepted the utilities' proposed equity returns with modification as follows:

> 1. FPL and TECO agree to the utilization of an equity midpoint of 13.6% in the calculation of an overall rate of return, pursuant to Rule 25-14.0003, Florida Administrative Code (as currently worded), for calendar year 1988;

2. Gulf, which has a lower bond rating than FPL and TECO, agrees to the utilization of an equity midpoint of 13.75% in the calculation of an overall rate of return, pursuant to Rule 25-14.003, Florida Administrative Code;

3. FPL and TECO agree to the use of an equity component of 13.6% and Gulf to 13.75%, in the calculation of their respective Allowance for Funds Used During Construction (AFUDC) rates for calendar 1988;

4. FPL and TECO agree to the use of an equity figure of 13.6% and Gulf to 13.75%, as surveillance report ceilings. They agree that earnings above these respective numbers during 1988 could serve as a basis for the Commission to institute show cause proceedings, and, further, that if such proceedings were instituted, earnings above 13.6% and 13.75%, for the respective companies, could be held subject to refund on a prospective basis; and

5. The three utilities agreed that they would not file for either interim or permanent base rate increases designed to become effective prior to January 1, 1989. This provision does not affect (1) Individual tariff filings or contract rates that may be proposed; (2) Fuel adjustment, conservation cost recovery or oil backout charges; or (3) TECO's 1988 subsequent year base rate increase approved in previous orders of this Commission in Docket No. 850050-EI.
Order No. 18340, October 26, 1987.

FPL uses a 15.60% return on equity (the authorized return from FPL's last rate case) in determining the revenue requirements, and AFUDC rates, for application in the oil backout cost recovery clause. [T. 241, 285, 299]. Witness Babka testified that a 15.60% equity return is also used for surveillance reporting purposes. [T. 299]. Order No. 18340 specifically states that FPL agreed to the use of a 13.60% ceiling for surveillance reporting. However, the company continued throughout 1988 and 1989 to use the last

authorized equity range of 14.60% - 16.60% in calculating the overall rate of returns on the monthly surveillance reports. While FPL stipulated to a lower, more realistic current equity return of 13.60%, the company maintains that the stipulation does not apply to the oil backout clause. [T. 320-323]. The company's continued use of a 15.60% return for any purposes, after recognizing that that return is excessive and is not indicative of current conditions is unreasonable and imprudent. The Citizens recommend that FPL be ordered to refund any and all revenues collected through the oil backout clause resulting from the use of an equity return above the 13.60% stipulated in the tax savings docket from January 1, 1988 to date. This refund should be made with interest.

The Citizens would also like to note that, while it is not specified in Order No. 18340, TECO reduced its equity return collected through the cost-plus provision in fuel adjustment for affiliated fuel transactions in conjunction with the stipulated return in the tax savings docket.

Issue 12: Are the capacity deferral benefits of the Martin Coal Units appropriately included in the calculation of Actual Net Savings of which two thirds are recovered as additional depreciation on the 500 KV line?

Public Counsel: No. The assumptions and costs upon which deferral "benefits" have been calculated are based on 1982 projections that would not have been applicable in the 1987-1989 timeframe.

Discussion: The only way FPL has been able to recognize "actual" (as opposed to speculative) net savings has been by including Martin Unit #3 as deferred capacity that would have gone on-line in June 1987 and Martin Unit #4 in December 1988. Presumably, FPL would also include its 1990 unsited unit next year if the project were not already fully depreciated. The benefits of deferred capacity have been assumed to be the same as those first projected, without regard to later developments.

Mr. Babka, in the January 1987 testimony to which FPL referred, said:

> The methodology used to compute the revenue requirements associated with Martin Unit No. 3 is consistent with the methodology described in J.L. Howard's pre-filed testimony in Docket no. 820001-EU

In other words, the assumptions made in 1982 were assumed to have actually occurred in 1987. But the Commission had expressly declined to accept that the assumptions were immutable. In Order No. 11210, issued September 27, 1982, in Docket No. 820001-EU, the Commission said it wanted to fix the assumptions on deferred capacity as accurately as possible. It explicitly stated that it wanted to evaluate assumptions when they would be applied:

> FPL has requested that the assumptions associated with the calculation of deferred capacity benefits be fixed at this time. We do not agree with that proposal. None of the assumptions are such that we cannot fix them more accurately through retrospection than through projection. We do not consider it appropriate to lock ourselves into assumptions prior to the time we will be applying them. Order No. 11210 at page 9.

Therefore, the critical area of inquiry is what assumptions of net savings would have been applicable when FPL sought to claim two-thirds as accelerated depreciation in June 1987 for Martin Unit #3 and in December 1988 for Martin Unit #4.

FPL never substantiated the reasonableness of its assumptions at the appropriate time as required by Order No. 11210. In spite of clear directions, it ignored any analysis of whether its assumptions would have changed between 1982 and 1987-88. It didn't even state that, in its estimation, the assumptions would not have changed.

The Commission said it wanted to evaluate assumptions at the time they were being applied. In 1987, when Martin Unit #3 was first used in the calculation of net savings (although to no effect), FPL did not allege or show that its 1982 assumptions would have held true unaltered. In February 1988, FPL's witness, Mr. Babka, said he was providing details of assumptions, but all he really did was carry the 1982 assumptions forward without any contention that they would not have been affected by changed circumstances in the intervening years:

> Document No. 1 to my testimony details the methodology and assumptions used to compute the revenue requirements associated with Martin Unit No. 3. The methodology and assumptions are consistent with those used when the Project was certified. The assumptions have been updated for actual inflation rates through the end of the construction period, changes in the federal and state income tax rates, and the Company's current capital structure and cost rates. February 24, 1988, Hearing on Docket No. 880002-EG, Transcript page 785.

The revision to reflect the actual cost of equity was, of course, inaccurate because FPL used its last-allowed return on equity instead of its actual cost as required by the rule. The only area FPL chose to update was done incorrectly. At the August 1987 hearings, Mr. Babka had said only that "The capital expenditures associated with Martin Unit No. 3 were provided by the Project Management Department and are consistent with the amounts used when obtaining certification of the Project." August 27, 1987 hearing in Docket No. 870002-EG, transcript page 712. The commission refused to be locked into 1982 assumptions in 1982 and it has never said it endorses their applicability in 1987, 1988 or 1989.

Thus, from an evidentiary and burden of proof perspective, this is not a case in which FIPUG's witness, Mr. Pollack, must have convinced the Commission that its original acceptance of FPL's assumptions was improvident. FPL never established the reasonableness of its assumptions to begin with. Accordingly, evidence in this docket should be evaluated in terms of whether FPL's assumptions were reasonable when applied, not in terms of whether FIPUG met a burden it did not bear to show the assumptions were unreasonable. On this point, it is noteworthy that FPL offered justification for continued use of its 1982 assumptions only to attack Mr. Pollock's testimony after he raised very specific issues.

MARTIN UNITS #3 AND #4 WOULD HAVE BEEN DEFERRED BEYOND 1987 AND 1988, RESPECTIVELY, EVEN IF THE TRANSMISSION PROJECT HAD NOT BEEN BUILT.

Mr. Scalf, a witness for FPL in 1982, recognized this possibility. [T. 118-19]. FPL's forecasts after 1982 showed that reductions in peak load would push the units further back. [T. 112]. The projections of summer peak reserve margins with the Martin units were well in excess of FPL's planning parameters. [T. 113]. Martin Unit #3 would not have been needed until 1991 based on 1983 projections and not until 1994 based on 1986 projections. Martin Unit #4 would not have been needed until 1992 or until after 1994 based on those same projection periods. [T. 113].

FPL's witness, Mr. Waters, countered that Unit #3 would have come on line as scheduled in 1987 and Unit #4 in 1988. But he was reiterating assumptions from 1982. He had not performed any year-by-year analysis of in-service dates. [T. 436]. Mr. Waters said, to meet the 1987 and 1988 in-service dates originally projected, expenditures would have to have begun in 1980 and 1982. [T. 358]. This does not, however, say anything about when they would have actually entered service. Mr. Waters' statement that

> I have no reason to believe anything but that the Martin Coal Units would have or could have been built to meet FPL capacity needs in 1987 and 1988. [T. 359].

is less that a ringing endorsement of the assumptions FPL used.

FPL is in an insupportable position as far as substantiating its 1982 assumptions about in-service dates because FPL did not even start to study alternatives until 1984. [T. 120]. Thus, Mr. Waters' arguments are really mere speculation that, in spite of everything happening in the industry in terms of load growth,

technology and capital markets, FPL would have adhered to its 1982 assumptions for in-service dates for Martin Units #3 and 4.

Mr. Waters answered questions about later evaluations under cross-examination. He said FPL, in 1983, would have been constructing Martin Unit #3 and would have "spent a fair amount of money" by that time. FPL would have had to perform an analysis at that time to see whether deferral would be cost effective. [T. 433]. He couldn't say whether any adjustments would have been made. [T. 434].

In fact, no analysis had been done at all to show that Martin Unit #3 would have been built in 1987 in the absence of the transmission project. [T. 436, 441]. Mr. Waters tried to divert the issue in his prefiled testimony and on cross-examination by stating that he had compared the cost of Martin Unit #3 with a combined cycle unit in 1987, and it "does not make sense to consider combining cycle as an alternative to Martin 3." [T. 436]. But this doesn't answer the question whether <u>any</u> capacity, coal-fired or combined cycle, would have to be constructed in that timeframe. Moreover, in his comparison of Martin #3 with a combined cycle unit, he began with the 1982 assumption (from Mr. Scalf's testimony) that the "required in-service date" was 1987. [T. 437].

Mr. Waters also conceded that the testimony submitted in 1987 simply carried forward the 1982 assumption for the in-service date. It did not include any analysis designed to verify the 1987 date assuming the absence of the Southern Company UPS contract. [T.

440]. He said the in-service date was not challenged in 1987 or anytime since, until this docket. [T. 440]. This ignores the Commission's directions in 1982 that it wanted to evaluate all assumptions in 1987.

FPL has simply not provided evidence of sufficient quality for the Commission to determine that, in the absence of the transmission project, FPL really would have placed 700 MW coal-fired units into service in June 1987 or December 1988. In the absence of such evidence, there is no basis upon which to allow $285 million of additional oil-backout revenue to be recovered as accelerated depreciation. FPL has not shown, and the Commission does not know, that there have been actual net savings.

EVEN IF THE MARTIN UNITS #3 AND #4 WOULD HAVE ENTERED SERVICE IN 1987 AND 1988, THEY WOULD NOT HAVE COST AS MUCH AS FPL PROJECTED.

To begin with, the 15.6% return on equity is too high and should be adjusted downward. This applies to the return on investment for the completed unit and to AFUDC and its compounding.

FPL did not evaluate its cost assumptions for the Martin Units at the time it began claiming two-thirds of net savings as accelerated depreciation. It began with the original Bechtel package costs and adjusted for actual inflation and for what FPL contends were actual costs of capital. This leaves unanswered the very question the Commission said it wanted to address in the light of actual experience. How much would the Martin Units have cost if they had really been built?

Mr. Pollock introduced evidence of significant changes that arose after 1982 that would have greatly reduced total costs. The construction market changed from a sellers' market to a buyers' market. The market became highly competitive; builders where accepting lower profit margins. FPL experienced the phenomenum at its St. Johns River Project. Bids there were significantly wer than anticipated. The transition from force accounts to contract packages reduced AFUDC and total project costs. Flue gas desulfurization technology matured and costs declined. This is all undisputed. [T. 115-16].

Mr. Waters did an analysis to purportedly show that Martin #3 would be cheaper than a combined cycle unit. But where did he show that FPL's actual costs, if the units had been built, would track the original projections? It hasn't been done, other than to say be believes the costs are "representative" of those that would have been incurred. [T. 401]. Given the importance of cost comparisons, it is amazing that Mr. Waters said he had not compared the estimated costs of the Martin units to actual costs for other units of similar size that came on-line during the same time period. [T. 432].

The Commission does not have before it reasonable assumptions of what Martin Units #3 and 4 would have cost. It does not, therefore, have a reasonable basis for allowing FPL to increase its oil-backout charges by $285 million. Refunds must be ordered.

Issue 13: Are there any oil backout Project tax savings due to the change in the federal corporate income tax rate?

Position: No. The excess revenues collected by FPL through the oil backout clause result from FPL's use of a 15.60% equity return in determining revenue requirements for the oil backout project. (See Citizen's discussion on issue 6.)

Issue 18: As a matter of law, can the Florida Public Service Commission place an accelerated depreciation surcharge on present customers to require them to pay the full cost of transmission facilities which are being used to provide reliability and capacity in three or four years when the facilities will be in used and useful service for more than 25 years?

Position: Public Counsel takes no position on this issue.

Issue 19: Is there any legal basis for charging customers costs associated with utility generating plants that have not been built, are not under construction and are not presently projected to be built?

Position: Public Counsel takes no position on this issue as it applies to this proceeding.

Issue 21: Does Rule 25-17.016(6), F.A.C., require the discontinuance of the OBCRF when the transmission line costs are fully recovered?

Position: Public Counsel takes no position on this issue as it applies to this proceeding.

Issue 26: Whether FIPUG's argument that the recovery of oil-backout project costs through an energy based charge is unfair and unduly discriminatory is barred by the doctrines of res judicata and administrative finality?

Position: Public Counsel takes no position on this issue.

Issue 27: Whether FIPUG's requested relief to discontinue recovery of oil backout project costs in an energy based oil backout charge is inconsistent with Rule 25-17.016 and therefore not permitted by Section 120.68(12)(b), Florida Statutes?

Position: Public Counsel takes no position on this issue.

Issue 28: Whether FIPUG has waived its ability to challenge or is estopped from challenging the use of the Martin coal units in calculating deferred capacity savings to be used in the calculation of Actual Net Savings since they have in three prior proceedings, in which they were a party, failed to raise the issue, not objected to stipulated Factors and failed to request reconsideration?

Position: No. In none of those prior proceedings did the Commission make a decision that, in light of its Order No. 11210, the assumptions and costs of the deferred Martin units were reasonable at the times FPL included them in its calculation of net savings.

Discussion: The discussion on Issues 5 and 12 are incorporated here by reference.

The Commission, in 1982, said it would consider the reasonableness of FPL's assumptions and cost estimates at such time as FPL started claiming net savings attributable to deferral of the Martin units. The question should therefore first be asked whether the Commission itself is foreclosed from inquiry because cost recovery factors have been approved. The answer is, of course, no. The Commission has never passed on the prudence of FPL's assumptions about cost or in-service dates. Therefore, the Commission is not foreclosed from consideration or disallowance of sums already collected. Gulf Power Company v. Florida Public Service Commission, 487 So.2d 1036, 1037 (Fla. 1986).

If the Commission is not foreclosed, neither is FIPUG. FIPUG was not under any obligation to raise the issue. FPL was the party seeking affirmative relief based on the deferral of the Martin units. FPL simply included computations based on 1982 assumptions in its 1987, 1988 and 1989 filings, but it never asked for or

received Commission confirmation of the reasonableness for FPL to use those assumptions.

The factors that were stipulated to were only addressing the accuracy of the calculations. FPL could have foreclosed further inquiry by making the reasonableness of its assumptions an explicit issue. FPL chose not to do that. The Court said in Florida Power Corporation v. Cresse, 413 So.2d 1187, 1191 (Fla. 1982), that "Simple production of cost records and documentation cannot satisfy the requirements imposed on a utility in a [fuel adjustment] true-up proceeding." The fact that the reasonableness of previous submittals had not been questioned did not shift the burden to the PSC or anyone else. 413 So.2d at 1191. The matter had properly been placed at issue, so the utility had to show that the costs had been incurred and that they did not arise from management imprudence.

If actual costs and documentation were not conclusive, how could assumptions that had never been scrutinized be conclusive? The assumptions were to be at a later date issue pursuant to the Commission's Order No. 11210 in 1982. FPL just chose not to raise it and receive a definitive ruling. Only now is the matter at issue, and FPL is in no position to say FIPUG cannot raise it because the utility ignored it. Since the Commission has a right to consider it, it doesn't make any difference which party raises it. But once raised, FPL should shoulder the burden. FIPUG should have no obligation to overcome what FPL never established in the first place. Florida Power Corp., supra, 413 So.2d at 1191 (Burden

of proof is on utility seeking a rate change or on other parties seeking to change established rates.)

Issue 29: Whether the requested refund on oil backout revenues would constitute illegal retroactive ratemaking?

Position: No.

Issue 30: Whether FIPUG's argument that FPL cost estimates for the Martin Coal units are overstated should be heard?

Position: Yes. The Commission has never passed on the reasonableness of the assumptions used to quantify the Martin Unit cost estimates FPL asked for approval of the assumptions underlying it estimates in 1982 which the Commission rejected. FPL has never sought nor received explicit approval of its assumptions or cost estimates based on those assumptions.

Discussion: See discussion on Issue 28.

Respectfully submitted,

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of the State of Florida

CERTIFICATE OF SERVICE
Docket No. 890148-EI

I HEREBY CERTIFY that a correct copy of the foregoing Brief of the Citizens of the State of Florida has been furnished by U.S. Mail or by hand-delivery* to the following parties on this 5th day of October, 1989.

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