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ORIGINAL FILE COPY

October 13, 1989

Mr. Steve Tribble
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, FL 32301

RE: Docket No. 890148-EI

Dear Mr. Tribble:

Upon the request of Staff, Florida Power & Light Company is filing the original and fifteen copies of Florida Power & Light Company's Supplemental Summary Position On Issues in Docket No. 890148-EI.

Very truly yours,

Charles A. Guyton

Charles A. Guyton

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of the Florida Industrial Power Users Group to Discontinue Florida Power & Light Company's Oil Backout Cost Recovery Factor.	Docket No. 890148-EI Filed: October 13, 1989

FLORIDA POWER & LIGHT COMPANY'S SUPPLEMENTAL SUMMARY POSITION ON ISSUES

ISSUES OF FACT

2. ISSUE: Should FPL be required to refund past collected [oil] backout revenues associated with accelerated depreciation? (FIPUG)

FPL POSITION: No. Consistent with the Oil Backout Rule and pursuant to Commission approval, since August 1987 FPL has been collecting revenues through the Factor and taking as accelerated depreciation an amount equal to two-third's of the project's actual net savings. Tr. 389-93 (Waters). One benefit of several recognized in the calculation of actual net savings has been the avoided costs of the Martin Coal Units 3 and 4. Id. Without the Project these units would have been in-service in June 1987 and December 1988, respectively. Id. The avoided cost calculations for the Martin Units are reasonable and representative of what the units would have cost. Tr. 395-402 (Waters). The inclusion of these capacity deferral benefits in the computation of the Project's actual net savings is appropriate because without the Project the Martin Units would have been built and been needed as originally projected. Id. FIPUG's attempt to question the Project's capacity deferral benefits is untimely and has been waived. Its requested refund would be unlawful retroactive ratemaking.

5. ISSUE: Has the time come to require FPL to collect the capacity charges for the Southern System UPS charges through base rate mechanisms? (FIPUG)

FPL POSITION: No. FIPUG has failed to establish why the current treatment of UPS capacity payments is improper. The evidence shows that (1) UPS capacity charges have historically been treated as an oil backout cost, Order No. 11217 at 2, 3-

5, 7 (Tab G), and recovered through the Factor, Order No. 11210 at 9, (2) that the treatment of UPS capacity charges as a Project O&M expense is consistent with Section (4)(a) of the Oil Backout Rule, Tr. 448-49 (Waters), (3) that under Section (4)(c) of the rule, continued recovery of Project O&M expenses even after the full depreciation of the Project is appropriate, Tr. 450 (Waters), and (4) that under Section (4)(d) of the Rule recovery of these costs through the Factor should continue until "new base rates" are placed into effect. Moreover, FPL requested this relief in its last rate case and it was denied, with the Commission specifically excluding those costs from FPL's currently effective base rates. Order No. 13537 at 60 (Tab L). The time has not yet come to move the recovery of the UPS capacity charges to base rates, and no such change should be made without the specific adjustment to base rates required by Sections (4)(c) and (d) of the Oil Backout Rule.

6. ISSUE: Is FPL justified in charging a 15.6% return on the equity portion of its capital invested in the 500 kV transmission lines? (FIPUG)

FPL POSITION: Yes. The Commission has the long standing practice (fourteen prior orders) of authorizing FPL to earn on its equity oil backout investment the rate of return on equity authorized in FPL's most recent rate case, Tr. 319 (Babka), even through FPL initially argued its cost of equity then was higher than its authorized rate of return on equity. Id. This practice was premised on a consensus of position by all the parties to this proceeding. Now that it is alleged that FPL's equity costs are lower than its authorized return on equity, it would be unfair not to hold all the parties to their original agreement. More importantly, there is no evidence in this record supporting a cost of equity for FPL. In the absence of proof of a cost of equity other than the 15.6% authorized in FPL's last rate case and in light of the prior agreement of the parties, the Commission should find that FPL has been justified in recovering a 15.6% return on its equity investment in the 500 kV transmission lines.

11. ISSUE: Were the Martin Coal Units 3 and 4 deferred as a result of the Project and the original UPS purchases? (FPL)

FPL POSITION: Yes. Mr. Pollock specifically acknowledged, Tr. 84, and Mr. Waters conclusively established, Tr. 353, 355, 357-61, 394, 396-400, 410-12; Ex. No. 209, Docs. 2 and 3, that the Martin Coal Units were deferred by the Project and the UPS purchases. The Martin Coal Units were deferred in 1981 when FPL made the decision to stop spending on the units because it had decided to accelerate the Project and enter the UPS Agreement. Tr. 359, 362 (Waters). Without the Project and the UPS purchases, the Martin Coal Units would have been

built and would have been needed as originally projected. Tr. 358-62, 395-98; Ex. No. 209, Doc. Nos. 2 and 3. From 1982 through 1988 the Martin Coal Units were the most economical choice to meet capacity needs absent the Project and UPS purchases. Tr. 395-98; Ex. No. 209, Doc. No. 3. Even with lower load forecasts between 1983 and 1986, without the Project and UPS purchases the Martin Coal Units would have been needed to meet load and reserve requirements in 1987, Ex. No. 209, Doc. No. 2, and it would have been uneconomical to defer those units rather than finish construction by the time the load forecasts were lowered. Tr. 472 (Waters); Ex. No. 218. FIPUG has failed to establish that the Martin Coal Units were not deferred by the Project and the UPS purchases.

12. ISSUE: 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? (FPL)

FPL POSITION: Yes. As is clearly demonstrated in the testimony of Mr. Waters, the Martin Coal Units were deferred by the 500 kV Project and the UPS purchases. See, FPL Position on Issue 11. In the absence of the Project and the UPS purchases, the Martin Coal Units would have been built and in service by 1987 and 1988. Because these units were deferred, FPL's customers have not had to pay the units' revenue requirements, only UPS capacity payments. In calculating Actual Net Savings, 2/3 of which are recovered through the Factor as additional depreciation on the 500 kV line, it is proper and consistent with the Oil Backout Rule to recognize all Project savings (net fuel savings and capacity deferral savings) and all Project costs (UPS energy and capacity costs as well as foregone Martin fuel savings). Under the Oil Backout Rule, 2/3 of any resulting net savings are to be recovered as additional depreciation on the 500 kV line. FPL is not recovering through the Oil Backout Cost Recovery Factor any return on units it has not built.

13. ISSUE: Are there any oil backout Project tax savings due to the change in the federal corporate income tax rate? (FPL)

FPL POSITION: No. Consistent with Subsection (4)(a) of the Oil Backout Rule, FPL has collected only "actual tax expense" through its Oil Backout Cost Recovery Factor. When the corporate income tax rate was lowered, FPL reflected this lower rate in its oil backout filings. Consequently, there are no oil backout project tax savings. Moreover, as tax savings are defined in the Commission's Tax Savings Rule, Rule 25-14.003, there are no oil backout project tax savings.

This issue is addressed more extensively in issue IV of FPL's Brief. FPL incorporates that discussion by reference in this

position statement.

16. ISSUE: Should FPL be required to refund these tax savings to customers? (FIPUG)

FPL POSITION: As framed by FIPUG, this issue assumes there are oil backout tax savings. As previously discussed in Issue 13, there are no oil backout tax savings. FPL has only recovered "actual tax expense" through its Oil Backout Cost Recovery Factor. Therefore, there are no oil backout tax savings to refund.

As FPL notes in issue IV of its Brief, oil backout revenues, expenses and investment should not be recognized in the computation of FPL's tax savings refund. First, there are no oil backout tax savings to refund under either the Oil Backout Rule or the Tax Savings Rule. Second, the Commission has clearly articulated and established the policy of separate accounting for oil backout costs. This is reflected in Section (5) of the Oil Backout Rule as well as the Commission's last rate case order for FPL. Consequently, FPL's and the Commission's omission of the oil backout revenues, expenses and investment in calculating FPL's tax savings refund is consistent with Commission policy and the instruction for the tax savings report forms.

ISSUES OF LAW

18. ISSUE: 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 use and useful service for more than 25 years? (FIPUG)

FPL POSITION: There is nothing unfair, unreasonably discriminatory or unduly preferential regarding the Oil Backout Rule or its application to FPL. Consequently, the Commission has no statutory obligation under Section 366.07, Florida Statutes to revise the Oil Backout Cost Recovery Factor. The customers paying revenues which have been taken as accelerated depreciation on FPL's Oil Backout Project have enjoyed significant savings as a result of the Project. The Oil Backout Rule simply authorizes the sharing of those savings until the Project is fully depreciated, and the Commission has a statutory obligation to act consistently with its rule. Even with allowing FPL to recover revenues and take accelerated depreciation equal to two-thirds of the Project's

actual savings, current and past customers have benefited from the Project and are better off than they would have been if the Project had not been built. Indeed, they have paid less than they otherwise would have if the Project had not been built. Now that the depreciable portion of the Project is fully depreciated, customers will benefit even more through reduced revenue requirements on the Project. FIPUG has had no less than eighteen prior opportunities to raise this issue, which is a direct challenge to the Oil Backout Rule. Its prior failures to raise this issue should be a waiver of any right to raise the issue now.

19. ISSUE: 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? (FIPUG)

FPL POSITION: The factual premise underlying this so-called legal issue is totally erroneous and has not been established. As Mr. Waters pointed out in detail in his rebuttal testimony, there is no recovery for costs of unbuilt generating plants through the Oil Backout Cost Recovery Factor. Tr. 389-93. "FPL does not now collect, nor has it ever collected, any of the revenue requirements associated with the deferred coal units. Mr. Pollock's statements are extremely misleading." Tr. 389 (Waters). Mr. Waters went on to explain that consistent with Section (4)(a) of the Oil Backout Rule, "FPL is recovering the cost of the transmission project in the form of additional depreciation, not any revenue requirements of the deferred units. Mr. Pollock's allegation that FPL is recovering the costs of facilities which are not used and useful is totally wrong." Id. The cost of the facilities on which FPL is recovering a return through its Oil Backout Cost Recovery Factor, the 500 kV facilities, are undeniably used and useful and properly subject to recovery under Section 366.06, Florida Statutes.

20. ISSUE: Does collection of capacity charges in excess of fuel savings through a fuel cost recovery charge comply with the law? (FIPUG)

FPL POSITION: FPL is at somewhat of a disadvantage in responding to this issue since FIPUG has not identified the law with which collection of capacity charges through a fuel cost recovery charge allegedly fails to comply. Undeniably, the capacity charges that FPL recovers through its Oil Backout Cost Recovery Factor are legitimate costs of service which FPL should be allowed to recover through its rates. This Commission has broad discretion as to the appropriate means of recovery of the legitimate costs of service.

As with most of the questions raised by FIPUG in this

proceeding, the Commission has already addressed this issue. In Order No. 11210 authorizing the initial cost recovery of UPS capacity charges, the Commission found the capacity and wheeling charges under the UPS contracts "should be collected through either the Fuel Adjustment Factor or the Oil Backout Cost Recovery Factor". Order No. 11210 at 9.

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

FPL POSITION: No, and this represents a slight modification from FPL's position in its Prehearing Statement because FPL misread FIPUG's issue. FPL does believe that Subsection (6) of the Oil Backout Rule requires termination of the Oil Backout Recovery Factor once the costs of a qualified project have been completely recovered, and that was the issue to which FPL took a position in its Prehearing Statement. Unfortunately, FIPUG's framing of this issue was limited to the full recovery of transmission line costs. As Staff correctly points out, the transmission line itself is only one component of FPL's entire Oil Backout Project. The Oil Backout Cost Recovery Factor should not be terminated until all Project costs are fully recovered, or the remaining UPS Project costs (non-depreciable land, prepaid taxes, UPS capacity charges and other O&M costs) are included in new base rates as envisioned in Section (4)(c) and (d) of the Oil Backout Rule.

26. ISSUE: 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? (FPL)

FPL POSITION: Yes, as outlined and developed fully in issue II in FPL's Brief. FPL's discussion of this issue in its Brief is incorporated by reference as a part of its position on this issue.

27. ISSUE: 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? (FPL)

FPL POSITION: Section 120.68(12)(b) states that a court shall remand any case to an agency if it finds the agency's exercise of discretion to be "inconsistent with an agency rule." Under the present Oil Backout Rule, if the Commission authorizes the recovery of oil backout project costs through an Oil Backout Cost Recovery Factor, it must authorize an energy based oil

backout charge. That is the import of Subsection (4)(e) of the Rule and the interpretation given the Rule by FIPUG's witness when the rule was adopted. (Tab A; Tab S, Transcript excerpt from Docket No. 810241-EU at 186). Consequently, FIPUG's requested relief to discontinue recovery of oil backout project costs through an energy based oil backout charge is inconsistent with Rule 25-17.016, and if the Commission were to grant FIPUG's requested relief, it would be grounds for remand under Section 120.68(12)(b), Florida Statutes.

28. ISSUE: 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? (FPL)

FPL POSITION: Yes. Beginning in 1987, in three oil backout proceedings prior to FIPUG's petition FPL explained in its testimony that it was recognizing the Project's capacity deferral benefits in computing Actual Net Savings and seeking to recover two-thirds of the Actual New Savings as revenue. This was consistent with the Oil Backout Rule. FIPUG and Public Counsel had notice from FPL's oil backout filing as well as a 1982 Commission Order that the issue of the Project's capacity deferral benefits would be addressed in 1987. By failing to raise the issue of whether capacity deferral benefits were properly quantified in any of the three proceedings, FIPUG and Public Counsel waived the issue. Rule 25-22.038(5)(b)2, Florida Administrative Code. Their attempt to resurrect the issue in this proceeding is an untimely motion of reconsideration which is not permissible. Rule 25-22.060(1)(d), Florida Administrative Code.

29. ISSUE: Whether the requested refund of oil backout revenues would constitute illegal retroactive ratemaking? (FPL)

FPL POSITION: Yes. In this case FIPUG seeks a refund of revenues which have already been collected by Florida Power & Light Company. Such a refund would be an effective reduction to the rates FPL previously charged. The Commission has no authority to make retroactive ratemaking orders. City of Miami v. Florida Public Service Commission, 208 So. 2d 249 (Fla. 1968).

30. ISSUE: Whether FIPUG's argument that FPL's cost estimates for the Martin Coal Units are overstated should be heard? (FPL)

FPL POSITION: No. The pleadings of this case properly frame

the issues and scope of the controversy. Nowhere in FIPUG's Petition was it alleged that FPL's cost estimates for the Martin Coal Units were overstated. This defect in FIPUG's pleading has been pointed out, and FIPUG has elected not to cure it. Consequently, this argument should not be heard because it is outside the scope of the proceedings, and FPL objected to it as being outside the scope of the pleading.

As pointed out in issue III D in FPL's Brief, even if this issue is heard, the record does not support FIPUG's claims. The record shows that the cost estimates used by FPL for the Martin Coal Units are reasonable and representative of what FPL would have spent without its Oil Backout Project.

Respectfully submitted,

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BY: Charles A. Guyton
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of the Florida Industrial Power Users Group to Discontinue Florida Power & Light Company's Oil Backout Cost Recovery Factor	)))))	Docket No. 890148-EI

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of October, 1989, a true and correct copy of Florida Power & Light Company's Supplemental Summary Position On Issues in Docket No. 890148-EI was served by hand delivery* and by U. S. Mail** on the persons listed below.

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