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January 12, 1999

VIA HAND DELIVERY

Blanca S. Bayo, Director
Division of Records and Reporting
Gunter Building
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0870

Re: Docket No. 981390-EI

Dear Ms. Bayo:

Enclosed for filing and distribution are the original and fifteen copies of the Florida Industrial Power Users Group's Petition On Proposed Agency Action in the above docket.

Please acknowledge receipt of the above on the extra copy enclosed herein and return it to me. Thank you for your assistance.

Sincerely,

ACK *Vicki Gordon Kaufman*
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 McWHIRTER, REEVES, MCGLOTHLIN, DAVIDSON, DECKER, KAUFMAN, ANDREOLI & STEIN, P.A.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation into the Equity)
 Ratio and Return on Equity of Florida)
 Power & Light Company.)

Docket No. 981390-EI

Filed: January 12, 1999

**THE FLORIDA INDUSTRIAL POWER USERS GROUP'S
PETITION ON PROPOSED AGENCY ACTION**

The Florida Industrial Power Users Group (FIPUG) files this Petition challenging Proposed Agency Action Order No. PSC-98-1748-FOF-EI. As grounds therefor, FIPUG states:

Identification of Petitioner

1. The name and address of Petitioner is:

The Florida Industrial Power Users Group
 c/o John W. McWhirter, Jr.
 McWhirter Reeves
 400 North Tampa Street, Suite 2450 (33602-5126)
 Post Office Box 3350
 Tampa, Florida 33601-3350

Joseph A. McGlothlin
 Vicki Gordon Kaufman
 McWhirter Reeves
 117 South Gadsden Street
 Tallahassee, Florida 32301

2. All pleadings, orders and correspondence should be directed to:

The Florida Industrial Power Users Group
 c/o John W. McWhirter, Jr.
 McWhirter Reeves
 400 North Tampa Street, Suite 2450 (33602-5126)
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FIPUG's Substantial Interest

3. FIPUG is an organization of large industrial consumers. Members of FIPUG are located in the service area of Florida Power and Light Company (FPL). Although FIPUG members purchase less than one-half of one percent of FPL's total output, they consume a substantial amount of electricity from FPL. The cost of electricity constitutes one of FIPUG's members' largest variable costs.

4. In Order No. PSC-98-1748-FOF-EI, the Commission approved, as Proposed Agency Action (PAA), FPL's proposal concerning return on equity and equity ratio.¹ Among other things, the PAA permits FPL to extend its special, accelerated amortization plan and to include additional items to be amortized. The plan authorizes FPL to apply an additional \$145 million of revenues annually that would otherwise constitute earnings representing a potential basis for base rate reductions and/or refunds to customers to write-off an increasing list of assets more rapidly than normal ratemaking would allow. It sets FPL's return on equity at a mid-point of 11.2%, but does not calculate the earned rate of return FPL would experience in the absence of extraordinary and unwarranted write-offs, and returns no money to customers.

5. As FPL customers, the Commission's decision in this matter will adversely affect FIPUG's substantial interests.

Background

6. FPL's last general rate case was in 1984. There has been no general review of FPL's earnings with an eye toward base rate revision since that date despite FPL's burgeoning

¹Though the PAA refers to a "settlement," none of the parties who participated in negotiations with FPL prior to the PAA joined in the proposal FPL proffered.

revenues. On several occasions since that time, the Commission has elected to allow FPL to accelerate the recovery of plant and/or retain monies that potentially could be refunded to customers, presumably under the theory that future customers would benefit. Examples of the policy decisions include:

7. In an order after the 1984 rate case, FPL was allowed accelerated depreciation of an upgraded transmission line to transport coal by wire from Georgia. The justification for accelerated cost recovery was that it would be paid for through fuel cost savings to customers and future customers would get the benefit of the fast reduction in rate base. The accelerated depreciation lowered FPL's earned rate of return. In 1987, FIPUG filed a complaint and testimony seeking to terminate the fast recovery on the grounds that falling oil and gas prices had eviscerated the estimated future fuel cost savings. The Commission denied the relief sought and allowed the fast write-off to continue. **(Even though estimated fuel cost savings did not materialize, current customers were required to rapidly amortize the cost of transmission assets for the "benefit" of future customers.)** Today on information and belief, there is depreciation reserve surplus with result to these assets, but current customers (the future customers who were expected to benefit) have received no rate reduction as a result of their overpayments in the 1980s.

8. In 1986, Congress enacted a major revision to the federal income tax rate for corporations. Money collected from customers to pay future taxes was no longer needed to pay the difference between the pre-1986 and post-1986 tax rates. FIPUG requested under the Commission's tax adjustment rule that 20% of the over-collections be refunded to customers currently. The Commission repealed the rule. The Commission denied the request for refunds,

and ordered that the excess tax collections be returned to customers through accounting treatments over the remaining useful life of FPL's rate base. **(Excess taxes paid by then current customers would not be refunded, but would be reflected on FPL books over 25 to 40 years).**

9. In 1995, it appeared that FPL's earnings were exceeding the upper limits of its authorized return. Commission Order No. PSC-96-0461-FOF-EI in Docket No. 950359-EI addressed the circumstance and concluded that FPL should book an additional annual expense of a minimum of \$30 million to accelerate the write-off of the historic reserve deficiency in nuclear production. The plan permitted FPL to commit additional revenues to the amortization plan without regard to an earnings test that would have identified any revenues in excess of the authorized return and without requiring either a base rate reduction or refunds to customers. The fast write-off plan was continued in 1996, 1997, 1998 and for 1999 in Order No. PSC-97-0499-FOF-EI.

10. The reserve deficiency was created by FPL accounting methods and through no action of customers. On information and belief, no docket was opened to determine if FPL was earning in excess of its authorized return during the period between 1986 and 1995 when it was accruing the reserve deficiency complained of. **(Beginning in 1995, current customers were asked to postpone any rate reduction to which they might be entitled in order to allow FPL to make up for the accounting methods it had used during the preceding 15 to 20 years.)**

11. By Order No. PSC-98-0027-FOF-EI, the Commission added more items to the mix of assets subject to the fast write-off plan. One item is the cost of reacquired debt. It cost FPL \$397 million to refinance its debt. Instead of amortizing this cost over the remaining life of the

debt, as would happen under normal ratemaking, the order held that current customers should pay to amortize the rest of it in 1998 and 1999. **(Current customers have received no rate reduction as a result of the lower interest cost. The rates they pay are still based on pre-1984 interest cost. Any rate reduction to which they might be entitled is overridden by new fast write-off provisions that apply potentially excess revenues to an extraordinary expense program without justification.)**

12. At the time of the order referred to above, the tax reflected on some sets of FPL's books was different than the books used for retail rate regulatory purposes. The order directed that the tax be amortized rapidly. The order fails to discuss the nature of the tax timing differences or whether FPL's holding company structure is used to avoid the tax charges attributed to utility customers. **(Current customers pay now rather than amortizing the tax timing differences over the remaining life of the FPL assets to which they relate as would happen with normal ratemaking. Instead, the order applies revenues which potentially could serve as a basis for rate reductions and/or refunds and applies them as extraordinary expense without justification.)**

13. The largest regulatory asset is the unamortized nuclear plant decommissioning plant cost addressed in 1995. This fast write-off is now supplemented by a fast write-off of the fossil plant. Customers who intervened in Docket No. 970410 recommended that part of this cost be offset by the excess depreciation reserve for the coal by wire transmission line and other transmission and distribution assets. The order denied this request. **(Without justifying the departure from normal ratemaking, the PAA order allows FPL to continue applying revenues that could potentially serve as the basis for rate reductions and/or refunds to a**

program of extraordinary expense.)

14. In Docket No. 970410, consumer intervenors argued that FPL's capital structure currently disadvantages current customers. By Order No. 97-1070-PCO-EI, the Commission determined that capital structure was outside the scope of the fast write-off case. The increased debt equity ratio is not an insignificant matter. A 12% return on equity translates to a 19.3% return charged to customers to cover the cost of taxes attributed to the 12% return. **(In calculating overearnings, the Commission chose to ignore reductions in cost of capital caused by changes in the debt equity ratio.)** In the PAA, the Commission proposes to reduce FPL's authorized return on equity and equity ratio. The revised levels in the PAA continue to be unreasonable in light of current market conditions. Moreover, any benefit to ratepayers associated with these proposals would be defeated by the extraordinary, unwarranted, utility-favoring amortization program that would enable FPL to shield hundreds of millions of revenues from the litmus test of ROE and equity ratio.

15. Since the 1980s, the policy emphasis of the Commission has been to allow FPL to retain monies, presumably with the belief that "future ratepayers would benefit." The purpose of reciting these past decisions is not to attempt to roll them into this case, but to make the point that it is time for a reckoning, and for a policy that gives appropriate attention to the rights and needs of current customers. Unless the Commission applies consumer protection tests in the form of a reasonable return on equity and appropriate equity ratio, and applies those protective standards to a portrayal of FPL's earnings that is not distorted by extraordinary and unwarranted write-off programs, the benefits to ratepayers will never materialize; only stockholders will gain. Under prevailing circumstances, the rapid amortization program is an inappropriate policy for the

regulatory body charged with the responsibility of protecting customers against overcharges by the utility monopoly from whom they are obligated to buy.

16. On information and belief, the amounts targeted for fast write-off in the order which is the subject matter of this protest between now and December 31, 2000 under the proposed settlement agreement are as follows:

(a) Fossil Dismantlement	\$ 38 Million
(b) Reacquired Debt Expense	\$166 Million
(c) Nuclear Deficiency	\$535 Million
(d) Spent Fuel	<u>\$ 50 Million</u>
Total	\$723 Million

17. The order fails to discuss this amount, or to review the regulatory policies which justify the exponentially increasing write-off or to identify the base rate reductions/refunds which would potentially be possible if the extraordinary and company-favoring write-offs were terminated or reversed.

18. If the extraordinary amortizations are ordered or permitted, the agreed upon reduction in return on equity, if it is the appropriate reduction, will result in no rate reductions to customers. With the fast write-off program, FPL keeps the money. FIPUG members who must compete with companies in other states with lower rates are hampered in their economic development. FIPUG believes that overearnings should be shared with the customers who pay for them rather than retained by FPL.

19. In its original petition for fast write-off, FPL discussed "stranded investment." The PAA order does not address stranded investment and FIPUG believes that it should be given no

consideration as an issue in this case. The case should be considered on its merits in a regulated environment.

Disputed Issues of Material Fact

20. Disputed issues of fact include, but are not limited to, the following:
- a. Whether it is in the best interest of FPL ratepayers to extend and increase FPL's amortization plan and to include in it the cost of reacquired debt; nuclear and fossil plant investment/dismantlement; and spent nuclear fuel;
 - b. Whether it is reasonable to include in the expanded amortization plan regulatory assets that have not yet even been defined;
 - c. Whether the expanded amortization plan results in intergenerational inequity;
 - d. Whether the return on equity (ROE) set in the PAA is reasonable given current facts and circumstances;
 - e. Whether FPL's equity ratio is reasonable given current facts and circumstances; and
 - f. Whether it is reasonable to treat FPL's purchase power obligations as debt in the regulatory context.

Ultimate Facts Alleged

21. Ultimate facts alleged include, but are not limited to, the following:
- a. FPL's amortization plan does not benefit ratepayers. Extending and increasing the amount attributable to the FPL amortization plan is not in the best interest of ratepayers. Any excess revenues that FPL would devote to this plan should be used to reduce

current rates and/or be refunded to customers;

b. The ROE and equity structure set out in the PAA are unreasonable given today's financial markets;

c. It is unreasonable to include in the expanded plan regulatory assets that have not yet been defined or approved;

d. The proposed extraordinary treatments of nuclear plant, fossil plant dismantlement, spent fuel, and cost of reacquiring debt are unwarranted, unreasonable, and not in the interests of ratepayers;

e. FPL's debt/equity ratio is unreasonable given today's financial markets;

f. It is unreasonable to treat FPL's purchase power obligations as debt; and

g. The expanded plan results in intergenerational inequity.

Rules and Statutes Entitling FIPUG to Relief

Sections 57.105(2), 366.041 and 366.06, Florida Statutes, entitle FIPUG to relief.

WHEREFORE, FIPUG requests that:

1. The Commission conduct an evidentiary hearing on the matters in dispute;

2. The Commission reject FPL's expanded amortization proposal;

3. The Commission refund \$140 million and reduce FPL's base rates;

4. The Commission award attorneys fees and costs to consumer advocates as it does

for utility attorneys' fees and costs; and

5. The Commission grant such other relief as necessary.

Vicki Gordon Kaufman

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Attorneys for the Florida Industrial
Power Users Group

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of FIPUG's foregoing **Petition On Proposed Agency Action** has been furnished by hand delivery (*) or by U.S. Mail to the following parties of record this 12th day of January, 1999:

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