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Subject: Docket No. 080677-EI and 090130-EI
Attachments: FIPUG Memorandum on Inclusion of Issues 08.11.09.pdf

In accordance with the electronic filing procedures of the Florida Public Service Commission, the following filing is made:

- a. The name, address, telephone number and email for the person responsible for the filing is:

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- b. This filing is made in Docket No. 080677-EI, In re: Petition for increase in rates by Florida Power & Light Company; and Docket No. 090130-EI, In re: 2009 depreciation and dismantlement study by Florida Power & Light Company.
- c. The document is filed on behalf of Florida Industrial Power Users Group.
- d. The total pages in the document are 8 pages.
- e. The attached document is FIPUG's Memorandum on Inclusion of Issues.

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Increase in Rates by
Florida Power & Light Company.

DOCKET NO. 080677-EI

DOCKET NO. 090130-EI

In re: 2009 depreciation and dismantlement
study by Florida Power & Light Company.

FILED: August 11, 2009

**THE FLORIDA INDUSTRIAL POWER USERS GROUP'S
MEMORANDUM ON INCLUSION OF ISSUES**

The Florida Industrial Power Users Group (FIPUG), pursuant to Order No. PSC-09-0552-PCO-EI, through undersigned counsel, hereby files its memorandum in support of the inclusion of additional issues in this docket. FIPUG supports the addition of the issues discussed below.

INTRODUCTION

The dispute among the parties focuses on very important policy and legal matters that will impact this proceeding and future proceedings. That issue is: Should the matters in dispute be specifically delineated, so that the Commission and parties will have a clear indication, a road map, as to what is in contention, or should the issues be broad and general and reach only the ultimate issue? FIPUG strongly supports the former approach is preferred and more appropriate.

Taken to its logical conclusion, the "broad" issue approach would require that only one or two issues be set forth in this complex rate case for Commission determination and vote. For instance, as it relates to a utility request for additional revenues, one issue – such as, how much of a revenue increase, if any, should FPL receive – would capture the Commission's ultimate decision and parties could arguably address every revenue issue under this ultimate issue. However, this broad framework does not allow the Commission to focus on or the parties to present and receive a decision on the discrete factual issues about which the parties disagree or

have placed in dispute. Nor does it facilitate a full understanding of the discrete decisions required to formulate an answer to the ultimate question.

Further, FPL has not had a litigated base rate proceeding since 1985. FPL is requesting a revenue increase of over \$1 billion for just the first year of its requested 2-year increase. Consumers are entitled, as a matter of clarity, fairness and due process, to present and have the Commission rule on the specific issues that will lead to the Commission's ultimate decisions.

CHAPTER 120

As a legal and evidentiary matter, this Commission's evidentiary proceedings are governed by Chapter 120, Florida Statutes. For example, the Commission utilizes the requirements of Chapter 120 and the model rules related thereto to determine intervention. *See, i.e.,* Order Granting Petition to Intervene, Order No. PSC-09-0281-PCO-EI. Further, in the recent Tampa Electric rate case, Docket No. 080317-EI, the Commission approved its Staff's recommendation, filed July 6, 2009, finding that its handling of certain aspects of that rate case did not violate Chapter 120.¹ While the Commission enjoys some exemptions from Chapter 120, none of those exemptions relate to the conduct of an evidentiary rate case. *See, section* 120.80(13).

Section 120.569(2)(c) requires petitions to be in substantial compliance with the Uniform Rules. Such rules require "[a] statement of all disputed issues of material fact."² And in fact, the Commission has dismissed some pleadings which failed to comply with the requirements of section 120.569(2)(c).³ This again emphasizes the need for specificity in framing and deciding issues.

¹ FIPUG disagrees with this finding, but that is not germane to the issues addressed herein.

² Rule 28-106.201(2)(d), Florida Administrative Code.

³ *See, Order No. PSC-07-0724-PCO-EQ*

Section 120.57(1) governs proceedings involving disputed issues of material fact. Section 120.57(1)(b) requires that the parties be given the opportunity to present “evidence and argument on all issues. . . .” These statutory standards require that the issues which the parties are to address be specific, not broad generalizations.

SPECIFIC ISSUES IN DISPUTE

As to the issues that are the subject of Order No. PSC-09-0522-PCO-EI, for the reasons set out below, FIPUG supports and urges the Prehearing Officer to include Issues 21, 25-32, 36-38, 74-78, 79, 104-105, 110-118, 167, 171 in the Prehearing Order.

Depreciation Issues

Sixteen (16) of the listed issues relate to depreciation.⁴ These issues are a good example of the subparts of the ultimate issue of depreciation rates which must be determined before depreciation rates can be set.

Despite the complexity of the depreciation issues (and the extensive focus on that issue in this case), Staff suggests that the specific depreciation issues are “subsumed” in the very broad wording of Issue 19. Issue 19 states: “What are the appropriate depreciation rates, capital recovery schedules, and amortization schedules?” Thus, Staff recommends removing all the discrete depreciation issues.

FPL’s depreciation calculations and assumptions form an important part of its requested rate increase. The components of depreciation encompass many facts and assumptions, which are distinct, discrete and require a separate vote. While Issue 19 is clearly the ultimate issue on depreciation, it fails to identify and encompass the specific components of depreciation which the parties raised and about which they have filed specific testimony.

⁴ Issues 21-38.

For example, both OPC and FIPUG have included discrete issues related to the appropriate life spans to be used to depreciate FPL's various plants.⁵ Appropriate life spans form a critical component of FPL's depreciation calculation. The life span adjustments recommended by FIPUG witness would reduce FPL's depreciation accrual request by almost \$100 million.⁶ Similarly, important and discrete issues⁷ have been raised as to how to address the \$1.245 billion surplus reserve which FPL has accumulated⁸, interim retirements,⁹ and salvage values.¹⁰ It is critical that each these discrete depreciation issues be separately addressed and voted upon, not lumped together in a "catch all" issue.

Cost of Capital Issues

Eight (8) of the disputed issues relate to cost of capital. Each of those issues is discrete, distinct and important. Parties have filed extensive testimony regarding these issues and those issues should be included in the Prehearing Order. Again, Staff suggests that these separate matters be encompassed in ultimate Issue 71: "What is the appropriate equity ration that should be used for FPL for ratemaking purposes in his case?" FIPUG supports the inclusion of all the cost of capital issues.

Issue 72 was specifically raised by FIPUG (and FRF). It relates to FPL's imputation of purchase power agreement costs to make changes to its capital structure. This is a critical issue in the determination of the correct capital structure and should be separately addressed. A very

⁵ As FIPUG noted in its Prehearing Statement, it is willing to address Issues 22 and 23 within OPC's Issue 25, assuming that OPC's issue remains in the case.

⁶ See, Pollock testimony at pp. 13, 15.

⁷ Issues 35, 37, 38.

⁸ As FIPUG noted in its Prehearing Statement, FIPUG is willing to address Issue 35 within OPC's Issue 38, assuming that OPC's issue remains in the case and that the parties are given latitude beyond the usual 50 words in parties' positions on the issue

⁹ Issue 27.

¹⁰ Issues 28 and 29.

similar issue recently included in the Tampa Electric rate case¹¹ as a separate issue and the Commission rendered a separate vote on it. It should do so here as well.

Net Operating Income

OPC has raised 12 issues regarding net operating income.¹² Staff suggests that most of the issues are subsumed in ultimate issue 109. However, each issue raises a discrete situation regarding FPL affiliate transactions which should be separately address. FIPUG supports the inclusion of these issues.

Revenue Requirements

FIPUG has raised an issue¹³ regarding the appropriate level for the Commercial/Industrial Demand Reduction Rider (CDR). Staff says that this issue would be “more appropriately addressed in the Conservation Cost Recovery Clause.” However, in this case, the Commission will consider all FPL’s rates and charges and will determine the appropriate level of (all) rates charged by the utility.

Further, FPL itself has raised the issue of the CDR in its direct testimony and FIPUG is entitled to address that issue. For example, FPL witness Deaton, attached RBD-5 as an exhibit to her direct testimony. RBD-5 is titled “Summary of Current Rate Structures for Major Rate Schedules. Witness Deaton says this exhibit is a description of FPL’s retail rate schedules.¹⁴ At page 5 of her exhibit, witness Deaton lists the CDR as one of those rates. Further, on page 5 of RBD-5, witness Deaton provides a description of CDR in which she characterizes the CDR as non-firm service. Most tellingly, on page 7 of RBD-7, witness Deaton states: “No changes are proposed for credits available under the CDR rider.” While FPL may not propose any changes,

¹¹ Order No. PSC-09-0033-PHO-EI includes as Issues 32: “Should TECO’s requested pro forma adjustment to equity to offset off-balance sheet purchased power obligations be approved?”

¹² Issues 104-105, 110-118.

¹³ Issue 167.

¹⁴ Deaton direct at p. 8, l. 12.

FIPUG does propose changes to the rate and has provided testimony on the necessary changes.¹⁵

This issue is properly before the Commission as one that is disputed, and should be addressed as a stand alone issue.

The CDR, which Mr. Pollock testifies is greatly undervalued, is part and parcel of a variety of rate offerings which FIPUG addresses in its testimony. As such, it should be considered and ruled upon in this case.

CONCLUSION

This case is one of great importance to consumers as well as one of great complexity. Including discrete, specific issues, which will help the Commission decide the final ultimate issues, is critical to the appropriate management of this case and the rights of all parties.

WHEREFORE, FIPUG urges the Commission to include the issues discussed herein in the Prehearing Order.

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¹⁵ See Pollock testimony at pp. 63-66.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Florida Industrial Power Users Group's Memorandum on Inclusion of Issues has been served by Electronic and First Class United States Mail this 11th day of August, 2009, to the following:

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