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080677-EI

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Sent: Thursday, April 08, 2010 3:23 PM

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Subject: e-filing (Dkt. No. 080677-EI)

Attachments: 080677.OPC response to motion for reconsideration.sversion.doc

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket No. 080677-EI

In re: Petition for rate increase by Florida Power & Light Company.

c. Document being filed on behalf of Office of Public Counsel

d. There are a total of 12 pages.

e. The document attached for electronic filing is OPC's Response to FPL's Motion for Reconsideration and Clarification.

(See attached file: 080677.OPC response to motion for reconsideration.sversion.doc)

Thank you for your attention and cooperation to this request.

Brenda S. Roberts
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida Power & Light Company.	DOCKET NO. 080677-EI
In re: 2009 depreciation and dismantlement Study by Florida Power & Light Company	DOCKET NO. 090130-EI DATED: April 8, 2010

OPC'S RESPONSE TO FPL'S MOTION FOR RECONSIDERATION AND CLARIFICATION

The Citizens of the State of Florida, through the Office of Public Counsel, file their response to Florida Power & Light Company's (FPL) Motion for Reconsideration and Clarification ("FPL Motion"), and state:

1. OPC leaves to the Commission and its staff the determination of whether FPL has identified any computational errors in any of the items to which FPL refers as "Reconsideration Errors" in its Motion. FPL's motion contains a separate request for clarification of the treatment of depreciation expense. Given the dearth of information in FPL's Motion regarding its description of a $129 million discrepancy between the $753 million of depreciation and amortization expense that the Commission included in test year revenue requirements and the $624 million that FPL says individual depreciation rates would generate in the aggregate, OPC also cannot at this time formulate a position on the correct resolution of that item. If the Commission concludes that $753 million overstates the appropriate amount of test year depreciation and amortization expense, then revenue requirements would decrease on a net basis, regardless of the ruling on the alleged Reconsideration Errors. However, based upon considerations of stability and in light of the uncertainty to which the FPL Motion gives rise,

OPC does not oppose FPL's suggestion that the Commission address any fine tuning called for by the resolution of the FPL Motion through adjustments to the annual dollar amount of the amortization of FPL's reserve surplus ordered by the Commission, and not revise the retail base rates established in Order No. PSC-10-0153-FOF-EI.

2. On pages 3-4 of its motion, FPL refers to several documents of credit rating agencies and cites them as support for the action it requests. OPC requests the Commission to reject these documents explicitly in its ruling on FPL's motion. FPL attached the documents to its motion as "exhibits." However, labeling a document an "exhibit" does not make it part of the evidentiary record to which the Commission is limited.

3. The requirement that an agency base its decision on the evidence of record is one of the most fundamental aspects of quasi-judicial proceedings conducted pursuant to the Administrative Procedures Act. That FPL is aware of this requirement is illustrated by its Motion to Reopen the Record filed in this docket on November 5, 2009. FPL filed that motion because at the conclusion of the evidentiary hearing it had failed to move its Minimum Filing Requirements into the record.

4. More recently, on the eve of the Commission's decision in this docket, FPL filed a letter on January 12, 2010, from its counsel and attached an announcement by Fitch that it had placed FPL Group, Inc. on a "watch negative." Neither the exhibits attached to this current motion for reconsideration pertaining to credit rating agencies nor the attachment relating to

Fitch are part of this docket's evidentiary record; therefore, they should be rejected and not considered by the Commission in making any decision.

5. Also implicit in FPL's action is the idea that ominous pronouncements of discontented credit rating agencies should drive the Commission's decisions. The Commission should use this occasion to reject that notion. The perspectives of credit rating agencies stem from their "constituency"—the utility and its investors. As the evidence of record establishes, credit rating agencies have a client relationship with FPL. In short, they are not objective arbiters of the merits of Commission decisions. In the documents attached to FPL's Motion, the rating agencies register disappointment in the fact that the Commission did not give FPL what it requested; however, the credit rating agencies do not address what the evidence of record warranted. During the evidentiary hearing, OPC witness Dan Lawton demonstrated through testimony and exhibits that the metrics of FPL's financial integrity would continue to stay within the range associated with an "A" rated utility even if the Commission were to adopt all of OPC's proposals in the case. See Exhibit 442. Nothing has changed to alter that situation.

6. OPC is attaching two documents to this Response that further illustrate the need to refuse efforts to cite extra record documents. The first attachment is an article indicating that an analyst upgraded his recommendation of FPL following the Commission's rate case decision. The second attachment is an article in which an official of Moody's acknowledged that the increases to customers' bills that FPL sought far exceeded the amount of incrementally higher borrowing costs to the utility that would accompany a downgrade. If the Commission were to entertain FPL's request to consider its "exhibits," OPC would wish a similar opportunity to counter with these extra record documents. Clearly, to allow one party to cite matters outside the record would lead to competing requests from other parties. It is therefore with good reason that

decisionmakers are limited to the record that was closed following a proceeding in which due process was afforded to all parties. For all of these reasons, the Commission should deny FPL's efforts to place the "extrarecord" documents before it.

J.R. Kelly
Public Counsel

s/ Joseph A. McGlothlin
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Attorneys for Florida's Citizens

DOCKET NOS. 080677-EI & 090130-EI
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing OPC'S RESPONSE TO FPL'S MOTION FOR RECONSIDERATION AND CLARIFICATION has been furnished by U.S. Mail and electronic mail to the following parties on this 8th day of April, 2010.

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Joseph A. McGlothlin
Associate Public Counsel

Credit Suisses upgrades utility FPL to 'Outperform' following slide in share price

NEW YORK (AP) - An analyst upgraded Florida power company FPL Group Inc. Wednesday, saying its shares are attractively priced following a recent slide in their value.

Credit Suisse analyst Dan Eggers raised his rating to "Outperform" from "Neutral." His share price target of $56 implies the stock has room to grow 21 percent over the next year from Tuesday's closing price of $46.30.

Shares of FPL are down more than 12 percent so far in 2010 after the company cut its earnings guidance in October and then again in December, citing outages at a nuclear power plant, trouble in its wind energy unit and economic uncertainty in Florida.

At its analyst day in May, the company will likely talk about its earnings growth rate, and could address its strategy on electricity rates, Eggers wrote in a research note.

"Shoring up the uncertainty created by the rate case and economic slowdown will be important for FPL shares, even if growth is lower," Eggers wrote.

FPL's subsidiary has struggled to get its rate requests approved by Florida regulators.

ATTACHMENT 1

(Article dated February 24, 2010)

Too much politics in regulation, utility analysts say

BY MARY ELLEN KLAS
Herald/Times Tallahassee Bureau
October 8, 2009

TALLAHASSEE -- A day after Florida Power & Light lost its bid to build a ratepayer-financed natural gas pipeline, utility analysts Wednesday said Florida has a ``highly politicized atmosphere" for utility regulation and warned that if it continues, credit ratings for utility companies could drop.

``Moody's views political intervention in the utility regulatory process as detrimental to credit quality, sometimes resulting in adverse rate case outcomes," Moody's Investors Service wrote in its Global Credit Research letter.

FPL is seeking a $1.3 billion increase in its customer base rates beginning next year and Progress Energy is seeking a $500 million increase. But Gov. Charlie Crist, fearing undue influence of the utility lobby on the commission and its staff, announced it was ``time to clean house." He appointed two new commissioners to the panel and asked the PSC to postpone a decision on the rate cases until his appointees take office in January.

Moody's cited the rejected pipeline proposal, the governor's call for a rate case delay, the fact that a sitting commissioner who was expected to vote on the rate case resigned on Monday, and the possibility that new commissioners may take a while ``to get up to speed on often complicated utility rate matters."

It concluded that if both FPL and Progress Energy Florida don't get a rate relief ``sufficient to maintain cash flow" at historic levels, the situation could ``pressure the credit rating of both utilities" and add a ``level of uncertainty to the rate proceedings."

``When political intervention gets involved, it sometimes prevents enough of a rate increase to keep [the utility's] debt service stable," said Michael Haggerty, the Moody's utility analyst who wrote the report.

But Haggerty also acknowledged that even if both companies face a lower credit ratings, the added cost of capital could be marginal compared to what the company would get from consumers if the PSC approves the rate increases.

For example, FPL now has an A1 credit rating while Progress Energy has a A3 rating. If FPL needed to borrow $2 billion to finance a project and the rating companies dropped

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its rating one notch to Baa, the added cost of the capital paid by electric customers -- based on Moody's Daily Bond Yields on Wednesday -- would be $10 million a year

more, Haggerty said. By contrast, if the PSC approves FPL's rate increase, customers would see their base rate rise $1.3 billion more a year.

The Moody's report also noted that the companies need the rate increase to offset the drop in customers. ``These base rate increases were filed during a period of challenging economic conditions in the state, which has recently begun to lose population, contributing to weak sales volumes at both utilities," the report said.

FPL released a statement, saying that, ``a perception of greater regulatory risk means capital will be more expensive. On the other hand, constructive regulation will enable us to continue to provide efficient, reliable power at reasonable rates to our customers."

The Moody's warning is intended for investors, Haggerty told the Herald/Times. But, while analysts don't expect either company to get 100 percent of their rate increase requests, the impact of a lesser rate increase will depend on other variables, he said. (Such as how much of a rate increase; how it is divided between residential, commercial and industrial users; and how much the company can depreciate.)

Mary Ellen Klas can be reached at meklas@MiamiHerald.com

PSC's 'politicized atmosphere' draws warnings from Wall Street

A day after Florida Power & Light lost its bid to build a ratepayer-financed natural gas pipeline, utility analysts Wednesday said Florida had "highly politicized atmosphere" for utility regulation and warned that if it continues, credit ratings for utility companies could drop.

"Moody's views political intervention in the utility regulatory process as detrimental to credit quality, sometimes resulting in adverse rate case outcomes," Moody's Investors Service wrote in its Global Credit Research letter.

FPL is seeking a $1.3 billion increase in its customer base rates beginning next year and Progress Energy is seeking a $500 million increase. But Gov. Charlie Crist, fearing undue influence of the utility lobby on the commission and its staff, announced it was "time to clean house." He appointed two new commissioners to the panel and asked the PSC to postpone a decision on the rate cases until his appointees take office in January.

Moody's cited the rejected pipeline, the governor's call for a delay, the fact that a sitting commissioner who was expected to vote on the rate case resigned on Monday, and the possibility that new commissioners may take a while "to get up to speed on often complicated utility rate matters." It concluded that if both FPL and Progress Energy Florida don't get a rate relief "sufficent to maintain cash flow" at historic levels, the situation could "pressure the credit rating of both utilities" and add a "level of uncertainty to the rate proceedings."

"When political intervention gets involved, it sometimes prevents enough of a rate increase to keep [the utility's] debt service stable," said Michael Haggerty, the Moody's utility analyst who wrote the report.

But Haggerty also acknowledged that even if both companies face a lower credit rating, the added cost of capital could be marginal compared to what the company would get if the PSC approves the rate increases.

For example, FPL now has an A1 credit rating while Progress Energy has a A3 rating. If FPL needed to borrow $2 billion to finance a project and the rating companies dropped its rating one notch to Baa, the added cost of the capital paid by electric customers -- based on Moody's Daily Bond Yields on Wednesday -- would be $10 million a year more, Haggerty said. By contrast, if the PSC approves FPL's rate increase, customers would see their base rate rise $1.3 billion more a year.

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The Moody's warning is intended for investors, Haggerty told the Herald/Times. But, while analysts don't expect either company to get 100 percent of their rate increase request, the impact of a lesser rate increase will depend on other variables, he said. (Such as how much of a rate increase; how it is divided between residential, commercial and industrial users; and how much the company can depreciate.)

Haggerty, by the way, is a frequent commentator on FPL's credit ratings and debt. He appeared in February on a panel sponsored by the University of Florida's Public Utility Research Center along with FPL's chief financial officer Armando Pimentel.

Here's the full Moody's report and FPL statement:

Moody's Views Politicized Florida Rate Cases as Credit Negative

Moody's views the highly politicized atmosphere surrounding the base rate proceedings of Florida Power & Light Company (FPL, A1 Issuer Rating) and Progress Energy Florida, Inc. (PEF, A3 Issuer Rating) as negative to the credit quality of both utilities and an indication that the political and regulatory environment for investor-owned utilities in Florida may be deteriorating. These base rate increases were filed during a period of challenging economic conditions in the state, which has recently begun to lose population, contributing to weak sales volumes at both utilities. Rate relief that is insufficient to maintain cash flow coverage metrics at or close to historical levels could pressure the credit ratings of both utilities.

Over the last several weeks, the governor of Florida has become increasingly vocal in expressing his opposition to the utility rate requests, appointed two new commissioners to the Florida Public Service Commission (FPSC), and requested that the FPSC delay action on the rate cases until these new commissioners are in place in January. On October 5, one of the sitting commissioners that had been expected to vote on the pending rate cases resigned from the FPSC effective immediately, temporarily leaving the Commission with four sitting members. On October 6, the four remaining FPSC members unanimously denied FPL's petition of need for the construction of a new

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underground natural gas pipeline in Florida, indicating that FPL did not prove that the pipeline was the most cost-effective alternative and ordering the company to rebid the project.

Moody's views political intervention in the utility regulatory process as detrimental to credit quality, sometimes resulting in adverse rate case outcomes. In some cases, this has led to multi-notch credit rating downgrades of utilities in states where this has occurred, most notably Illinois and Maryland in recent years. Moody's notes that such intervention is highly unusual for the state of Florida, which has traditionally been one of the more constructive utility regulatory jurisdictions in the nation, characterized by fair and balanced regulatory proceedings with little to no political interference or controversy.

Moreover, the turnover of commissioners at state utility regulatory bodies heightens the level of uncertainty surrounding utility rate proceedings because of the lack of an established track record, the limited experience of new commissioners, and the challenges that many new commissioners face in quickly coming up to speed on often complicated utility rate matters. The replacement of experienced and seasoned commissioners on the FPSC with newcomers well after the rate proceedings have begun and most hearings have been completed increases the possibility of a rate case outcome that is negative to utility credit quality.

FPL Statement

Over the years, utility regulation in Florida has been constructive, in turn helping keep our credit rating strong. We've been able to raise significant amounts of capital at reasonable prices, which has allowed us to keep our rates the lowest in the state and below national averages.

Like other companies, we are entering one of the most significant construction cycles in our history. As we go to the market for our capital needs, debt and equity investors are keenly focused on the Florida regulatory environment. A perception of greater regulatory risk means capital will be more expensive. On the other hand, constructive regulation will enable us to continue to provide efficient, reliable power at reasonable rates to our customers.

Posted by Mary Ellen Klas at 08:14:21 PM on October 7, 2009

ATTACHMENT 2