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Attachments: FIPUG Post-Hearing Brief and Statement of Issues and Positions 04.19.10.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. 090505-EI, In re: Review of replacement costs associated with the February 26, 2008 outage on Florida Power & Light's electrical system.

c. The document is filed on behalf of Florida Industrial Power Users Group.

d. The total pages in the document are 9 pages.

e. The attached document is FIPUG's Post-Hearing Brief and Statement of Issues and Positions.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of replacement costs associated with the February 26, 2008 outage on Florida Power & Light's electrical system.	DOCKET NO. 090505-EI FILED: April 19, 2010

THE FLORIDA INDUSTRIAL POWER USERS GROUP'S
POST-HEARING BRIEF AND STATEMENT OF ISSUES AND POSITIONS

The Florida Industrial Power Users Group (FIPUG), by and through its undersigned counsel, pursuant to Order No. PSC-09-0854-PCO-EI files its Post-Hearing Brief and Statement of Issues and Positions.

BASIC POSITION

On February 26, 2008, a fault occurred at FPL's Flagami substation due to an FPL employee error. The fault caused three fossil-fueled generators and two nuclear generators to trip off line. FPL has agreed to assume the costs for replacement power needed due to this outage.[1]

To calculate replacement power costs, the Commission should use the avoided cost of nuclear generation that was displaced by the February 2008 outage (not system average costs as FPL proposes). The outage duration should be calculated as the time the nuclear units were out of service and could not provide energy to the ratepayers (158 hours for Turkey Point Unit 3, 107 hours for Turkey Point Unit 4). An appropriate calculation yields a refund to ratepayers of approximately $16 million. The Commission should reject FPL's proposal and adopt Dr. Dismukes' calculations set out in Exhibit No. 18 (DED-8) because those calculations represent the true cost of replacement power that occurred as a result of the nuclear outage.

[1] *See,* Exhibit No. 13, the Stipulation among the parties, in which FPL agreed to "bear the cost of replacement power attributable to the Flagami Transmission Event…"

ISSUES AND POSITIONS

ISSUE 1: How should the replacement power costs attributable to the February 26, 2008 outage be measured, and what is the amount of such costs?

FIPUG: *The nuclear units would not have tripped off line if the Flagami event had not occurred. Because the Flagami event was the result of an FPL employee's actions, FPL must be responsible for all replacement power costs based on the replacement fuel costs for the nuclear units. The amount of replacement power cost should be calculated as described by Dr. Dismukes in his Exhibit No. 18 (DED-8). The amount of replacement costs is $15,974,055. This should be refunded to customers.*

DISCUSSION

On February 26, 2008, an FPL employee at the FPL Flagami substation disabled the primary protection and the breaker failure protection on a circuit switcher. The employee did not notify the load dispatcher that he had disabled the secondary level of protection nor were other appropriate personnel notified. (Exhibit No. 12, Order Approving Stipulation and Consent Decree at 2-3). This employee action led to the loss of 22 transmission lines, 4,300 MW of generation, and 3, 650 MW of customer service or load. (Exhibit No. 12 at 2). As a result of this event, FPL voluntarily paid a $25 million civil penalty to the federal government and agreed to make reliability improvements to its system. (Exhibit No. 12 at 4).[2] During the 158 hours that Turkey Point Unit 3 was off line and the 107 hours that Turkey Point Unit 4 was offline, customers paid for replacement fuel costs. (Tr. 448).

There is no dispute that the incident at issue that caused the outage was a result of the actions of an FPL employee. (Tr. 83-84). Even FPL witness Avera admits that an FPL employee was responsible for the outage. (Tr. 227). If the employee actions had not occurred, Turkey Point Units 3 and 4 would have continued to run. (Tr. 84). The next

[2] The FERC does not address replacement fuel costs. This is within this Commission's jurisdiction.

scheduled outage for these units for refueling was scheduled for March 2009. (Tr. 95). There is no way that any action of FPL's customers could have prevented this employee action. The customers have no responsibility for how FPL trains and monitors its employees – that is a management function. To the extent that an employee engages in activities that cause harm to ratepayers – as between the company and ratepayers – the company should be held responsible, not the ratepayers who had no control over the situation.

FPL has provided the Commission with a novel theory as to how to determine replacement fuel costs -- a theory which FPL admits the Commission has never utilized. (Tr. 151-153, 247). In contrast, the Commission previously has used the replacement fuel cost methodology OPC and the intervenors propose. (Tr. 153, 248). The Commission used this methodology as recently as 2009 in Order No. PSC-09-0024-FOF-EI[3] and should use it in this case as well.

FPL's theory of replacement fuel costs has two components. First, FPL argues that because the transmission system returned to "normal" after eight hours[4], the eight-hour period should be used to measure the duration of the outage. Second, FPL contends that rather than using the avoided nuclear fuel cost to determine replacement power costs, the Commission should use system average cost. Both of these premises should be rejected as discussed below. As Dr. Dismukes testified, FPL's novel proposal is simply "a transfer of wealth from ratepayers to the Company and its shareholders." (Tr. 305).

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[3] *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*, Docket No. 080001-EI.

[4] As an alternative, FPL suggests that 48 hours should be used because Mr. Stall testified that that is the average time that it takes a nuclear unit to come back on line after it has been tripped off. (Tr. 139, 431-432). Again, this does not account for the entire time the nuclear units were off line.

<u>Outage Duration</u>

FPL's position that eight hours should be used to measure the outage duration should be rejected. This theory is based on Mr. Yupp's claim that after eight hours, the FPL system had "recovered" from the FPL transmission outage. (Tr. 454). Mr. Yupp testified that "recovered" means that the FPL system was being operated on an economic dispatch basis. (Tr. 454). However, at this time, the nuclear units were <u>not</u> included in the dispatch stack because they were offline. Mr. Yupp confirmed this when he testified that "economic dispatch" means that FPL dispatches its system with the units that are <u>available to run</u>. (Tr. 456). Clearly, the nuclear units were not available to run after eight hours and in fact were off line for much longer. While the system may have "recovered," the nuclear units did not.

Had the nuclear units been on line at the eight-hour mark, they no doubt would have been at the top of the dispatch stack. As Mr. Stall recognized, "... these plants [nuclear plants] are a low-cost source of safe, reliability [sic] generation for our customers." (Exhibit No. 32, Stall deposition at 31). Because the nuclear plants were offline, FPL had to use more expensive power.

To further attempt to bolster its eight-hour outage duration theory, FPL argued that the vast majority of the nuclear outage time was due, not to the transmission outage an FPL employee caused, but to issues unique to FPL's nuclear plants. In this sleight of hand argument, FPL attempts to entirely divorce the event occurring <u>on its own system</u> caused by <u>its own employee</u> and isolate just its nuclear activities. The Commission should reject this attempt.[5] This case involves a simple causation issue. But for the transmission outage, the nuclear units would not have tripped off line on February 26, 2008. (Tr. 417).

As FPL's Mr. Stall testified:

> [Counsel for FIPUG]: Q. ... And I really just have one question, and that is that if the Flagami Transmission Event had not occurred on February 26th, 2008, the Turkey Point units would not have gone down at that time and you would not have engaged in any of the activities that you have told us about these [past] two days, is that correct?
>
> [Mr. Stall]: A. That's correct.

(Tr. 416-417). The replacement fuel costs in this case should be treated in the same way they were treated in Order No. PSC-09-0024-FOF-EI.

Replacement Fuel

Second, rather than using the cost of nuclear fuel that FPL was required to replace due to the transmission outage its employee caused, FPL seeks to utilize system average fuel costs. FPL's position does not base replacement fuel costs on the true cost of replacement power – the nuclear power that was not available and that FPL had to either replace with wholesale power or with more expensive power from its own generating units. That is, due to the outage, FPL had to increase its own generation and purchase power from the wholesale market. (Tr. 314). FPL's use of an adjusted system average cost reduces the credit due to ratepayers since system average cost is much higher than the average fuel cost for nuclear power. (Tr. 312-313).

[5] The record also indicates that much of the nuclear work took an extended period of time due to knowledge gaps and insufficient guidance from FPL (*See*, *i.e*, p. 413 of Exhibit No. 31. Exhibit No. 31 contains FPL's Root Cause Analysis) and other problems that were the fault of FPL. As to the rod replacement that FPL argues it would have had to do at the next outage, the time added to this unplanned outage is simply speculation. In addition, FPL's reliance on Order No. 23232 is misplaced. In that case, the unplanned outage occurred concurrently with a previously scheduled planned outage. That is not the case here.

FPL admitted that the megawatt hour costs for Turkey Point Units 3 and 4 during the outage period were approximately $4.44 per megawatt hour. (Tr. 150). This $4.44 per megawatt hour figure stands in stark contrast to the $51.32 per megawatt hour system average cost, (Tr. 150), which FPL seeks to use to calculate replacement power costs. However, it is $4.44 – the cost of nuclear power that had to be replaced – that is the accurate measure of the outage.

Disincentive

Finally, FPL claimed that failure to accept its proposal would lead to a disincentive for utilities to invest in nuclear power in the future. Dr. Dismukes debunked this claim:

> Having ratepayers subsidize FPL's replacement costs would have little to no effect on any decision to invest in new nuclear, solar, wind, and energy efficiency resources given other issues that are (1) beyond the scope of this proceeding and (2) overwhelmingly more significant more significant than the net RPC credit due to ratepayers from the February 2008 outages.

(Tr. 305-306). Further, when FPL's expert on this issue, Dr. Avera, was questioned, he admitted that he would not advise FPL not to build a nuclear plant if FPL's position were rejected, (Tr. 229), or to operate its nuclear plants differently. (Tr. 230). FPL's Mr. Yupp also testified that he had no knowledge that FPL would operate it nuclear plants in a different manner if FPL's position in this case was rejected. (Tr. 141-142).

Dr. Avera further recognized the current incentives in Florida law to encourage nuclear generation. For example, section 366.93(2), Florida Statutes, permits utilities engaged in the development of nuclear power projects to recover through an annual recovery clause nuclear preconstruction costs. Section 366.93(6) permits the recovery of preconstruction and construction costs even if the project is cancelled. (Tr. 231-232). These certainly create incentives for the development of nuclear power.

In addition, FPL argued that rejection of FPL's proposal would result in assigning more risk to shareholders and/or potential FPL investors. Exhibit Nos. 36-38 demonstrate that this is not the case. In all earnings information and information to shareholders, FPL is careful to make it clear that the Commission has the authority to make disallowances.

Dr. Avera's comments also fail to recognize that the Turkey Point nuclear units have been in rate base and paid for by ratepayers for over thirty years. FPL has recovered the capital and O&M costs for those units over this period time and FPL has earned a return on the units. (Tr. 449). Ratepayers expect the units to operate efficiently and to provide fuel savings. (Tr. 450). A replacement credit of $16 million relative to an over $8 billion nuclear investment is a very small amount, (Tr. 349), making FPL's disincentive argument highly suspect. As Dr. Dismukes testified:

> In my opinion and my experience, I have never heard replacement cost issues come up as an issue associated with making generation planning decisions, particularly with regards to nuclear power plants.

(Tr. 349).

ISSUE 2: What is the appropriate method to credit customers for the replacement power costs determined pursuant to Issue 1?

FIPUG: *A one-time credit should be issued immediately to ratepayers. No charges for administering the refund should be assessed to customers.*

DISCUSSION

The transmission event that was the cause of the trip of the nuclear units and the resultant increase in fuel expense to ratepayers is FPL's responsibility. Therefore, customers should receive their refund as soon as possible. This is especially the case since the event at issue occurred in February 2008.

If ratepayers must wait until the next fuel adjustment proceeding, they will not see the refund for almost an entire year. As FPL witness Keith recognized, if the Commission directs FPL to make a one-time refund, customers will receive the refund more quickly than if the amount is included in next year's fuel adjustment charges. (Tr. 297).

Further, ratepayers should not be charged by FPL to implement the refund. The event causing this incident, as discussed above, was the result of the actions of an FPL employee – not the ratepayers. Thus, any expense that FPL may incur in returning the ratepayers' own money to them should be borne by FPL. It would be unjust and unfair to charge ratepayers for receiving their own money back.

s/ Vicki Gordon Kaufman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing The Florida Industrial Power Users Group's Post-Hearing Brief and Statement of Issues and Positions has been furnished by electronic mail and U.S. Mail this 19th day of April, 2010, to the following:

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