

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Nuclear Power Plant
Cost Recovery Clause

Docket No. 110009-EI

Filed: July 26, 2011

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

Pursuant to instructions from the Prehearing Officer, the Florida Industrial Power Users Group (FIPUG), files this brief regarding issues for inclusion in this docket upon which the parties are unable to reach agreement. FIPUG submits that its proposed two issues for each utility, the only issues which FIPUG has raised in the proceeding (Issues 4, 5, 21, 22), are relevant, disputed and important for the Commission's consideration in this docket. FIPUG's two proposed issues relate to the cost and timing of the proposed nuclear projects, and whether the costs and timing estimates are reasonable. These issues go to the very core of the Commission's consideration of the utilities' nuclear projects. The utilities' objections to disclosing the total costs and in-service dates of these projects, as well as whether such costs and timing are reasonable, is puzzling at best. Further, these issues affect FIPUG members' substantial interests, as FIPUG members are being asked to pay for the proposed nuclear projects.

The proposed expenditures at issue in this case, when coupled with the many millions of dollars already spent, as well as the uncertainty of when the nuclear projects will come on line and at what ultimate cost, should be separately articulated and considered. Florida Power & Light Company (FPL) and Progress Energy Florida, Inc. (PEF), two Florida-based investor owned utility companies, have each made the decision to pursue their own nuclear power projects. These two utility companies combined serve the vast majority of all electric customers

in the state, including many FIPUG members. Their respective customers deserve to know (and challenge), the amount they are being asked to expend on such projects, when they will receive energy from such projects, and whether the monies to be spent and the projected in-service dates of these projects are reasonable.

Such transparency is important to this process, despite FPL's and PEF's vociferous objections. The Commission might ask itself why FPL and PEF would object to providing such fundamental information in a docket specifically held to consider nuclear projects.¹ FIPUG's questions are, in essence: what are the projects going to cost; when are they going to provide energy; and is the cost and timeline reasonable. Stated more formally in the Prehearing Statement, FIPUG's issues are:

Issue 4: What is the current total estimated all-inclusive cost (including AFUDC and sunk costs) of the proposed Turkey Point Units 6 & 7 nuclear project and is that cost reasonable?

Issue 5: What is the estimated planned commercial operation date of the planned Turkey Point Units 6 & 7 nuclear facility and is that date reasonable?

Issue 21: What is the total estimated all-inclusive cost (including AFUDC and sunk costs) of the proposed Levy Units 1 & 2 nuclear project?

Issue 22: What is the estimated planned commercial operation date of the planned Levy Units 1 & 2 nuclear facility?

This proceeding is conducted pursuant to sections 120.569 and 120.57, Florida Statutes, as the Commission is taking action that will affect the substantial interest of FIPUG members. These provisions of law explicitly permit parties, such as FIPUG, to identify and litigate disputed issues of material fact. *See, National States Insurance Company, Inc. v. Office of Insurance Regulation*, 988 So. 2d 107, 110 (Fla. 1st DCA 2008); *Miller v. Florida Real Estate Commission*,

¹ FIPUG postulates that the utilities may argue that the Commission may only consider costs on a piecemeal, year-by-year basis. While that may be how the issues are parsed, a review of total costs is also important given the magnitude of the projects. The utilities' presumed approach is akin to "hide the ball" – it permits the utilities to disguise the total amount actually spent and forecasted to be spent on the nuclear projects.

902 So. 2d 325, 327 (Fla. 5th DCA 2005). FIPUG has identified two relevant issues of material fact that are in dispute. FIPUG contends that neither the estimated costs nor the estimated commercial in-service dates are reasonable. FIPUG further contends that additional time and money, beyond that currently projected, will be needed for these projects. PEF and FPL disagree with FIPUG on these factual matters. FIPUG's factual contentions, to be developed on cross-examination, demonstrate that FIPUG's two issues should be included in this proceeding.

FIPUG understands that FPL and PEF object to these issues because they say there is no provision in law requiring the Commission to consider or analyze such questions. FIPUG finds that view unfocused at best. To claim that the Commission has no obligation or authority to look at the myriad nuclear projects and determine their entire cost to ratepayers as well as when ratepayers can expect them to be in operation flies in the face of this Commission's fundamental responsibilities.

One of the main aspects of the Commission's jurisdiction is to "prescribe fair and reasonable rates and charges."² Consumers rely on the Commission to carry out that role. Though lawyers may parse and analyze the many issues in this case, the fundamental issues ratepayers are concerned with are: "how much will the nuclear plants cost," "when will the plants provide power to meet my needs," and "is pursuit of these projects reasonable?" Contrary to the utilities' claims that there is no provision in the law for the Commission to consider such questions, it is FIPUG's position that such authority flows from the Commission's basic authority to protect ratepayers. Furthermore, this proceeding is one designed to protect the substantial interests of FIPUG members. Specifically, the nuclear cost recovery rule, 25-6.0423(5)(c)1c, F.A.C., entitled "Projected Costs for Subsequent Years" requires that the

² Section 366.05(1), Florida Statutes.

Commission review and approve utility cost projections. Furthermore, Rule 25-6.0423(8) F.A.C. states, “A utility shall, contemporaneously with the filings required by paragraph 5(C) above, file a detailed statement of project costs sufficient to support a Commission determination of prudence, including, but not limited to the information required in paragraphs (8)(b)-(8)(e), below.” What could be more fundamental to that task before the Commission than questions of timing and cost of billion dollar projects? In the interest of transparency to the customers footing the bill, and compliance with Florida law governing administrative proceedings with disputed issues of fact, answers to these simple issues should be required and FIPUG’s two issues should remain.

Additionally, the utilities may argue these issues have been addressed previously in the need determinations for the respective nuclear projects. That argument might have merit if the utilities were held to the costs and timing represented in those need determination cases. However, project costs have increased dramatically and the forecast in-service dates have been extended. Those material changes, combined with the Commission’s express authority to conduct an annual nuclear cost recovery hearing to consider and, if satisfied, approve the costs associated with nuclear projects, guts any argument that the need determinations were exclusively the time and place for the Commission to consider the costs and timing of the new nuclear projects.

OPC Issues

FPL has challenged the inclusion of issues OPC has raised related to its management of the Extended Power Uprate (EPU) project.³ FPL claims that these issues of management and cost-effectiveness should not be considered in this docket. FIPUG disagrees – whether FPL has appropriately chosen the correct way to move forward with a project and whether it has

³ Issues 10A, 10B, 16-18.

performed the correct analysis to determine cost-effectiveness -- are issues the Commission must consider. FIPUG supports inclusion of these issues.

Regarding the PEF issues which are in dispute, PEF takes issue with OPC's issues⁴ regarding costs for activities unrelated to pursuit of the Combined Operation License (COL) for Levy Units 1 & 2. Again, this issue goes to costs and timing of the nuclear units and should be included in this docket.

WHEREFORE, FIPUG requests that the Commission include in this docket, consistent with Florida law governing administrative hearings, FIPUG's issues (4, 5, 21 and 22) regarding the total costs and timing of FPL's and PEF's proposed nuclear projects, and whether those costs and time frames are reasonable. Additionally, FIPUG supports the inclusion of issues 10A, 10B, 16, 17, 18, 26, 30 in the Prehearing Order.

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⁴ Issues 26, 30.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of The Florida Industrial Power Users Group's Brief On Inclusion Of Issues has been furnished by Electronic Mail and United States Mail this 26th day of July, 2011, to the following:

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