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Subject: Docket No. 120015-EI
Attachments: FIPUG Post-Hearing Brief 9.21.12.pdf

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

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b. This filing is made in Docket No. 120015-EI.

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

d. The total pages in the document are 75 pages.

e. The attached document is Florida Industrial Power Users Group's Post-Hearing Statement of Issues and Positions and Post-Hearing Brief.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 120015-EI

FILED: September 21, 2012

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

The Florida Industrial Power Users Group (FIPUG)[1], by and through its undersigned counsel, pursuant to Order No. PSC-PSC-12-0143-PCO-EI, as modified by Order No. PSC-12-0439-PCO-EI, files its Post-Hearing Statement of Issues and Positions and Post-Hearing Brief.[2]

INTRODUCTION

As a preliminary matter, FIPUG notes that it and other parties are in a unique position in this case. On August 17, 2012, FPL, FIPUG, FEA and SFHHA filed a Settlement Agreement in this docket. The Commission decided to proceed to hearing and to require briefs on the litigated issues in this case (which are resolved by the Settlement Agreement) as scheduled before the consideration of the Settlement Agreement.[3] Given the procedural posture and current timeline, FIPUG wants to make it clear that it supports approval of the Settlement Agreement as filed, notwithstanding the arguments made and positions advanced herein supporting FIPUG's litigated position. The Settlement Agreement is fair to FPL ratepayers because, among other things, it provides rate stability for four years as well as appropriate incentives and signals to encourage the maintenance and development of jobs and economic growth in Florida.

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[1] FIPUG was granted intervenor status in Order No. PSC-12-0135-PCO-EI.

[2] Throughout this brief, Florida Power & Light Company is referred to as FPL or the Company. The Office of Public Counsel is referred to as Public Counsel or OPC. The Florida Retail Federation is referred to as FRF. The South Florida Hospital and Healthcare Association is referred to as SFHHA. The Federal Executive Agencies are called FEA. References to the transcript are designated Tr., followed by the page number.

[3] The Commission is scheduled to consider the Settlement Agreement on September 27 and 28.

BASIC POSITION

Nonfirm Credits Should Be Increased

It was the unanimous opinion of all witnesses asked at hearing that Florida is experiencing difficult economic times. It is not in dispute that economic development and job growth are critical to Florida's future. To that end, the Commission should work to ensure that FPL's rates and programs foster an environment where businesses can flourish and new jobs can be created.

While FPL has certain tariff options which may be intended to do that, these programs have not kept pace with the times – in fact, the credits they provide have not been adjusted for many years. The rates fail to recognize the value that Commercial/Industrial Load Control (CILC) and Customer Demand Response (CDR) customers bring to Florida. These customers (collectively, nonfirm customers) are generally large customers, such as manufacturers and military bases. In this time of economic recovery, it is very important that the right signals are sent to entities that have large employee bases in Florida and the potential to create more jobs in the state.

Nonfirm customers provide a valuable service to FPL (as well as to other investor-owned utilities). In times of a capacity shortage, nonfirm customers may be instantaneously interrupted so that the lights of firm customers remain on. This service is provided not only to FPL, but to other utilities in the state that need capacity in times of emergency. Interruptible customers help FPL avoid demand for future plant because they are available to be shut off if capacity is needed. Thus, these customers receive an inferior level of electric service, interruptible service, but are not presently properly compensated for the operating flexibility this service provides FPL.

Despite the uncontradicted value of nonfirm service and the many current and potential jobs these customers bring to the state, the credits that nonfirm customers receive for their provision of service have not increased since *2000*. This stands in sharp contrast to the rise in the prices of generation equipment FPL President Silagy discussed, the rise in the consumer price index, and the rise in the cost of most other goods and services. FIPUG urges the Commission to carefully evaluate the substantive evidence on the appropriate value of nonfirm credits, *which has not been contradicted by any party in this case*, and raise the nonfirm credits to an appropriate level.

Return on Equity

This Commission recently awarded a return on equity (ROE) of 10.25% to Gulf Power Company, a company with a riskier capital structure (less equity) than FPL. Additionally, FPL has not been harmed by its currently authorized 10.0% ROE. To the contrary, FPL has prospered while interest rates have fallen further from the levels that justified that 10.0% ROE decision. The downward move in interest rates suggests that FPL's ROE be lowered from its current 10.0% figure.

As to FPL's request for an ROE of 11.50%, it is unreasonable and should be rejected. Its request for an 11.25% plus a .25% "adder" for good service should be dismissed out of hand. FPL's bloated ROE request is outside the bounds of reasonableness in light of today's financial conditions and well surpasses the ROEs this Commission has recently awarded to other utilities. Further, FPL's ROE should not be increased for "good" service. As a monopoly provider, it is part of FPL's regulatory compact to provide the most efficient and economical service since it has no market competition. FPL should not be "rewarded" for doing what it is required to do. FPL's ROE should be reduced from its current authorized midpoint of 10.0% or, alternatively, not be changed.

Capital Structure

The 50/50 capital structure OPC witness O'Donnell recommends should be adopted. The equity heavy structure FPL has requested is unreasonable and unjustified. Because common equity costs twice as much as debt, the capital structure FPL proposes is unreasonably expensive and will simply increase what ratepayers will pay for the utility to earn whatever ROE the Commission allows. Further evidence of the unreasonableness of the capital structure that FPL has requested is the fact that its parent company, NextEra Energy, Inc., has a capital structure with a much lower equity component than FPL proposes for itself.

Cost of Service

Cost of service issues are very important in a rate case. They determine how a revenue increase, if any, is distributed among the classes. Any increase approved must be distributed fairly and not violate the principles of gradualism this Commission has used in past rate case decisions. Important cost of service issues are summarized below.

Class Revenue Allocation

1. FPL's proposed class revenue allocation should be rejected because it would allow rates for one class to decrease while increasing the rates for other classes up to 46%. This allocation fails to recognize the principle of gradualism. If there is a base rate increase authorized in this proceeding, the principle of gradualism should be applied, which this Commission has interpreted to mean that no class should receive an increase greater than 1.5 times the system average percentage increase and no class should receive a decrease. Only base rates should be considered when this principle is applied, not clause recovery items, because clause recovery changes every year and is not the subject of this base rate case.

2. The Cape Canaveral step increase, if any, should be allocated in the same way as the main base rate increase, if any, not on an energy basis as FPL proposes.

Cost of Service Study

FPL has made the following errors in its Cost of Service Study which the Commission should correct:

1. FPL has incorrectly quantified the incentive payments associated with the CILC classes. This has the effect of understating the earned returns for those classes.

2. The CILC incentives and the CDR credits, as well as curtailable load credits, should not be allocated to the nonfirm loads receiving the credits. Allocating the credits to those loads violates cost causation principles and FPL's own planning practices. Nonfirm credits should be allocated only to firm loads who benefit from interruptible service.

3. Transmission plant-related costs should be classified and allocated entirely on a demand basis, not on the basis of the 12CP and 1/13th AD method. Because transmission is sized to meet peak demand, serving loads throughout the year is merely a by-product of serving the peak demand. Thus, allocation entirely on demand is correct.

4. FPL's classification of production operation and maintenance (O&M) expenses between demand and energy should be allocated according to the NARUC Electric Utility Cost Allocation Manual. This results in the reclassification of $99 million of other production O&M expense from energy to demand.

Rate Design

Several changes are also required to FPL's proposed rate design:

1. The proposed GSLD/CILC rate designs must be rejected because they are not cost based and because the demand and non-fuel energy charges are not aligned with the

corresponding costs. This results in high load factor customers receiving increases higher than the class averages.

2. The same is true of the proposed Cape Canaveral step increase where FPL proposes to collect the entire increase through the energy charge.

3. The CILC rate should be reopened. This is essentially the same program as the CDR Rider, which is not closed. CDR Rider customers currently receive a higher credit than CILC customers; therefore, the CILC program must be cost-effective. Further, the credits for both programs should be increased because FPL's own analysis demonstrates that such programs remain cost-effective at a credit amount over $12/kW, and it has been years since the credits have been increased.

ISSUES AND POSITIONS

LEGAL ISSUES

ISSUE 1: Absent a stipulation of parties in this case, does the Commission possess legal authority to grant FPL's proposal to continue utilizing the storm cost recovery mechanism that was one of the terms of the settlement agreement that the Commission approved in Order No. PSC-11-0089-S-EI?

FIPUG: *No. The storm recovery mechanism FPL proposes was part of a comprehensive settlement of FPL's last rate case. It has no precedential value and is not appropriate for use in a fully-litigated rate case.*

DISCUSSION OF ISSUE 1

In this proceeding, FPL proposes to use the storm recovery mechanism contained in the parties' settlement agreement in FPL's last rate case to recover storm expenses in this fully-litigated matter. Such proposal should be rejected for several reasons.

First, the proposal FPL proffers was lifted from a comprehensive settlement agreement in Docket Nos. 080677-EI and 090130-EI. The Commission approved the settlement in Order No.

PSC-11-0089-S-EI. As in the settlement of any case, this settlement involved many gives and takes and compromises on all sides. To that end, the settlement agreement specifically provides:

> No party will assert in any proceeding before the Commission that this Agreement or any of the terms in the Agreement shall have any precedential value.[4]

Thus, this mechanism may not be used in this matter absent agreement.

Second, this Commission, as well as pertinent statutes, provides numerous mechanisms for the recovery of appropriate storm charges. For example, section 366.8260, Florida Statutes, permits FPL to enter into storm recovery financing agreements approved by this Commission. And in fact, FPL's request to use this mechanism was approved by the Commission in Order No. PSC-06-0464-FOF-EI, Docket No. 060038-EI.

In other cases, the Commission has approved surcharges to recover reasonable storm restoration costs. *See, i.e.*, Order No. PSC-05-0250-PAA-EI, Docket No. 050093-EI; Order No. PSC-06-0601-S-EI, Docket No. 060154-EI.

Thus, FPL's request to use an isolated stipulated provision from a comprehensive settlement should be rejected. If and when FPL requires additional money to engage in storm restoration, it may petition the Commission through one of the approved mechanisms.

<u>ISSUE 2</u>: Does the Commission have the legal authority to approve FPL's requested base rate step increase for the Canaveral Modernization Project (CMP) if the CMP does not go into service until after the 2013 test year?

<u>FIPUG</u>: *No. The purpose of a test year is to take a snap shot in time for purposes of a utility's revenues and expenses. To include in expenses a plant that will not go in service during the test year skews the analysis of revenues and expenses in the utility's favor.*

[4] Order No. PSC-11-0089-S-EI at 22.

DISCUSSION OF ISSUE 2

The Florida Supreme Court has upheld the Commission's authority to use a projected test year for the purpose of rate setting. *See, Southern Bell Telephone and Telegraph Company v. Florida Public Service Commission*, 443 So.2d 92 (Fla. 1983). The use of a projected test year allows the Commission and parties to freeze a period in time and look at both revenues and expenses of the company requesting the increase.

The projected test year proposed by FPL and approved by the Commission is "the projected twelve-month period ending December 31, 2013....[5] To the extent the CMP is placed into service outside of the test year – that is, beyond December 2013 – costs of this project may not be included in rate base.

ISSUE 3: Does Commission Rule 25-6.1351, "Cost Allocation and Affiliate Transactions," require FPL to implement and apply the criteria (greater of market price or fully allocated cost for charges to affiliates, lesser of market price or fully allocated cost for charges paid to affiliates) and related requirements of the rule to all affiliate transactions?

FIPUG: *Yes. These are transactions between corporate affiliates and are not arm's length business transactions. Thus, the rule attempts to ensure that that the prices charged between the related companies are market based. FIPUG adopts the position and argument of OPC on this issue. FIPUG adopts OPC's argument on this issue.*

ISSUE 4: With respect to amounts that FPL charges or pays to affiliates, who has the burden of proof in this proceeding to demonstrate the amounts comply with Commission Rule 25-6.1351 and should be allowed in the cost of service borne by customers?

FIPUG: *A utility seeking an increase in rates always has the burden of proof to prove that its affiliate transactions are appropriate and in compliance with the affiliate transaction rule.*

[5] Correspondence from Chairman Brise to Mr. Olivera, dated February 7, 2012.

DISCUSSION OF ISSUES 3 AND 4

The purpose of the affiliate cost allocation rule, rule 25-6.1351, Florida Administrative Code, is to:

> establish cost allocation requirements to ensure proper accounting for affiliate transactions and utility nonregulated activities so that these transactions and activities are not subsidized by utility ratepayers.

This rule requires that FPL charge its affiliates the higher of fully allocated cost or market price. It further requires that affiliates must charge FPL the lower of fully allocated cost or market price for non-tariffed products and services. In Order No. PSC-01-1374-PAA-WS, the Commission noted that "related party transactions require closer scrutiny" due to the nature of the relationship between the parties.

FPL has the burden of proof to establish that its charges to and payments from affiliates comply with the Commission's affiliate transaction rule and should be funded by ratepayers. In *Florida Power Corp. v. Cresse*, 413 So.2d 1187, 1191 (Fla. 1982), the Florida Supreme Court squarely placed the burden of proof on the utility seeking a rate change:

> The requirement that utilities demonstrate the reasonableness of their fuel costs is not improper or unusual. "Burden of proof in a commission proceeding is always on a utility seeking a rate change, and upon other parties seeking to change established rates." WELCH, CASES AND TEXT ON PUBLIC UTILITY REGULATION, 638 (Revised Edition 1968).

Thus, FPL must implement the requirements of the affiliate transaction rule and has the burden to demonstrate that it has done so.

Finally, FPL allows a number of its affiliates to use the FPL brand name without charge. FPL spends considerable monies on advertising its name, creating an inference of value attributable to the FPL name. Just because FPL did not present evidence of the value of FPL's name does not mean it has met its burden of proof. It would be illogical to suggest that FPL's affiliates should benefit by FPL simply neglecting to present evidence about the value of the FPL name. Such gamesmanship should not be rewarded and an appropriate adjustment should be ordered, something this Commission has the ability and discretion to undertake.

ISSUE 5: Does the Commission possess the power to grant a 25 basis point performance incentive to FPL?

FIPUG: *The Commission has noted in the past that it has such authority; however, it does not appear that the Legislature has given the Commission the authority to award an ROE adder. Further, even if the Commission has such authority, the facts in this case do not warrant such an incentive, valued at over $40 million, and the mechanism proposed by FPL to implement such a mechanism is inappropriate.*

ISSUE 54: Should FPL's request for a 25 basis point performance adder to the authorized return on equity and proposed annual review mechanism be approved?

FIPUG: *No. FPL is a monopoly. Thus, its customers have no choice of providers. In return for its monopoly status, FPL is bound by state statute to offer the most efficient and cost-effective service. It should not be rewarded for taking action which the statute requires.*

DISCUSSION OF ISSUES 5 AND 54

Commission Authority

FPL seeks to have an additional $40 million per year added to the ratepayers' collective bills as a reward for good performance. This request is termed the "ROE adder" and will be referred to as such in FIPUG's brief opposing FPL's request. The Commission should deny this request on numerous grounds.

As an administrative agency and creature of the Legislature, the Commission has only those powers which the Legislature has delegated to it. *City of Cape Coral v. GAC Utilities, Inc. of Florida,* 281 So.2d 493, 496 (Fla. 1973) ("the Commission's powers, duties and authority are those and only those that are conferred expressly or impliedly by statute of the State. . . . Any reasonable doubt as to the lawful existence of a particular power that is being exercised by the Commission must be resolved against the exercise thereof." (Citations omitted).

Further, it is the Legislature that prescribes policy and the Commission who implements it. FPL witness Reed admitted that FPL was asking the Commission to make a policy decision in this case regarding the ROE adder. (Tr. 255). However, a reading of the Commission's authorizing statute does not reveal that the Legislature has granted the Commission such authority. Nowhere in Chapter 366, Florida Statutes, is the Commission given authority to award an ROE adder as a "reward" to a monopoly utility. Policy decisions of this nature are better left to the legislative arena.

Rulemaking requirements are also instructive as well. In 1999, the Legislature amended section 120.52(8), Florida Statutes, which contains the definition of rule, to clarify its policy in light of a recent court decision.[6] In its amendment, the Legislature instructed agencies that the powers and functions of an agency "extend no further than implementing or interpreting specific powers and duties conferred by the same statute." Similarly, an agency may not go beyond its statutory authority to promulgate and enforce policy without clear direction from the Legislature.[7]

The issue of whether to implement an ROE rider is better addressed by the Legislature, either by expressly providing the Commission with rulemaking authority to implement an ROE adder or by creating a legislative policy, a statute, that embraces such a policy. As FPL's own expert witness, Dr. Avera, testified, other states, like Virginia, have authorized an ROE adder legislatively to promote certain polices, like renewable energy. (Tr. 1641). Like Virginia, the

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[6] *St. Johns River Water Management District v. Consolidate-Tomaka Land Co.*, 717 So.2d 72 (Fla. 1st DCA 1998).
[7] Agencies are reversed when they go beyond their authority. *See, Smith v. Florida Department of Corrections*, 920 So.2d 638 (Fla. 1st DCA 2005) (inmate copying rule invalid where it was not supported by specific grant of legislative authority).

Florida Legislature should grapple with the specific policy to incent with an ROE adder, if they find an adder an appropriate mechanism.

Even accepting FPL's contentions and facts in support of the ROE adder for argument's sake, it is unclear whether the policy to be advanced is efficient utility operations/management or provision of the lowest cost residential bill in the state. Rather than attempting to resolve that policy-laden question in this rate case, it is more appropriate for the Legislature to consider the ROE adder issue and provide express direction.

Rulemaking

Even assuming that the Commission has authority to award an ROE adder, before such an adder could be considered, it would have to be adopted as a rule. Section 120.52(16), Florida Statutes, defines a rule as "each agency statement of general applicability that implements, interprets, or prescribes law or policy. . . ." Section 120.54(1)(a), Florida Statutes, emphasis supplied, provides that:

> *Rulemaking is not a matter of agency discretion.* Each agency statement defined as a rule by s. 120.52 shall be adopted by the rulemaking procedure provided by this section as soon as feasible and practicable.

Thus, pursuant to the Legislature's direction, an agency's statement of general applicability must be adopted pursuant to rule, if it is within the agency's authority to do so.[8] Assuming *arguendo* that the Commission has the legislative authority to approve an ROE adder, in this case, the Commission has been asked to approve FPL's request, in part, to "incent all Florida utilities to go beyond this target to achieve superior performance through an incentive mechanism…." (Tr. 221). Mr. Reed further testified that "broadly establishing them [incentives] is a good policy."

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[8] *See*, section 120.52(8), Florida Statutes ("Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.").

(Tr. 255). FPL further states that it proposes the adder "to create an incentive for all utilities regulated by the FPSC to achieve superior customer value...." (Tr. 1904). FPL also notes that it is "suggesting that this type of incentive mechanism be considered for all Florida investor-owned utilities." (Tr. 228).

Therefore, FPL is suggesting the implementation of a policy of general applicability. This may be accomplished only through rulemaking, *if* the Commission has legislative authority to do so. *See*, section 120.54, Florida Statutes. The Commission, should it decide to pursue an ROE adder, should do so through the more appropriate vehicle of rulemaking. This would allow other utilities and other interested parties who may not have intervened in the FPL rate case to be heard and participate in the rulemaking process. Such a forum often produces new ideas or raises questions that are better handled in the context of rulemaking. Implementing a policy of general applicability in this rate case, the ROE adder, is not appropriate legally or as a matter of policy. The Commission has not engaged in rulemaking here and may not approve FPL's proposal.[9]

The Proposal

Putting aside the legal infirmities described above, FPL has failed to show entitlement to any such "adder." FPL seeks $41.6 million of additional revenue requirements due to the ROE adder. (Tr. 2860). FPL witness Reed characterizes this $41.6 million as "modest." (Tr. 221). Ratepayers would no doubt disagree. And interestingly, the Company admits that it is not requesting the adder so as to provide adequate and efficient service to its customers, (Tr. 231), nor does it need it to do so. (Tr. 2862). Rather, FPL wants to be "rewarded" for doing the job it is supposed to do. But, the adder does not measure management performance. (Tr. 3355).

[9] FPL's implementation proposal involves no workshops or any rulemaking. (Tr. 2191). As such, it is fundamentally at odds with the requirements of Chapter 120, Florida Statutes.

FPL is a protected monopoly. Its customers have no ability to take service from another utility, but rather *must* take such service from FPL. Thus, FPL is protected from competition and enjoys many advantages over competitive enterprises, including no competition, cost recovery clauses, and the ability to seek a change in rates when needed to earn a fair return. (Tr. 2862, 2864). FPL, like other monopolies, has a duty to provide superior performance in exchange for cost recovery plus an opportunity to earn a return or profit commensurate with profits earned from ventures with similar risks. (Tr. 2864).[10] FPL should use its best efforts to provide the best quality of service it can at the lowest prices. (Tr. 2880). In addition, FPL is already being fairly compensated for any results attributable to management. (Tr. 3354).

Oddly, FPL states that the "justification" for the adder is *not* the lowest bill, but rather "excellent reliability, excellent customer service, excellent cost containment, and O&M costs." (Tr. 2192). However, these items will *not* be examined to determine if the adder should be maintained; rather, FPL will present a report regarding the lowest customer bill. (Tr. 2193). There is a large disconnect between the initial alleged justification for the reward and its continuance.

FPL attempts to tout its low bills as justification for the reward. However, differences in rate levels are attributable to many factors other than management performance. For example, the costs of a utility to serve are influenced by factors such as development density, customer mix, and vintage of equipment. (Tr. 2863).

In FPL's case, FPL may have the lowest residential rates in the state due to the fact that it has many gas-fired power plants and gas prices are at an all-time low. FPL management has no influence over the low gas prices which produce its lower rates. (Tr. 3355). Nor did the

[10] Surprisingly, FPL President Silagy disagreed with former FPL President Olivera, Progress Energy President Dolan, and Gulf Power President Crosswhite that FPL had an obligation to provide safe and reliable service at the lowest possible cost. (Exh. No. 485; Tr. 417).

Company have any influence over the Commission's rejection of its proposal to build a coal-fired power plant resulting in FPL moving to more gas-fired plants. This was simply a result produced by the Commission oversight. (Tr. 3356). Surprisingly, while FPL witness Dewhurst appears to recognize that many matters that contribute to his view are beyond FPL's control, he testified that such matters *should* be considered when the Commission decides if an adder is appropriate:

> Q [Mr. Sundback] You wouldn't want the criteria on which the adder is evaluated, the opportunity to take advantage of the adder is evaluated, to be based on circumstances that are beyond the utility's control, would you?
>
> A [Mr. Dewhurst] No. I disagree with that. I believe the basis for the performance adder should be ultimately the total value delivery for customers. I believe that's the way free markets work. And as I say in my testimony, one of the values of this is it's a way of mimicking what free markets do. *Free markets reward outcomes regardless of how they are obtained.*

(Tr. 1973, emphasis supplied). It appears that FPL expects an additional 25 basis points to be added to its ROE regardless of whether it had anything to do with the benefits it touts.

Last, FPL witness Deason had occasion to consider the issue of a reward for corporate performance in a Tampa Electric Company rate case he sat on as a Commissioner.[11] In that case, the reward was denied and the Commission said: "we are reluctant, unless the conditions seem to be fairly extreme one way or the other to grant a reward or impose a penalty."[12] No extreme circumstances have been demonstrated in this case.

<u>Implementation</u>

If the Commission were to award FPL the adder it seeks, which FIPUG argues it should not, FPL proposes to submit a report on a yearly basis with a residential bill comparison. (Tr.

[11] *In Re: Application for rate increase by Tampa Electric Company*, Docket No. 920324-EI, Order No. PSC-93-0165-FOF-EI.
[12] *Id.* at 93.

2167, 3346). This adder would be included in FPL's rates so long as FPL maintains the lowest residential rates. (Tr. 2166-2167). FPL need do nothing regarding industrial or commercial rates to maintain the adder. (Tr. 2882).

Mr. Reed and Mr. Dewhurst have much testimony discussing the metrics and standards factoring into FPL's position that it deserves a reward. However, none of those metrics or standards has any applicability once the award is made nor will inquiry into them be permissible. (Tr. 2193-2194). As Mr. Reed explained:

> The company's position is that the decision to adopt the ROE adder should be consider [sic] by this Commission based upon a wide variety of metrics, and that includes the more than 20 metrics that I have in my direct testimony, as well as the customer service information that Ms. Santos puts forth in her evidence.
>
> The decision as to whether the ROE adder should be considered after it's implemented is based on a trigger, as the company has proposed, as to whether it is providing the lowest typical residential bill in the future.

(Tr. 260). Thus, the initial basis for the ROE adder is entirely divorced from the basis for its continuation. Certainly the lowest residential bill in the state is not an indication of excellence in the many metrics and standards witnesses Reed and Dewhurst described. For example, a utility could cut customer service representatives to save money and contribute to a low bill, but not provide excellent customer service. The proposed implementation process deprives the parties of the ability to determine if the award (if granted) should be continued from year to year.

Adopting the ROE adder at this time to impose an additional $40 million in base rates on consumers sends the wrong message to Florida's struggling businesses and families. The Florida economy continues to suffer, and many witnesses acknowledged that tough economic times still confront the state. With persistently high unemployment rates in Florida, many businesses are cutting jobs and/or not providing raises, and many residents are being forced to make hard budget decisions to keep their households functioning. Giving FPL an extra $40 million (or for that matter authorizing significant pay raises FPL put in place since its last rate case) is not warranted or in the public interest.

ISSUES 6 - 8: DROPPED

TEST PERIOD AND FORECASTING

ISSUE 9: Is FPL's projected test period of the 12 months ending December 31, 2013 appropriate?

FIPUG: *No position regarding the test year period so long as activities occurring outside the test period are not included in it. See FIPUG's position on Issue No. 2.*

ISSUE 10: Are FPL's forecasts of Customers, KWH, and KW by Rate Class and Revenue Class, for the 2013 projected test year appropriate? If not, what forecasts of Customers, KWH, and KW by Rate Class and Revenue Class should the Commission use in determining revenues and setting rates in this case?

FIPUG: *No. FPL has understated its test year revenues and sales due to the use of an outdated 20-year normalized weather forecast. Such forecast fails to recognize warming trends and the fact that in the past 10 years, FPL's cooling degree hours have increased.*

ISSUE 11: Are FPL's projected revenues from sales of electricity by rate class at present rates for the 2012 prior year and projected 2013 test year appropriate? If not, what are the appropriate projected amounts of revenues from sales of electricity for the 2012 prior year and projected 2013 test year?

FIPUG: *No. See Issue No. 10.*

ISSUE 12: What, if any, provisions should the Commission make in setting FPL's rates for the 2013 test year to address uncertainty related to projected billing determinants and revenues?

FIPUG: *The Commission should correct FPL's under projection of its sales and revenues in the test year. Further, the Commission should adopt the rate allocation method set forth in the testimony of witness Pollock.*

ISSUE 13: What are the appropriate inflation, customer growth, and other trend factors for use in forecasting the 2013 test year budget?

FIPUG: *FPL has understated customer growth, revenues and sales for the test year as well as inappropriate weather assumptions. The Commission should utilize appropriate data for these items.*

DISCUSSION OF ISSUES 10-13

The evidence demonstrates that FPL's application of a 20-year weather normalized forecast understates its sales and revenues. Lower forecasted sales mean lower revenues and a greater need for rate relief. The Commission should adjust FPL's forecast based on the best known information.

FPL witness Morley testified that she used weather-normalized FPL sales over a 20-year period in her projections. This normalized forecast is the basis for FPL's projected billing determinants. (Tr. 621). When FPL's weather normalized assumptions are compared to actual weather in FPL's service territory, it demonstrates that actual cooling degree hours are 1.64% greater than the weather-normalized value FPL used for its projections in this case. (Tr. 3131; Exh. No. 319).

During the past 10 years, weather conditions in FPL's service territory have been 1.64% hotter than during the 20-year period FPL used. Using a 10-year period in this rate case would have produced a higher level of sales and revenues than FPL assumed in its rate filing. These additional revenues would, all else being equal, have offset some of the alleged revenue deficiency in this case. (Tr. 3131-3132). However, FPL's use of a 20-year average implies lower sales and revenues[13] as witness Morley admitted. (Tr. 3460). To ensure the most accurate forecast of revenue and sales, the Commission should use the 10-year period and adjust FPL's forecast accordingly.

Further, FPL failed to take into account the most current population data from the Office of Economic and Data Research of the Florida Legislature (EDR) which shows an increase in population growth in Florida. Population growth rose about one-third from the growth forecast

[13] Amazingly, Dr. Morley contended that even if the evidence showed (as it does in this case) that load in the test year would be greater than FPL's normalized weather projection, FPL should not use that information. (Tr. 3462).

upon which FPL relied. (Tr. 661). Again, population growth means increased sales and revenues. FPL's forecast of sales revenue and population growth are understated and should be adjusted.

ISSUE 14: Is FPL's proposed separation of costs and revenues between the wholesale and retail jurisdictions appropriate?

FIPUG: *Category 2 Stipulation. FIPUG takes no position on the stipulation.*

QUALITY OF SERVICE

ISSUE 15: Is the quality and reliability of electric service provided by FPL adequate?

FIPUG: *No position.*

RATE BASE

ISSUE 16: Should the revenue requirement associated with the West County Energy Center Unit 3 currently collected through the Capacity Cost Recovery Clause be included in base rates?

FIPUG: *Category 2 stipulation. FIPUG takes no position on the stipulation.*

ISSUE 17: Should FPL's adjustment to extend the amortization period of the new SAP general ledger system from 5 years to 20 years be approved?

FIPUG: *Agree with Public Counsel. FIPUG adopts Public Counsel's argument on this issue.*

ISSUE 18: Has FPL made the appropriate adjustments to remove all non-utility activities from Plant in Service, Accumulated Depreciation and Working Capital for the 2013 projected test year?

FIPUG: *Agree with Public Counsel. FIPUG adopts Public Counsel's argument on this issue.*

ISSUE 19: Whether FPL's request for a base rate increase is needed to construct the poles, wires, and transformers needed to serve an anticipated 100,000 new customer accounts from the end of 2010 through the end of 2013?

FIPUG: *No position.*

ISSUE 20: Are FPL's overhead costs (salaries, materials and supplies, benefits, etc.) related to in-house capital improvement projects properly recorded in rate base?

FIPUG: *Agree with Public Counsel. FIPUG adopts Public Counsel's argument on this issue.*

ISSUE 21: Has FPL properly reduced rate base by contributions in aid of construction related to underground placement of distribution and transmission facilities?

FIPUG: *Agree with Public Counsel. FIPUG adopts Public Counsel's argument on this issue.*

ISSUE 22: Is FPL's requested level of Plant in Service in the amount of $30,424,227,000 ($31,078,941,000 system) for the 2013 projected test year appropriate? (Fallout Issue)

FIPUG: *Agree with Public Counsel. FIPUG adopts Public Counsel's argument on this issue.*

ISSUE 23: Should capital recovery schedules be approved for Cutler Units 5 and 6, Sanford Unit 3, and Port Everglades? If so, what are the appropriate capital recovery schedules?

FIPUG: *Category 2 Stipulation. FIPUG takes no position on the stipulation.*

ISSUE 24: Is FPL's requested level of Accumulated Depreciation in the amount of $11,901,711,000 ($12,970,028,000 system) for the 2013 projected test year appropriate? (Fallout Issue)

FIPUG: *Agree with Public Counsel. FIPUG adopts Public Counsel's argument on this issue.*

ISSUE 25: For purposes of this rate case, should the Commission exercise its authority under Rule 25-6.0141(1)(g) to exclude a proportion of costs incurred by FPL to finance projects during construction from Construction Work in Progress ("CWIP") to be recovered upfront in rate base, and instead treat that proportion of costs subject to an allowance for funds used during construction ("AFUDC") to be recovered over the lives of the underlying assets?

FIPUG: *Yes. Agree with SFHHA. FIPUG adopts SFHHA's argument on this issue.*

ISSUE 26: If the answer to Issue 25 is in the affirmative, what proportion of costs incurred by FPL to finance projects during construction should be treated as CWIP to be recovered upfront in rate base, and what proportion should be treated subject to AFUDC to be recovered over the lives of the underlying assets?

FIPUG: *Agree with SFHHA. FIPUG adopts SFHHA's argument on this issue.*

ISSUE 27: Is FPL's requested Construction Work in Progress in the amount of $501,676,000 ($514,978,000 system) for the 2013 projected test year appropriate?

FIPUG: *No. Agree with SFHHA and Public Counsel. FIPUG adopts SFHHA's and Public Counsel's argument on this issue.*

ISSUE 28: Is FPL's proposed accrual of Nuclear End of Life Material and Supplies and Last Core Nuclear Fuel for the 2013 projected test year appropriate?

FIPUG: *No. Agree with SFHHA. FIPUG adopts SFHHA's argument on this issue.*

ISSUE 29: Is FPL's requested level of Nuclear Fuel of $565,229,000 ($576,317,000 system) for the 2013 projected test year appropriate?

FIPUG: *No. Agree with SFHHA. FIPUG adopts SFHHA's argument on this issue.*

ISSUE 30: Should the Commission approve FPL's request to include the Fort Drum, McDaniel, and Hendry County proposed generation sites in Plant Held For Future Use?

FIPUG: *No. FPL has no need for these sites at this time as any need is too far in the future and too speculative. They should be removed from rate base.*

DISCUSSION OF ISSUE 30

FPL should not be permitted to include in base rates more than $100 million for two power plant sites that FPL identified and purchased while evaluating and considering "greenfield" options rather than repowering the Port Everglades power plant. The need for these sites is very distant and FPL failed to properly consider controlling these sites with a less costly option agreement.

While evaluating possible greenfield power plant alternatives to the Port Everglades repowering project, a project that is scheduled to begin commercial operation in 2016, FPL identified 26 possible power plant sites that were suitable and could accommodate future power plants. (Tr. 4251). Rather than prudently deferring action on these power plant sites after FPL decided it was more cost effective to seek a need determination to repower the Port Everglades power plant, FPL decided to purchase not one, but two, new power plant sites. FPL made this decision, even though this Commission recently concluded that FPL would not have a need for a new power plant (for the purposes of determining FPL's avoided unit) until 2025:

> [T]he projected addition of Turkey Point Nuclear Units 6 and 7 will provide an additional 1,110 MW of capacity in 2022 and 2023, thus maintaining FPL's 20 percent reserve margin. Subsequent to the addition of Turkey Point Units 6 and 7, FPL's next avoidable fossil fuel-fired generating unit has a projected in-service date in 2025, which is beyond the ten-year planning horizon.[14]

Now, despite no need for a new fossil fuel-fired generating unit for *13 years*, FPL wants its ratepayers to pay more than $100 million for not one, but two, power plant sites. Departing from its past practice of having a primary site, FPL contends it needs two power plant sites in case "permitting" issues arise for one site. (Tr. 4227). FPL's ratepayers should not have to bear this unprecedented "double power plant site" burden and its related costs.

FPL's effort to prematurely include these two power plant sites in rate base will benefit FPL shareholders much more than it will benefit FPL ratepayers. Indeed, it is an attractive and lucrative real estate investment for FPL to have unimproved land, with no buildings to maintain, no rent to collect, no property insurance to pay, and no hurricane risk to mitigate (because there are no improvements) generate more than 10% in earnings per year on the invested capital. (Tr. 3937). Stated differently, if the Commission allows these properties to be included in rate base, FPL will earn more than $130 million on the $100 million investment *before* the first megawatt is generated at either site.[15]

Tellingly, when FPL engaged in efforts to locate a coal-fired power plant in Glades County, Florida, which is near the two sites in question, FPL secured site control of the proposed site through an option to purchase the subject property. (Tr. 4247). Option agreements, which

[14] Order No. PSC-12-0336-TRF-EQ at 2.
[15] Based on Mr. Deason's testimony this is a 10% annual return on $100 million of additional rate base for 13 years, from 2013 until 2025. (Tr. 3937).

permit the prospective purchaser to buy the property for a sum certain at a future point, cost only a fraction of the fee simple value of the property in question. (Tr. 4244). Option agreements can provide site control, so that permitting and related activity can proceed, without saddling a developer or FPL with the full costs of the project site. This business practice, which FPL used in securing and permitting the Glades coal power plant site, should have been used with the sites at issue here.

The Legislature has also provided FPL with the power of eminent domain that it can use to acquire property needed for a future power plant site. *See*, section 361.01, Florida Statutes; *Clark v. Gulf Power Corporation*, 198 So. 2d 368, 371 (Fla. 1st DCA 1969). FPL neglected to advise the Commission in its pre-filed testimony that it possesses this meaningful tool to secure property for a future power plant site. Indeed, section 74.011, Florida Statutes, provides that a public utility may use a "quick take" statute to secure needed property promptly. FPL is undoubtedly aware of this "quick take" eminent domain approach, as FPL has made use of the "quick take" process. *See, Whitehead v. Florida Power and Light Company*, 318 So.2d 154 (Fla. 2nd DCA 1975) (FPL used "quick take" legislative statute to secure land for an electric transmission line). Given that FPL has the ability to use the "quick take" eminent domain process, a tool the Florida Legislature has provided to secure land for a future power plant site, and thus does not have to wait for a willing seller to convey suitable property to FPL, the Company's claim that it needs these two future sites in rate base now, *13 years before* this Commission recently determined FPL would need its next fossil fuel generating power plant, is without merit.

Further, FPL's chief argument to support the inclusion of these two sites in rate base, that power plant sites will become increasingly scarce in the future, due to increases in population, development, and values, is speculative and tenuous. FPL's chief witness with knowledge about these two sites, Rene Silva, admitted that he was not an expert in real estate matters. (Tr. 4230). Thus, Mr. Silva's opinion that land values for power plant sites will increase in the future is not supported by competent, substantial evidence and cannot be relied upon to make this finding of fact.

Finally, as with prices for natural gas or shares of FPL stock, it is rank speculation to predict the value of land at a point many years in the future. While Florida's population as a whole may be projected to increase, Mr. Silva admitted that many counties in which FPL does business are experiencing population decreases, not increases. (Tr. 4252). This admission undercuts FPL's argument that increases in population growth and density compel the acquisition of these two sites and inclusion in rate base.

The Commission should not permit these two sites, valued in excess of $100 million, to be included in rate base at this time. If it is FPL's belief that the land in question will appreciate in value, FPL can realize the value of such appreciation when the land is placed in rate base or, should a better site closer to FPL's load center become available, FPL can sell the land in question. FPL's request to include the costs of these two sites in rate base should be denied.

ISSUE 31: Should the Commission approve FPL's request to include nine proposed transmission line sites for which projected in-service dates are either 2022-2023 or indeterminate ("TBA") within Plant Held For Future Use?

FIPUG: *No. The need for such sites is speculative and too far in the future to include them in Plant Held for Future Use. FIPUG adopts OPC's argument on this issue.*

ISSUE 32: Is FPL's requested level of Property Held for Future Use in the amount of $230,192,000 ($237,400,000 system) for the 2013 projected test year appropriate? (Fallout Issue)

FIPUG: * See Issue Nos. 31 and 32. The properties should be removed from rate base.*

DISCUSSION OF ISSUE 32

ISSUE 33: Should any adjustments be made to FPL's fossil fuel inventories for the 2013 projected test year?

FIPUG: *No position.*

ISSUE 34: Should unamortized rate case expense be included in Working Capital?

FIPUG: *No. Agree with SFHHA and Public Counsel. FIPUG adopts SFHHA's and Public Counsel's arguments on this issue.*

ISSUE 35: Should Account 143, Other Accounts Receivable, be included in working capital for the 2013 test year?

FIPUG: *No. Agree with Public Counsel. FIPUG adopts Public Counsel's argument on this issue.*

ISSUE 36: Should an adjustment be made to the amount of Account 182.3, Other Regulatory Assets, included in working capital for the 2013 test year?

FIPUG: *No. Agree with Public Counsel. FIPUG adopts Public Counsel's argument on this issue.*

ISSUE 37: Should an adjustment be made to the amount of Account 186, Miscellaneous Deferred Debits, included in working capital for the 2013 test year?

FIPUG: *Yes. Agree with Public Counsel. FIPUG adopts Public Counsel's argument on this issue.*

ISSUE 38: Should unbilled revenues be included in working capital for the 2013 test year?

FIPUG: *No. Agree with SFHHA. FIPUG adopts SFHAA's argument on this issue.*

ISSUE 39: Has FPL adhered to the Commission's policy of including net clause over-recoveries and excluding net clause under-recoveries in its calculation of working capital? If not, what adjustments should be made?

FIPUG: *FPL has the burden of proof to demonstrate that it has adhered to Commission policy of excluding clause over-recoveries and including clause under-recoveries in its calculation of working capital under the balance sheet approach, if used in this case.*

ISSUE 40: What is the appropriate methodology for calculating FPL's Working Capital for the 2013 projected test year?

FIPUG: *Agree with Public Counsel. FIPUG adopts Public Counsel's argument on this issue.*

ISSUE 41: If FPL's balance sheet approach methodology for calculating its Working Capital is adopted, what adjustments, if any, should be made to FPL's proposed Working Capital?

FIPUG: *Agree with Public Counsel. The Commission should make the adjustments recommended by witness Shultz. FIPUG adopts Public Counsel's argument on this issue.*

ISSUE 42: Are FPL's adjustments to the Asset Retirement Obligation (ARO) revenue neutral as required by Commission rule?

FIPUG: *Agree with Public Counsel. FIPUG adopts Public Counsel's argument on this issue.*

ISSUE 43: Should the nuclear maintenance reserve be modified to reflect post-paid reserve accounting in lieu of pre-paid reserve accounting?

FIPUG: *Yes. Agree with SFHHA. FIPUG adopts SFHHA's argument on this issue.*

ISSUE 44: Is FPL's requested level of Working Capital in the amount of $1,217,209,000 ($2,032,805,000 system) for the 2013 projected test year appropriate? (Fallout Issue)

FIPUG: *No. Agree with Public Counsel. FIPUG adopts Public Counsel's argument on this issue.*

ISSUE 45: Is FPL's requested rate base in the amount of $21,036,823,000 ($21,470,413,000 system) for the 2013 projected test year appropriate? (Fallout Issue)

FIPUG: *No. The appropriate rate base should be $20,535,584,000 on a jurisdictional basis.*

COST OF CAPITAL

ISSUE 46: What is the appropriate amount of accumulated deferred taxes to include in the capital structure?

FIPUG: *Agree with Public Counsel. FIPUG adopts Public Counsel's argument on this issue.*

ISSUE 47: What is the appropriate amount and cost rate of the unamortized investment tax credits to include in the capital structure?

FIPUG: *Agree with Public Counsel. FIPUG adopts Public Counsel's argument on this issue.*

ISSUE 48: What is the appropriate cost rate for short-term debt for the 2013 projected test year?

FIPUG: *Category 1 Stipulation. FIPUG takes no position on the stipulation.*

ISSUE 49: What is the appropriate cost rate for long-term debt for the 2013 projected test year?

FIPUG: *No position.*

ISSUE 50: What is the appropriate cost rate for customer deposits for the 2013 projected test year?

FIPUG: *Category 1 Stipulation. FIPUG takes no position on the stipulation.*

ISSUE 51: What is the appropriate equity ratio that should be used for FPL for ratemaking purposes in this case?

FIPUG: *The appropriate equity ratio is 50%. This is fair to both the ratepayers and FPL and reduces ratepayers' costs due to FPL's proposed capital structure which is over weighted in equity.*

ISSUE 59: What is the appropriate capital structure that should be used by FPL for ratemaking purposes in this case?

FIPUG: *The appropriate capital structure is 50% equity and 50% debt. This is fair to both the ratepayers and FPL and reduces ratepayers' costs due to FPL's proposed capital structure which is over weighted in equity.*

DISCUSSION OF ISSUES 51 AND 59

Capital structure is the relative percentages of debt, equity and other components that are used to finance a company's investments. (Tr. 2440). FPL's capital structure and its equity/debt ratio are important to ratepayers because these relationships dramatically affect the rates consumers pay. As FPL's equity ratio increases, its revenue requirements increase and customers' rates increase with no corresponding increase in the quality of service. (Tr. 2318, 2444). Common equity is the most expensive form of capital. (Tr. 3297). The cost of common equity is more than twice as expensive as debt. (Tr. 2444).

FPL proposes a capital structure with a common equity ratio of 59.62%. (Tr. 1866). This structure includes much more equity and less debt than the capital structures of other electric utilities and even that of FPL's parent company, NextEra. (Tr. 2355). FPL's proposed capital structure is far out of line with that of other utilities and NextEra, (Tr. 2359), and the proposed equity component is excessive. (Tr. 3295-3296).

For example, NextEra's common equity ratio is 38.2%. (Tr. 2380; Exh. No. 229). As Mr. Woolridge testified, the relevant capital structure that should be used to measure risk is that of NextEra, not FPL. (Tr. 2380). FPL has failed to follow this principle and instead has given its unregulated subsidiaries, which have higher risk, a lower equity ratio; NextEra's unregulated subsidiaries have, inexplicably, an equity ratio of 21.1%. (Tr. 2448). FPL's reversal of logic relates to the fact that the parent, NextEra, has an incentive to maximize the amount of equity in the less risky utility, FPL, because the returns are safer and more certain. (Tr. 2449).

FPL's capital structure, when compared to other utilities, is grossly excessive for ratemaking purposes. (Tr. 2445). When witness Avera's comparable group is compared to FPL, the average common equity of Dr. Avera's group is 47.2%, compared to the 59.62% FPL seeks. (Tr. 2446; Exh. No. 226). Another point of reference – Value Line – shows the common equity ratio of all utilities followed by Value Line to be 47.0%, nowhere near the over 59% FPL requests. (Tr. 2447; Exh. No. 228). Further, FPL's equity is not "well within the range of individual results" as witness Avera testified. (Tr. 1717). Rather, FPL's request of 59.6% is well above the average book ratio of each of Dr. Avera's proxy groups, which range from 45.9%

to 48.1%. (Tr. 3049; Exh. No. 208). FPL witness Dr. Avera's[16] imputation of debt and comparison of the capital structures of the operating companies of his utility proxy group to the market value capital structures of his utility proxy group is erroneous and does not justify the requested capital structure. (Tr. 2359).

Despite FPL's position, FPL's credit rating will not be negatively impacted if the Commission uses a more reasonable equity/debt ratio for FPL. (Tr. 2452). Stockholders look at the consolidated capital structure when making decisions and this proceeding will have little bearing on that. (Tr. 2454). Investors cannot buy FPL stock; they can only invest in NextEra, so it will be NextEra's capital structure which they evaluate. (Tr. 2455).

To address the large imbalance in FPL's capital structure, the Commission should use a capital structure for FPL of 50% common equity and 50% debt. (Tr. 2458; Exh. No. 233).

ISSUES 52 - 53: DROPPED

ISSUES 55 - 57: DROPPED

ISSUE 58: What is the appropriate authorized return on equity (ROE) to use in establishing FPL's revenue requirement?

FIPUG: *Given market conditions today, FPL's ROE should be lowered or remain at 10%.*

DISCUSSION OF ISSUE 58

FPL's request for an ROE of 11.25% should be rejected for the following reasons:

1. FPL, with a currently approved ROE of 10.0%, is a financially healthy company. Its parent has repeatedly increased dividend payments to shareholders and has experienced a marked increase in stock price since the FPL 2009 rate case;

2. An 11.25% ROE is not consistent with current market conditions and the recent ROE decision of this Commission in the Gulf Power rate case where Gulf's ROE was set at 10.25%;

[16] In fact, much of Dr. Avera's opinions and testimony were discredited due to his failure to ensure the accuracy of his testimony and exhibits. *See*, Tr. 4562-4575.

3. As an investor, FPL is satisfied with a return on its pension fund investments of 7.75% significantly below its requested ROE of 11.25%;

4. Close review of the reasons FPL cites in support of its 11.25% ROE request, namely, the need to access capital markets, the ability to incur lower interest rate costs on debt that will save ratepayers money, and possible negative reaction by the Wall Street investment community to a rate case/ROE decision, reveals the weakness of FPL's position.

Each of these reasons, any one of which is sufficient to support a Commission decision to reduce or leave unchanged FPL's current ROE, are detailed further below.

FPL, with a currently approved ROE of 10.0%, is a financially healthy company. Its parent has repeatedly increased dividend payments to shareholders and has experienced a marked increase in stock price since the 2009 FPL rate case

The financial health of FPL is currently sound at its approved midpoint ROE of 10.0%. Since FPL's last rate case, FPL's parent company, NextEra, of which FPL is a key subsidiary company, has increased dividend payments to shareholders and seen the value of its stock appreciate considerably. (Exh. No. 496; Tr. 1839-40). While FPL spent a great deal of time and testimony speculating on how the markets *may* view this Commission's rate case decision, particularly its ROE decision, FIPUG notes that the markets did not punish FPL for the results of the last rate case where FPL was awarded only a small portion of its requested increase. The record lacks competent substantial evidence to bolster FPL's claim that the ratepayers have been adversely affected by the Commission's decision to award FPL a midpoint ROE of 10.0% in FPL's previous rate case.

With its current ROE midpoint of 10.0%, FPL is financially sound and can readily access capital markets. The Commission is legislatively charged with striking the appropriate balance between the interests and needs of FPL and the interests and needs of FPL's ratepayers. There is no statutory requirement to consider the interests and needs of Wall Street, and the Commission should resist the temptation to do so, particularly in these continuing difficult economic times facing Floridians.

There was no credible evidence to suggest that FPL will not be able to continue to access the capital markets if its ROE remains the same or is lowered slightly. There was much conjecture and speculation about what markets may look like at some future point in time. Markets are dynamic and no witness can testify with certainty as to future market conditions. Thus, the Commission must make its ROE decision in reliance on market conditions as they currently exist. Current market conditions were reflected in testimony and exhibits introduced in this case. If market conditions change materially, the Company or the intervenors can ask this Commission to make an adjustment based on those changed market conditions. Based on the evidence of market conditions as they existed at the time of this hearing, the overwhelming evidence points to establishing an ROE less than the 10.0% presently authorized.

FPL spends considerable effort negatively describing the results of the last rate case and certain Wall Street ratings firms' reactions. FPL and its witnesses then ask this Commission to send Wall Street the "right signal" and return Florida to a "constructive regulatory environment." If a "constructive regulatory environment" is a euphemism for awarding one of the highest ROEs in the country, an ROE untethered from current market conditions, the Commission should summarily reject FPL's request. If a "constructive regulatory environment" means having this Commission award an ROE that is in line with recent ROE decisions of other Commissions around the country[17] and current market conditions, this Commission should either slightly lower or keep FPL's current ROE of 10.0% in place.

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[17] *See, e.g., Application of Entergy Texas, Inc. for Authority to Change Rates, Reconcile Fuel Costs, and Obtain Deferred Accounting Treatment* (P.U.C. Docket No. 39896) (SOAH Docket No. 47301202979) (FRF supplemental authority, September 19, 2012, in which a ROE of 9.8% was awarded.).

Wall Street has not reacted negatively or termed the Florida Commission a less than "constructive regulatory environment" following the recent 10.25% ROE award in the Gulf Power rate case. While using colorful adjectives, neither the rating agencies nor FPL has put forth tangible evidence of harm FPL suffered as a result of the current 10.0% ROE. Furthermore, at hearing, FPL was not able to quantify, explain clearly, or monetize how the one notch downgrade by two rating agencies, Moody's and Standard and Poor's, and no adjustment by another rating agency, Fitch, impacted the Company or its ratepayers. (Tr. 1939-40; 2029; 4784). Put differently, FPL failed to back up its rhetoric with concrete examples or credible, substantial evidence to suggest that a 10.0% ROE had or has a deleterious impact on the Company or its ratepayers.

The intervenor witnesses provided expert opinions that an appropriate ROE, given the current economic climate, should be characterized as beginning with a single digit, with most suggesting midpoints beginning with the number **nine**. While this would be a slight reduction from FPL's current midpoint of 10%, no witness contended that interest rates, a key factor in establishing an appropriate ROE, have increased since the last rate case. In fact, FPL's chief ROE witness, Dr. Avera, admitted that interest rates had decreased since the last rate case, but he did not know the degree to which average corporate bond yields had decreased since the last rate case, and estimated a decline of 100 basis points or 1%. (Tr. 4512-13). The decrease in interest rates is significant to the ROE question, something pointed out by expert ROE witness and FPL's Chief Financial Officer Maury Dewhurst. Witness Dewhurst testified that the biggest driver of ROE decisions is the underlying interest rate. (Tr. 2032). Given the decrease in interest rates, a key metric in setting the midpoint of an approved ROE, the Commission should reduce, not increase, FPL's current ROE.

An 11.25% ROE is not aligned with the Commission's recent
<u>decision in the Gulf Power rate case of a 10.25% ROE</u>

Earlier this year, in Docket No. 110138-EI, this Commission fully considered the return on equity for Gulf Power Company. The Commission decided that an ROE award of 10.25% was warranted in the Gulf Power case. (Order No. PSC-12-0179-FOF-EI). While the Commission's ROE decision made earlier this year is not binding in the FPL rate case, it is instructive.

Qualified experts who addressed the topic of ROE agreed that if two investments provided the same return, the option with the less risk would be preferred. (Tr. 1927-28). Further, investors would expect that an investment that presents less risk, like U.S. treasury instruments, would provide a lower return than the potential return on an investment with greater risk. In the context of utility investments, an investor would expect a lower return/ROE for a utility that is less risky when compared to another utility, all other things being equal. Both FPL and Gulf are wholly-owned subsidiaries of parent companies, NextEra Energy Resources, Inc. and the Southern Company, respectively. How the rating agencies view risk is important, because investors rely on these rating agencies for insight and guidance. Moody's Investment Services, Inc. is a key rating agency that analyzes and rates debt issued by FPL and Gulf. The ROE experts who testified in this case largely deferred to the credit agencies' review and weighing of risk, because that information is what investors in the markets see and use. When rating debt, Moody's reviews and analyzes a variety of factors that affect the risk of a particular company. Moody's rates the debt of Gulf's parent as riskier than the debt of FPL's parent. (Exh. No. 571; Tr. 4520).

If the rating agencies, including Moody's, who are relied upon by investors in determining risk, assign a higher risk to Gulf Power Company, with an ROE of 10.25%, it follows that FPL, with lower risk than Gulf Power, should receive an ROE of less than 10.25%. Thus, adoption of an ROE figure recommended by the experts for the intervenors, or leaving the current FPL ROE figure of 10% unchanged, is logically called for given the facts described above.

As an investor, FPL is satisfied with a return on its pension <u>fund investments of 7.75%, significantly below its requested ROE of 11.25%</u>

FPL's view of an adequate return on capital differs depending on the context in which the question is asked. When asked the question in the context of this rate case, FPL, which receives its equity capital from its parent company, says that a return of 11.25% percent is needed. FPL provides this answer even though it regularly recovers the majority of its expenses through clauses, faces no real competition for its customers, and has a capital structure weighted heavily with equity, thus reducing risk, compared to other utilities.

When FPL is asked what return it expects when investing the assets of the Company's pension plan, the answer, 7.75%, is markedly different. (Tr. 1949). It should be noted that FPL's pension benchmark return of 7.75% is composed, in significant part, of investments in "large cap" companies (27.90% invested), small cap companies (2.1%) and international funds (10.4%), investments that are typically viewed as risker than investing in a stable utility stock, like FPL's parent. (Exh. No. 559). Finally, the pension fund expected return for each per asset classification is noteworthy in that expected nominal return for hedge fund investments is 4.6%, emerging markets, 7.8%, and private equity, 7.20% – all below the requested 11.25% ROE FPL seeks.

The comparison between the two measures of FPL's expected returns is illuminating and makes clear the meaning of the saying "Where you stand depends on where you sit." Stated differently, the difference between the two figures – the projected pension return of 7.75% and

FPL's ROE request of 11.25% – 3.5% or 350 basis points, represents a convenient situational adjustment to FPL's view of returns investors expect. FIPUG would suggest that FPL's expected return for its pension fund assets is more in line with the average investor's expected returns, argues for an ROE closer to the figure suggested by the Intervenor experts than the Company's expert, Dr. Avera, and highlights the inflated nature of a 11.25% ROE request.

Close review of the reasons FPL cites in support of its 11.25% ROE request, namely, the need to access capital markets, the ability to incur lower interest rate costs on debt that will save ratepayers money, and possible negative reaction by the Wall Street investment community to a rate case/ROE decision, reveals the weakness of FPL's overall argument

FPL's arguments supporting its 11.25% ROE request are largely unfounded. FPL provided no credible evidence that an A-rated electric company (Moody's ratings), which is FPL's current rating, was denied access to the capital markets. Further, FPL provided no credible evidence that an A-rated company (Moody's rating) is currently unable to access the capital markets on reasonable terms. FPL's current Moody's rating of A places it on solid financial ground compared to other utilities in the country.

FPL suggests, in very broad terms, that a higher ROE will allow it to access debt capital at better interest rates, saving customers money in the long run. This contention breaks down upon closer review. An example, based on the facts in this case, helps make this point.

The difference in costs to ratepayers between the currently authorized 10.0% ROE and an 11.0% ROE (slightly less than the 11.25% FPL seeks) is approximately $160 million per year. (Tr. 1195). The largest debt spread between Moody's rated public utility AA bonds and A-rated public utility bonds over the past five years, from January 2005 to August 2010, which included a brief period of time characterized by some as a credit crisis, is 77 basis points. (Exh. No. 618 – November 2008 debt spread). The amount of debt FPL projects to incur in the test year is $1 billion. (Tr. 1944). Applying the greatest interest rate spread between Moody's AA-rated public utility bonds and A-rated public utility bonds found in Exh. No. 618, to this $1 billion sum results in $7.7 million dollars per year in extra financing costs if FPL remains an A-rated company. Ratepayers will be better off to the tune of $152.3 million dollars by paying a slightly higher interest rate on debt than paying an additional $160 million per year in the form of a 100 basis point increase in the ROE from 10.0% to 11.0%. ($160 million represented by 100 basis point increase in ROE minus $7.7 million additional debt costs associated with being Moody's ranked A rather than AA equals $152.3 million).

There is no credible evidence to suggest that rating agencies and Wall Street will react negatively if this Commission retains or slightly lowers FPL's ROE. With interest rates significantly lower now compared to when this Commission last set FPL's ROE, those on Wall Street who follow utility companies will hardly be surprised if the ROE remains unchanged or is decreased incrementally. To the contrary, it will likely be a surprise to many, including those on Wall Street, if this Commission awards FPL an ROE of 10.25% or greater given the recent decision in the Gulf rate case to award a 10.25% ROE midpoint. This is especially true when reviewing the capital structure of Gulf is compared to FPL and the bond ratings of Gulf are compared to FPL's bond ratings.

In sum, for the reasons set forth above, the Commission should reduce or leave unchanged FPL's current authorized midpoint ROE of 10.0%.

ISSUE 60: Is the combination of regulatory ROE, debt costs, capital structure and performance adder (if any) appropriate?

FIPUG: *See discussion of Issue Nos. 51, 54, 58, 59, 61.*

ISSUE 61: What is the appropriate weighted average cost of capital?

FIPUG: *Agree with Public Counsel. FIPUG adopts Public Counsel's argument on this issue.*

NET OPERATING INCOME

ISSUE 62: Has FPL maximized the sources of net jurisdictional revenue that are projected to be reasonably available and technically viable for the 2013 test year? If not, what action, if any, should the Commission take in setting FPL's rates in this case? (For purposes of this issue, "net jurisdictional revenue" may include net revenue related to the supply of CO_2 captured from an FPL facility.)

FIPUG: *FPL should take reasonable and cost-effective steps to offset test year revenue requirements so long as it is in the best interests of ratepayers.*

ISSUE 63: Does FPL properly account for revenues received from FPL Fibernet and other telecommunications companies for utilizing long-haul fiber optic facilities hosted by FPL's electric transmission system?

FIPUG: *No. The burden is on FPL to demonstrate that it has properly accounted for revenues paid to it by utilities. FPL has provided no support for its accounting of revenues or charges related to FiberNet. The expert FPL retained to review affiliate transactions did not review of the FiberNet transactions.*

DISCUSSION OF ISSUE 63

As discussed in Issue No. 4 above, FPL has the burden of proof to establish that the charges to and payments from affiliates are properly accounted for, are in accord with the Commission's affiliate transaction rule, and are reasonable. As to FiberNet, FPL has failed to carry its burden of proof.

FPL retained the services of Tom Flaherty to review the appropriateness of FPL's affiliate transactions. However, despite the fact that this case concerns the 2013 test year, Mr. Flaherty did not look at any information concerning the test year nor did he verify any of the allocations among the affiliates, including FiberNet. (Tr. 3689-3690). Mr. Flaherty testified in his deposition that: "We're not looking at any detail in terms of the test year itself." (Exh. No. 121 at 115-116). In fact, Mr. Flaherty looked at FPL allocations as they pertained to *2010*. (Exh. No. 121 at 115).

Specifically as to FiberNet, during Mr. Flaherty's deposition, which was taken on August 8th (less than two weeks before the start of the rate case hearing and well after his rebuttal testimony was filed), Mr. Flaherty had no information about FiberNet. (Exh. No. 121 at 126). During his review of FPL affiliate transactions, Mr. Flaherty did not ask for or receive any information regarding FiberNet, (Tr. 3690), and he did not review any charges or revenues flowing between the two companies. (Exh. No. 121 at 126). Nor did Mr. Flaherty review the service agreement between FPL and FiberNet before he filed his testimony in this case. (Tr. 3691).

Ms. Ousdahl, the FPL witness offered to support affiliate transactions, admitted that as to FiberNet, which provides long-haul fiber, FPL has made no effort to benchmark the cost of such fiber, (Exh. No. 110 at 67), and is not aware of any policy that would require FPL to review the award of an agreement to provide long-haul fiber to ensure that the FPL affiliate arrangement is the most cost-effective for ratepayers. (Exh. No. 110 at 69). And in fact, Ms. Ousdahl was not even aware of what policies were applicable to procurement of services for a new circuit. (Exh. No. 110 at 71). Thus, FPL has failed to carry its burden as to its affiliate, FiberNet.

ISSUE 64: What are the appropriate projected amounts of other operating revenues for the 2013 projected test year?

FIPUG: *FPL has the burden to demonstrate that the other operating revenues it proposes are appropriate.*

ISSUE 65: Is FPL's projected level of Total Operating Revenues of $4,407,253,000 ($4,505,007,000 system) for the 2013 projected test year appropriate? (Fallout Issue)

FIPUG: *No. FPL's operating revenues should be adjusted to include additional revenues that FPL will likely realize when appropriate adjustments are made to its customer levels and for weather. See Issue Nos. 10-13.*

ISSUE 66: Has FPL made the appropriate test year adjustments to remove fuel revenues and fuel expenses recoverable through the Fuel Adjustment Clause?

FIPUG: *Category 2 Stipulation. FIPUG takes no position on the stipulation.*

ISSUE 67: Should an adjustment be made to transfer incremental security costs from the Capacity Cost Recovery Clause to base rates?

FIPUG: *Yes. These types of costs should be recovered through base rates, as is done for all other utilities.*

ISSUE 68: If incremental security costs continue to be recovered in the Capacity Cost Recovery Clause, should the Commission approve FPL's adjustment to transfer incremental security payroll loadings from base rates to the Capacity Cost Recovery Clause?

FIPUG: *No. FIPUG agrees with Public Counsel that normal recurring operating expenses and payroll loadings should be recovered in base rates. FIPUG adopts Public Counsel's argument on this issue.*

ISSUE 69: Has FPL made the appropriate test year adjustments to remove capacity revenues and capacity expenses recoverable through the Capacity Cost Recovery Clause?

FIPUG: *No position.*

ISSUE 70: Has FPL made the appropriate test year adjustments to remove environmental revenues and environmental expenses recoverable through the Environmental Cost Recovery Clause?

FIPUG: *Category 2 Stipulation. FIPUG takes no position on the stipulation.*

ISSUE 71: Should FPL's adjustment to remove all costs for the Substation Pollution Discharge Prevention Program from base rates and include them in the Environmental Cost Recovery Clause be approved?

FIPUG: *No position.*

ISSUE 72: Has FPL made the appropriate test year adjustments to remove conservation revenues and conservation expenses recoverable through the ECCR?

FIPUG: *Category 1 Stipulation. FIPUG takes no position on the stipulation.*

ISSUE 73: Should FPL's adjustment to remove ECCR clause related payroll loadings of $1,815,000 for FICA and unemployment taxes from base rates and include them in the Energy Conservation Cost Recovery Clause be approved?

FIPUG: *No. FIPUG agrees with Public Counsel that normal recurring operating expenses should be recovered in base rates not in cost recovery clauses. FIPUG adopts Public Counsel's argument on this issue.*

ISSUE 74: Has FPL made the appropriate adjustments to remove all non-utility activities from operating revenues and operating expenses for the 2013 projected test year?

FIPUG: *Agree with Public Counsel. FIPUG adopts Public Counsel's argument on this issue.*

ISSUE 75: Is the percentage value (or other assignment value or methodology basis) used to allocate NextEra Energy, Inc. corporate costs and/or expenses to FPL appropriate?

FIPUG: *No. The Commission should make the adjustments recommended by OPC witness Vondle. In addition, it should assign a value for use of the FPL name for which it currently assigns no value.*

ISSUE 76: Should the percentage value (or other assignment value or methodology basis) of NextEra Energy, Inc. corporate costs and/or expenses allocated to FPL be equal to the percentage value (or other assignment value or methodology basis) of NextEra Energy, Inc. corporate costs and/or expenses allocated to NextEra Energy Resources, LLC?

FIPUG: *Agree with Public Counsel. FIPUG adopts Public Counsel's argument on this issue.*

ISSUE 77: Are the amounts of the NextEra Energy, Inc. corporate costs and/or expenses (including executive compensation and benefits) allocated to FPL fair, just, and reasonable?

FIPUG: *FPL has the burden of demonstrating that all non-utility activities and costs attributable to its affiliates are not included in its filing. In addition to adjustments warranted by the totality of evidence taken in this case, the Commission should make the adjustments recommended by OPC witness Vondle to ensure that FPL's transactions with its affiliates do not impose inappropriate costs on its customers.*

ISSUE 79: Should any adjustments be made to FPL's operating revenues or operating expenses for the effects of transactions with affiliated companies for the 2013 projected test year?

FIPUG: *Yes. The recommendations of OPC witness Vondle should be adopted. FIPUG adopts Public Counsel's argument on this issue.*

ISSUE 80: What additional action (including, but not limited to, establishing a separate investigatory docket), if any, should the Commission take related to affiliate transactions as a result of the evidence taken in this docket?

FIPUG: *The Commission should open a separate docket to investigate FPL affiliate transactions. Further, to the extent the Commission awards any portion of any increase based on costs of affiliate transactions, such costs should be subject to refund, pending the outcome of the investigatory docket.*

ISSUE 78: DROPPED

ISSUE 81: Are FPL's overhead costs (salaries, materials and supplies, benefits, etc.) allocated to capital projects properly deducted from operating expenses?

FIPUG: *FPL has the burden of demonstrating that these costs are properly recorded in its books and records and properly reflected in its MFRs. Also see Issue No. 104. FIPUG adopts Public Counsel's argument on this issue.*

ISSUE 82: Has FPL made appropriate reductions in operating expenses where capital projects are not done in-house, but employee salaries and related overhead costs have been included in rate base?

FIPUG: * FPL has the burden of demonstrating that these costs are properly recorded in its books and records and properly reflected in its MFRs.*

ISSUE 83: Has FPL properly reduced operating expenses in amounts equal to overheads reimbursed by third parties through contributions in aid of construction related to underground placement of distribution and transmission facilities?

FIPUG: * FPL has the burden of demonstrating that these costs are properly recorded in its books and records and properly reflected in its MFRs.*

ISSUE 84: Has FPL properly reduced operating expenses in amounts equal to any overheads charged to third parties as contributions in aid of construction, fees or other payments to FPL?

FIPUG: *FPL has the burden of demonstrating that these costs are properly recorded in its books and records and properly reflected in its MFRs.*

ISSUE 85: Should FPL salaries, costs and overheads for activities associated with (a) public relations or external affairs, (b) shareholder services, (c) attempted acquisitions of electric facilities, and (d) efforts opposing municipalizations pursuant to a franchise agreement be removed from operating expenses?

FIPUG: *Yes. The above activities inure to the benefit of stockholders, not ratepayers. Thus, ratepayers should not be required to fund such activities. All activities related to these costs should be removed.*

ISSUE 86: Should FPL costs to pay contractors for legal, public relations or other consulting services be borne by customers or FPL shareholders?

FIPUG: *No. Such activities inure to the benefit of stockholders, not ratepayers. Thus, ratepayers should not be required to fund such activities. All activities related to these costs should be removed.*

ISSUE 87: What is the appropriate amount of FPL's tree trimming expense for the 2013 projected test year?

FIPUG: *Tree trimming expenses should be reduced by $9,236,000. FIPUG adopts Public Counsel's argument on this issue.*

ISSUE 88: What is the appropriate amount of FPL's pole inspection expense for the 2013 projected test year?

FIPUG: *Pole inspection expenses should be reduced by $2,733,000. FIPUG adopts Public Counsel's argument on this issue.*

ISSUE 89: What is the appropriate amount of FPL's production plant O&M expense for the 2013 projected test year?

FIPUG: *Steam plant production expense should be reduced by $9 million, based on a four-year average. FPL's nuclear outage expense should be reduced by $15.1 million, using a three-year average. FIPUG adopts the arguments of Public Counsel and SFHHA on this issue.*

ISSUE 90: What is the appropriate amount of FPL's transmission O&M expense for the 2013 projected test year?

FIPUG: *See Issue Nos. 87 and 88.*

ISSUE 91: What is the appropriate amount of FPL's distribution O&M expense for the 2013 projected test year?

FIPUG: *See Issue Nos. 87 and 88.*

ISSUES 92 - 94: DROPPED

ISSUE 95: If in its resolution of Legal Issue 1 the Commission determines it has legal authority to do so, should it approve FPL's proposed storm cost recovery mechanism?

FIPUG: *No. The Commission should address storm restoration expenses if and when a need arises. See Issue No. 1.*

ISSUE 96: What is the appropriate annual storm damage accrual and storm damage reserve for the 2013 projected test period?

FIPUG: *No additional monies should be accrued beyond the approximately $200 million that is currently earmarked for storm restoration costs.*

ISSUES 97 - 98: DROPPED

ISSUE 99: Should an adjustment be made to FPL's level of executive compensation for the 2013 projected test year?

FIPUG: *Category 2 stipulation. FIPUG has no position on this issue.*

ISSUE 100: Should an adjustment be made to FPL's level of non-executive compensation for the 2013 projected test year?

FIPUG: *Agree with Public Counsel. FIPUG adopts Public Counsel's argument on this issue.*

ISSUE 101: Are FPL's proposed increases to average salaries for the 2013 projected test year appropriate?

FIPUG: *No. At this time, when many ratepayers have had no salary increases or have experienced salary reductions or layoffs, it is inappropriate to award salary increases to FPL employees. Such increases are passed directly on to ratepayers, who themselves have suffered financially. The requested salary increases are unfair and unreasonable, especially considering that the average salary for an FPL employee is approximately $100,000 per year.*

DISCUSSION OF ISSUE 101

As many witnesses in this proceeding discussed, Floridians are attempting to work their way out of the most severe recession since the 1930s. (Tr. 470). FPL President, Mr. Silagy, testified that Florida's economy is still struggling. (Tr. 470). Ms. Slattery, FPL's compensation witness, testified that "these have been tough economic times." (Tr. 1528).

In the months of June 2012-July 2012, approximately 3,500 jobs were lost in the manufacturing sector alone, (Exh. No. 482; Tr. 417), and Florida's current unemployment rate is approximately 8.6%. (Tr. 1534). When education and healthcare jobs are included, over 10,000 jobs were lost in Florida in the same time period. (Exh. No. 472; Tr. 418).

Ms. Slattery testified that the average salary for an FPL employee is over $100,000 per year, *not* including benefits. (Tr. 1527; MFR C-35). Since FPL's last rate case, salaries for bargaining and non-bargaining employees increased by more than 10%. (Tr. 1543-1544). FPL's salaries stand in stark comparison to the median income for the average Floridian of $43,000. (Tr. 1528). FPL witness Slattery admitted that she was aware that a number of businesses and governments and others had gotten no raise or benefit increase in the years following FPL's last rate case. (Tr. 1528-1529).

Under these circumstances, FPL asks its ratepayers – many of whom have lost their jobs – to fund additional salary increases of approximately $76 million for its employees. In addition to these salary increases, FPL seeks to increase employee benefits by $37 million. (Tr. 1528).

FIPUG suggests that given the economic circumstances described above and which FPL admits exist, the requested increases are excessive and not in keeping with the job market in Florida.

ISSUE 102: Is FPL's projected level of employee positions for the 2013 projected test year appropriate?

FIPUG: *No. FPL's employee positions for 2013 are overstated. FIPUG adopts Public Counsel's argument on this issue.*

ISSUE 103: What is the appropriate amount of Other Post Employment Benefits Expense for the 2013 projected test year?

FIPUG: *FPL has the burden to prove that these costs are reasonable and appropriate.*

ISSUE 104: What is the appropriate amount of FPL's requested level of Salaries and Employee Benefits for the 2013 projected test year? (Fallout Issue)

FIPUG: *Agree with Public Counsel. FIPUG adopts Public Counsel's argument on this issue.*

ISSUE 105: What is the appropriate amount of Pension Expense for the 2013 projected test year?

FIPUG: *Agree with Public Counsel. FIPUG adopts Public Counsel's argument on this issue.*

ISSUE 106: Should an adjustment be made to the amount of the Directors and Officers Liability Insurance expense that FPL included in the 2013 projected test year?

FIPUG: *Yes. Directors and Officers Liability expense should be reduced by $1.4 million. FIPUG adopts Public Counsel's argument on this issue.*

ISSUE 107: What is the appropriate amount of accrual for the Injuries & Damages reserve for the 2013 projected test year?

FIPUG: *Agree with Public Counsel. FIPUG adopts Public Counsel's argument on this issue.*

ISSUE 108: What is the appropriate amount and amortization period for Rate Case Expense for the 2013 projected test year?

FIPUG: *The amount that FPL has included in rate case expense is excessive, particularly in the area of travel expenses, overtime labor, payroll, and outside experts. The requested amount should be reduced by $2 million and amortized over 4 years. FIPUG adopts Public Counsel's argument on this issue.*

ISSUE 109: What is the appropriate amount of uncollectible expense and bad debt rate for the 2013 projected test year?

FIPUG: *FPL's bad debt expense should be reduced by $1.7 million. FIPUG adopts Public Counsel's argument on this issue.*

ISSUE 110: What is the appropriate accounting methodology for the Nuclear Outage Maintenance Expense?

FIPUG: *Agree with SFHHA. FIPUG adopts SFHHA's argument on this issue.*

ISSUE 111: What is the appropriate amount of the Nuclear Outage Maintenance Expense and Nuclear Outage Maintenance Reserve for the 2013 test year?

FIPUG: *Agree with SFHHA. FIPUG adopts SFHHA's argument on this issue.*

ISSUE 112: Has FPL included the appropriate amount of expense associated with the AMI smart meters in the 2013 projected test year?

FIPUG: *No. The Commission should use the net savings of $19.9 million which FPL projected in its last rate case rather than the net expense in excess of $3.7 million which it seeks in this case.*

ISSUE 113: Has FPL included the appropriate amount of savings associated with the AMI smart meters in the 2013 projected test year?

FIPUG: *No. FPL should be required to impute O&M savings of $19.9 million which it told the Commission it would receive. *See,* Order No. PSC-10-0153-FOF-EI.*

DISCUSSION OF ISSUES 112 AND 113

FPL originally requested approval for its smart meter program in its 2009 rate case. However, many of the savings and benefits that it touted in that case have not materialized. As to savings due to the smart meter program, in FPL's last rate case, FPL projected net O&M costs for the first three years with annual net savings by 2012.[18] By 2013, the test year under consideration here, FPL projected net O&M savings of $19.9 million. (Tr. 2774). Despite FPL's promise of ratepayer savings, FPL's projections for the 2013 test year show that not only are there no net savings attributable to the smart meter program, but O&M expense exceeds savings by $3.7 million. (Tr. 2775). Additionally, FPL has projected expenses in the 2013 test year of $20.7 million which is $10.3 million more than the expenses represented to the Commission in the last rate case. (Tr. 2775).

These new projections have a significant impact on FPL's revenue request. Based on FPL's requested ROE, capital costs already being recovered and capital costs sought in the test year, the smart meter program has an impact of $82 million. (Tr. 2776).

In FPL's last rate case, FPL did not include any projected savings from the smart meter program because such savings fell outside the test year. (Tr. 1270). In its last rate case, FPL also told the Commission that much of the smart meter savings would come from automated meter reading. (Tr. 1272 -1273; Exh. No. 521). However, contrary to FPL's prior testimony, there have been no net O&M savings for 2009 through the projected test year. (Tr. 1273). In both FPL's prior rate case and the current case, savings attributable to the smart meter program

[18] Order No. PSC-10-0153-FOF-EI at 95.

are projected to occur outside the test year. In the current case, FPL does not project any O&M savings until 2014 and 2015. (Tr. 1274). Customers have been paying for the smart meter program since the last rate case and FPL wants them to continue to do so going forward. However, FPL proposes to *exclude* any savings from that program from the test year.[19] That is simply unfair to ratepayers who have funded this program without any realization of the promised benefits.

Further, FPL did not conduct any usage studies to evaluate the usage behavior of its customers due to smart meter usage. (Tr. 790). In fact, FPL witness Santos testified that one of the benefits of smart meters is that customers will have more access to detailed information about their energy consumption. (Tr. 763). However, of the more than 3 million smart meters installed, only 1.9% of the monthly visitors use this feature. (Tr. 788; Exh. No. 511).

Another alleged benefit of the smart meters that has not materialized is FPL's claim that the meters would assist in the identification and reduction of the theft of electricity. However, FPL projects no O&M savings related to reduced electricity theft. (Tr. 1270).

In order to remedy this situation, the Commission should not permit FPL to collect an additional $3.7 million in expenses from ratepayers. Ratepayers should not be required to fund O&M expenses that exceed 2013 savings, especially when FPL now predicts that such savings will occur outside the test year. (Tr. 2776-2777). In addition, FPL should be required to include the net savings it predicted for 2013 in its last rate case of $19.9 million. (Tr. 2777-2778). OPC witness Ramas succinctly sums up the situation:

> It would be grossly unfair to require ratepayers to fund the full capital costs associated with the smart meter implementation in base rates yet receive none of the net savings that will result. This

[19] FPL unabashedly seeks full recovery of its Cape Canaveral power plant despite that facility being available for part of the test year. Using the same rationale, FPL advances to warrant recovery of Cape Canaveral, the Commission should adjust the smart meter program so that customers realize the savings originally promised by FPL.

> is especially the case, given the projections upon which the Commission predicated its approval of the AMI deployment. Inclusion of the $19,943,000 of net cost savings is still less than the full annual net cost savings that FPL projects will ultimately result from the smart meter implementation.

(Tr. 2778). FIPUG concurs with this view; the Commission should ensure that ratepayers are protected.

ISSUE 114: Is FPL's requested level of O&M Expense of $1,542,322,000 ($1,568,633,000 system) for the 2013 projected test year appropriate? (Fallout Issue)

FIPUG: *No. The appropriate O&M expense should be $1.4 billion, reflecting a decrease of $144 million. FIPUG adopts Public Counsel's argument on this issue.*

ISSUE 115: What is the appropriate amount of depreciation and fossil dismantlement expense for the 2013 projected test year?

FIPUG: *No position.*

ISSUE 116: Is FPL's requested amortization of $191,000,000 the appropriate amount of the theoretical depreciation reserve surplus to be amortized for the 2013 projected test year?

FIPUG: *No. Agree with Public Counsel. FIPUG adopts Public Counsel's argument on this issue.*

ISSUE 117: Given that in Order No. PSC-11-0089-S-EI the Commission directed FPL to complete the amortization of $894 million of depreciation surplus during the period 2010-2013, and in light of the Commission's decision regarding the amount of remaining reserve surplus to be amortized in the 2013 test year in conjunction with the resolution of Issue 116, should the Commission direct FPL to discontinue recording amortization of reserve surplus on its books after 2013 unless authorized or directed by subsequent Commission order?

FIPUG: *Yes. Once the Commission determines how much will conclude the four-year depreciation amortization in the prior settlement, FPL may not continue to defer $191 million each year but instead must return to normal depreciation accounting.*

ISSUE 118: Is FPL's requested level of Depreciation and Amortization Expense of $802,761,000 ($819,794,000 system) for the 2013 projected test year appropriate? (Fallout Issue)

FIPUG: *No. Agree with Public Counsel. FIPUG adopts Public Counsel's argument on this issue.*

ISSUE 119: Is FPL's requested level of Taxes Other Than Income of $371,710,000 ($378,853,000 system) for the 2013 projected test year appropriate? (Fallout Issue)

FIPUG: *No. Agree with Public Counsel. FIPUG adopts Public Counsel's argument on this issue.*

ISSUE 120: Should the Commission adjust FPL's test year current state income taxes or rate base to recognize benefits, if any, that FPL has provided, or will provide, to any affiliates in furtherance of the affiliate's ability to elect to apportion adjusted Federal income tax under s.220.153, Florida Statutes (single sales factor)?

FIPUG: *Yes. Agree with Public Counsel. FIPUG adopts Public Counsel's argument on this issue.*

ISSUE 121: Is FPL's requested level of Income Taxes of $513,276,000 ($528,838,000 system) for the 2013 projected test year appropriate? (Fallout Issue)

FIPUG: *No. Agree with Public Counsel. FIPUG adopts Public Counsel's argument on this issue.*

ISSUE 122: Is FPL's requested level of (Gain)/Loss on Disposal of Plant of negative $2,641,000 (negative $2,641,000 system) for the 2013 projected test year appropriate? (Fallout Issue)

FIPUG: *Agree with Public Counsel. FIPUG adopts Public Counsel's argument on this issue.*

ISSUE 123: Is FPL's requested level of Total Operating Expenses of $3,250,894,000 ($3,317,404,000 system) for the 2013 projected test year appropriate? (Fallout Issue)

FIPUG: *No. Total operating expenses should be $3.1 billion, which is a reduction of $140.8 million. FIPUG adopts Public Counsel's argument on this issue.*

ISSUE 124: Is FPL's projected Net Operating Income of $1,156,359,000 ($1,187,603,000 system) for the 2013 projected test year appropriate? (Fallout Issue)

FIPUG: *No. Projected net operating income should be $1.3 billion, subject to whatever additional adjustments are made. FIPUG adopts Public Counsel's argument on this issue.*

REVENUE REQUIREMENTS

ISSUE 125: What are the appropriate revenue expansion factor and the appropriate net operating income multiplier, including the appropriate elements and rates for FPL?

FIPUG: *The appropriate NOI multiplier is 1.63188.*

ISSUE 126: Is FPL's requested annual operating revenue increase of $516,521,000 for the 2013 projected test year appropriate? (Fallout Issue)

FIPUG: *No. Operating revenues should be decreased by $253,446,000.*

ISSUE 127: What economic impact will FPL's request for a rate increase have on customers, businesses and communities in Florida, including economic development activities and raising capital in Florida?

FIPUG: *A rate increase for FPL of over $690 million will have a devastating effect on its customers as they try to recover from the current economic circumstances in Florida. Electricity is an essential service and consumers have no alternative but to take such service from FPL. Any increase falls upon consumers at a time when they have very difficult spending decisions to make. Further, such an increase will affect the ability of industry to expand and locate in Florida. Businesses look carefully at electricity costs and may well choose to take new jobs to other states where electric rates are lower.*

DISCUSSION OF ISSUE 127

It was the unanimous view of witnesses who testified regarding this topic that Florida remains in a depressed economic situation from which consumers are struggling to recover. For example, FPL witness DeRamus, FPL's "impact witness" testified that Florida is in "a period of relatively anemic growth" and that Florida's unemployment level is currently 8.8%. (Tr. 4113). Based on Bureau of Labor Statistics (Exh. No. 472), FPL witness Reed testified that more people are looking for work in July than in previous months. (Tr. 243).

With that backdrop in mind, FPL suggests that its requested $690 million requested increase will not have a significant impact.[20] FPL then proceeds to attempt to quantify that increase on a daily basis, (Tr. 4093), so as to disguise the real impact. It is interesting to note that at a time when Florida is attempting to grow its economy and create jobs in the state, FPL makes *no attempt* to quantify the impact of the increase on industrial customers, including the military bases in FPL's territory. (Tr. 4101, 4122, 4129). But, any base rate increase that approaches 43% for industrial consumers is not moderate and will have a large impact on all consumers, including industrial consumers.

The Commission should thoroughly consider the impact to customers of the large rate increase FPL has requested and ensure that an increase, if any, is the minimum amount needed to provide adequate and reliable service at the lowest possible cost. Further, the Commission should consider the requested base rate increase on its own merits and not in conjunction with clause mechanisms, particularly fuel charges. (Tr. 2928, 2929; see Issue Nos. 142 and 144.)

Particularly as it concerns industrial consumers, energy is a large component of their costs. For some, it may be the most critical component. As such, rate stability and overall cost of electricity are vital to the economic health of large commercial and industrial customers in Florida, and to the economic health of Florida itself. (Tr. 3374). To visit huge increases on this class as it emerges from the economic problems of the past will be a disincentive to retain and grow jobs in the state.

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[20] FPL characterizes the increase as "moderate." (Tr. 4093). It should also be noted that witness DeRamus' characterization of the increase as "moderate" includes the current fuel adjustment projections, (Tr. 4117), which as discussed in Issue Nos. 142 and 144 will likely change in the future. Dr. DeRamus did not provide any analysis as to the impact of only the base rate increase. (Tr. 4118). Nor did Dr. DeRamus factor in any potential changes to natural gas prices. (Tr. 4126).

BASE RATE STEP ADJUSTMENT

ISSUE 128: Should the Commission approve a base rate step adjustment for the Canaveral Modernization Project?

FIPUG: *Only if the plant comes on line during the test year. If it does, the adjustments suggested by OPC witness Ramas should be made.*

ISSUE 129: Should deferred taxes be included in the capital structure rather than as a reduction to rate base for the Canaveral Modernization Project base rate step adjustment?

FIPUG: *Yes, deferred taxes should be reflected as a reduction to rate base. FIPUG adopts Public Counsel's argument on this issue.*

ISSUE 130: Is FPL's requested rate base of $821,325,000 ($837,297,000 system) for the Canaveral Modernization Project appropriate?

FIPUG: *An increase, if any, to account for the Canaveral Modernization Project is dependent on when the plant comes on line. Additionally, if the plant comes on line during the test year, rate base should reflect FPL's updated projections and rate base should be reduced by $9.7 million. FIPUG adopts Public Counsel's argument on this issue.*

ISSUE 131: What is the appropriate weighted average cost of capital, including the proper components, amounts and cost rates associated with the capital structure, to calculate the base rate step adjustment for the Canaveral Modernization Project?

FIPUG: *These items should be the same as approved for the general rate increase, if any increase is granted.*

ISSUE 132: Is FPL's requested net operating loss of $32,092,000 ($32,712,000 system) for the Canaveral Modernization Project appropriate?

FIPUG: *No, the net operating loss should be $29,304,000. FIPUG adopts Public Counsel's argument on this issue.*

ISSUE 133: Is FPL's requested Net Operating Income Multiplier of 1.63188 for the Canaveral Modernization Project appropriate?

FIPUG: *No position.*

ISSUE 134: Is FPL's requested base rate step increase of $173,851,000 for the Canaveral Modernization Project appropriate?

FIPUG: *No. If any rate increase is granted, FPL's request should be reduced by at least $121.5 million. FIPUG adopts Public Counsel's argument on this issue.*

ISSUE 135: What is the appropriate effective date for implementing FPL's requested base rate step increase for the Canaveral Modernization Project?

FIPUG: *If the plant comes on line during the test year and any increase is granted, it should take effect when the plant comes on line. If the plant comes on line after the test year, FPL may seek recovery for it in its next rate case.*

COST OF SERVICE AND RATE DESIGN ISSUES

ISSUES 136 - 138: DROPPED

ISSUE 139: Should FPL employ a minimum distribution system ("MDS") cost of service methodology to classify and allocate distribution costs; if not, what methodology should be used?

FIPUG: *Yes. There is a customer-related component of certain distribution plant costs, as cited in the NARUC *Electric Utility Cost Allocation Manual*, which should be recognized in setting rates.*

ISSUE 140: What is the appropriate cost of service methodology to be used to allocate production costs to the rate classes?

FIPUG: *FPL's predominant seasonal loads are in the summer as SFHHA has demonstrated. Therefore, a method that places more emphasis on summer peaks would be more appropriate than the 12CP-1/13th AD method FPL has selected. However, because the Commission has consistently approved the 12CP-1/13th methodology, FIPUG does not object to this method at this time.*

DISCUSSION OF ISSUE 140

FPL has chosen to use the 12CP-1/13th AD method to allocate production (generating plant) related costs. This method allocates approximately 92% of the costs of production to individual rate schedules based on each rate schedule's contribution to the 12 monthly coincident peaks. The coincident peaks are the maximum load that FPL serves in an hour in each of the 12 months of the year. The 12CP-1/13th AD method looks at the highest demand in each month and then assigns responsibility based on each class' contribution to demand in each of the 12 months.

(Tr. 1444-1445). In this case at this time, FIPUG does not object to the use of this method for allocation of production plant. (Tr. 1398).

However, allocation of production plant costs should reflect cost causation and the allocation methodology the Commission selects should closely reflect the load characteristics of FPL's system. Because FPL is a strongly summer peaking utility,[21] which experiences its tightest reserve margins in the summer months, more emphasis should be placed on summer month demands than the 12CP/1/13th AD method as SFHHA witness Baron explains.[22] A summer CP methodology would do a better job in appropriately allocating costs because FPL is predominantly a summer peaking utility. (Tr. 1448-1449).

Further, FPL has misclassified some costs to energy that should be classified to demand. In that instance, FPL failed to follow the National Association of Regulatory Utility Commissions (NARUC) Cost Allocation Manual (CAM). FPL has classified $323 million of production O&M expense to demand; using the NARUC CAM would result in classifying $422 million (or $99 million) to demand. (Tr. 1424; Exh. No. 289). The Commission should make this reclassification.

<u>ISSUE 141</u>: What is the appropriate cost of service methodology to be used to allocate transmission plant-related costs to the rate classes?

<u>FIPUG</u>: *Transmission plant should be classified and allocated entirely on a demand basis. The rationale for this is that transmission plant is sized to meet peak demand. Serving loads throughout the year is a by-product of serving peak demand and is unrelated to energy usage.*

[21] Except for one year, from 2005-2011, FPL's highest coincident peak occurred in the summer. (Tr. 1445). *See also*, Exh. No. 286.

[22] As Mr. Baron testified, FPL's summer peak is the main driver of FPL's capacity resource needs. Therefore, it would be appropriate an appropriate methodology to use to assign cost responsibility for generation and transmission fixed costs. (Tr. 3082).

DISCUSSION OF ISSUE 141

FPL also proposes to use the 12CP-1/13th AD methodology to allocate transmission. As discussed in Issue No. 140, this methodology allocates costs partly on a coincident peak demand basis and partly on an energy basis. In addition, the coincident peak portion is based on customer demand in all 12 months. That is, the 12CP-1/13th AD methodology assumes that transmission-related costs are caused by year-round coincident peak and average demand. (Tr. 1419).

The 12CP-1/13th AD methodology is inappropriate to use to allocate transmission plant-related costs for a number of reasons. First, transmission plant is sized to meet system peak demand. (Tr. 2110). The size of a transmission line is based on peak demand because that is when the largest capacity of the line is needed. (Tr. 2110). Energy or average demand does not determine the amount of transmission capacity FPL needs. (Tr. 1420). Cost causation is a function of peak demand. (Tr. 1420).

Second, in contrast to production plant costs, there is no difference in the cost of transmission plant as a function of generation technology. The capital cost/operating cost tradeoffs that may influence the characteristics of production plant are not a factor in the cost of transmission plant. (Tr. 1420). FPL must have enough transmission plant to serve its peak demand.

Finally, there is a double-counting problem inherent in an energy-based allocation method that allocates a portion of investment on average demand and a portion on peak demand. For all these reasons, transmission plant should be allocated on a 100% demand basis. (Tr. 1421).

Mr. Ender, FPL's witness on this topic, testified that FIPUG's position that transmission plant should be allocated using a straight coincident peak methodology is a reasonable method for allocation of those costs. (Tr. 2110). Therefore, the Commission should utilize the straight CP method to allocate transmission costs as this best reflects cost causation.

ISSUE 142: Has FPL properly allocated costs to the rate classes?

FIPUG: *No. Assuming that an increase is granted, which FIPUG does not endorse, FPL has violated the principles of gradualism by allowing rates for one class to decrease while increasing rates for some other classes as much as 46%. The Commission should apply its long-standing gradualism policy to limit increases per class and should base increases, if any, only on base rates, not on clause recovery. Clause recovery is unstable and changes year by year and further, is not the subject of this case.*

ISSUE 144: How should the change in revenue requirement be allocated among the customer classes?

FIPUG: *A change in revenue requirements, if any, should be based on the application of the principle of gradualism, using the appropriate cost of service study. Classes should move toward cost subject to the Commission's gradualism policy, based only on base revenues.*

DISCUSSION OF ISSUES 142 AND 144

Issue Nos. 142 and 144 deal with how a rate increase (if granted) should be allocated among the customer classes. The allocation of any change in base revenues should reflect the cost of providing service to the classes while also applying the principle of gradualism to prevent any class from receiving an overly large increase. (Tr. 1400). FPL's proposed allocation should be rejected because it fails to comport with these principles. It allows rates for one class to decrease while subjecting other classes to increases of up to 46%, thus ignoring principles of gradualism. (Tr. 1395).

FPL's proposed allocation is shown in Exh. No. 280. Across the board, FPL proposes an 11% base increase for January 1, 2013. However, the SL-2 class would get a *24% decrease*, while the CILC-1T class would receive a *34% increase*. When the Cape Canaveral step increase is considered, FPL proposes to assess an additional 3.7% base increase across the board, but a 9.1% increase for the CILC-1T. This results in a *43% increase* for the CILC-1T class. (MFR E-13a). A 46% increase for the CILC-1T is shocking, violates principles of gradualism, and should be rejected. Such an increase would unfairly impact customers who take service under the CILC-1T, most of whom are large business users of electricity and employ scores of people. Such action would likely thwart the development of new jobs in Florida.

FPL's allocation proposal violates the Commission's principle of gradualism. Some classes are allocated an amount higher than necessary to move them toward cost (GSLD(T)-3, CILC-1D and CILC-1T) while others are moved away from cost (residential, SL-1, SST-DST, SST-TST). (Tr. 1403-1404; Exh. No. 281). In addition, by reducing the SL-2 rates, FPL violates the gradualism maxim that no class should receive a decrease. (Tr. 1404). As is evident from the wide disparity between the cumulative proposed base rate increases (from negative 20% to 46%), as shown in Exh. No. 281 at 3, FPL has given virtually no recognition to the principle of gradualism.

The major area of dispute between the parties regarding cost allocation and application of gradualism principles is whether application of the gradualism policy, of giving no class an increase of more than 1.5 times the system average, is applicable to base rates or to base rates and adjustment charges. FPL argues that application of the 1.5 limitation is applicable to base rates and adjustment charges, (Tr. 5013), and further argues that this is the approach that the Commission has followed consistently; however, FPL is simply incorrect.

In Tampa Electric Company's most recent rate case, the Commission applied the 1.5 times system average policy to base rate revenues *only*. (Tr. 5016; Order No. PSC-09-0283-

FOF-EI). When FPL witness Deaton was questioned about the Tampa Electric rate case order, she receded from her "Commission policy" argument and stated that no parties in the Tampa Electric case objected to this application of the gradualism policy. (Tr. 5016). However, parties cannot nullify a Commission policy by agreement. Thus, the Commission's application of the 1.5 system average has rightly been applied to only base revenues and should be so applied in this case.

Beyond that, it makes sense to apply the gradualism principles to base rates *only* for a number of reasons. First, cost recovery clauses should not be included in the application of gradualism principles because recovery clauses change on an annual basis whereas base rates remain in place for a much longer period of time. FPL witness Deaton admitted that no changes to the fuel clause will be implemented in this base rate case, (Tr. 2180), and the increase that FPL seeks in this case has nothing to do with increases or decreases in adjustment factors. (Tr. 1405-1406). Ms. Deaton further acknowledged that the fuel factor changes once a year after the Commission's November fuel adjustment hearing. (Tr. 2180). And, sometimes the fuel factor changes more than once a year, if a utility comes in for a mid-course correction. (Tr. 2181).

Fuel prices, especially natural gas, are very volatile, (Tr. 2182), and are currently quite low as reflected in the fuel factor. Fuel prices may experience great fluctuation in one year and then dramatically change again in the next year, thus, dramatically affecting the fuel cost recovery factor. Nonetheless, Ms. Deaton admitted that no gradualism policy is applicable to the fuel adjustment and such changes are simply passed through to consumers regardless of their magnitude. (Tr. 2182-2184).

Given that the cost recovery clauses are separate ratemaking mechanisms and can have positive or negative impacts on customers depending on the circumstances, any projected short-term changes resulting from clause recoveries should not be considered in setting base rates. Any increase or decrease in natural gas prices will not affect how base rates in this case are determined. (Tr. 1406).

Thus, it would be inappropriate to include and rely on projections of clause revenues for just one year (the test year) in setting base rates. (Tr. 1405). The Commission should apply its gradualism policy solely to base rates.

ISSUE 143: Is FPL's proposed allocation of the Cape Canaveral Modernization step increase reasonable?

FIPUG: *No. FPL's proposed allocation is inconsistent with the methodology that FPL has used to allocate production capacity costs both in this case and in its filings in the Capacity Cost Recovery Clause. Further, the proposed allocation resembles a pure energy allocation and is not cost-based. It is totally inconsistent with the 12CP-1/13th AD method that FPL uses to allocate production costs. If any increase for the Cape Canaveral Modernization is awarded, it should be allocated on a 12 CP-1/13th basis, consistent with cost causation and cost of service principles.*

DISCUSSION OF ISSUE 143

In Docket No. 080245-EI, FPL sought a determination of need for the conversion of its Cape Canaveral plant. In its order granting the determination of need, the Commission found that:

> FPL has demonstrated a reliability need for additional resource capacity in 2013. . . . FPL chose gas-fired combined cycle units as its resource option to meet its capacity needs. This decision was made primarily because coal and nuclear generation have longer construction times and would not be able to provide the additional capacity in the time needed. This approach will maintain FPL's reserve margin above 20 percent throughout the period.[23]

Thus, the Commission's order granting the Cape Canaveral determination of need makes it clear that FPL's request was approved, not on the basis of any fuel savings, but on the basis that the plant was needed to serve the capacity requirements of ratepayers. Despite the fact that Cape

[23] Order No. PSC-08-0591-FOF-EI at 3.

Canaveral is being built to meet capacity needs, FPL proposes to use almost a pure energy allocator for the step increase. (Tr. 1404, 5009). There are numerous problems with this proposal.

First, FPL seeks to allocate the Cape Canaveral increase in a manner that is totally inconsistent with the methodology FPL uses to allocate production capacity costs in its cost of service study ***filed in this case*** and in the Capacity Cost Recovery Clause. (Tr. 1396). This is inappropriate because the request for recovery related to Cape Canaveral is simply an extension of this rate case. Thus, the same principles used for class revenue allocation should apply to both the 2013 request and any step increase.

Second, the proposed Cape Canaveral allocation is a pure energy allocation – that is, class increases are made on a per kWh basis. Use of an energy allocation is unrelated to cost-based ratemaking. (Tr. 1404). The allocation factors that FPL proposes to use are totally inconsistent with the 12CP-1/13th AD factors that FPL uses to allocate ***all*** other production plant in this case. (Tr. 1404).

FPL attempts to justify this clear deviation from principles of cost causation by arguing that:

> Applying the step increase to energy charges rather than demand charges better matches the increased cost associated with CC with the benefit of the fuel savings associated with CC that will be reflected in the fuel factors when CC goes into service.

(Tr. 5009). However, as Mr. Pollock testified, future capacity additions occur because capacity is needed to meet peak demand. And in fact, over 80% of the Cape Canaveral revenue increase is demand related. (Tr. 3128). If there is no load growth requiring additional capacity, the proposed need would not be authorized and the plant would not be built. (Tr. 1442). It is hoped that any new capacity addition will create fuel savings, but *fuel savings do not cause the need for* *plant*; that need is caused by peak demand. Thus, costs of plant should be allocated on the basis of peak demand, not fuel savings. (Tr. 1442).

If any base rate increase is authorized in this proceeding for Cape Canaveral, it should be allocated in a manner that moves classes closer to cost using an appropriate cost of service methodology adjusted for the approved revenue requirement. The Cape Canaveral step increase, if awarded, should be allocated in the same manner as the 2013 increase. (Tr. 1396).

ISSUE 145: Should FPL's current time-of-use residential rate be closed to new customers, effective January 1, 2013?

FIPUG: *Category 2 Stipulation. FIPUG takes no position on the stipulation.*

ISSUE 146: Should the Commission approve FPL's new Residential Time-of-Use Rider?

FIPUG: *Category 2 Stipulation. FIPUG takes no position on the stipulation.*

ISSUE 147: Should FPL's proposal to credit the fuel charge for lighting customers who are required to turn off outside lights during turtle nesting season be approved?

FIPUG: *Category 2 Stipulation. FIPUG takes no position on the stipulation.*

ISSUE 148: Should FPL's proposed change to the late payment charge be approved?

FIPUG: *No position.*

ISSUES 149 -156: DROPPED

ISSUE 157: Should FPL's proposed change to the temporary construction service rate be approved?

FIPUG: *Category 2 Stipulation. FIPUG takes no position on the stipulation.*

ISSUE 158: Should FPL's proposed change to the Returned Payment Charge be approved?

FIPUG: *No position.*

ISSUE 159 - 164: DROPPED

ISSUE 165: What is the appropriate monthly kW credit to be provided customers who own their own transformers pursuant to the Transformation Rider? (8.820)

FIPUG: *No position.*

ISSUE 166: Has FPL correctly quantified the incentive payments associated with the Commercial/Industrial Load Control (CILC) classes?

FIPUG: *No. FPL did not appropriately quantify the CILC incentive payments nor did it properly allocate such payments. As to the quantification problem, FPL's restated revenues to account for the payments do not reflect the revenues that each CILC class would generate under the applicable firm rate. This is necessary to reflect the cost differential between firm and nonfirm service. This results in the earned returns for this class being understated. The CILC incentive payments should be recalculated to reflect the cost differential between firm and nonfirm service as shown in FIPUG witness Pollock's testimony.*

DISCUSSION OF ISSUE 166

The CILC program is a nonfirm tariff option under which customers agree to curtail load at FPL's direction. This allows FPL to maintain system reliability so as to maintain firm service. Thus, these customers receive a lower quality of service due to the fact that they may be interrupted at any time. (Tr. 1412).

The CILC incentive payments are the differential in base rate revenues (excluding Customer charges) between the CILC rate and the corresponding firm (i.e., GSD(T), GSLD(T)-I, and GSLD(T)-3) rates. (Tr. 1413). It is important that FPL appropriately quantify CILC revenues so that it accurately reflects the revenue that it receives from each class, including the CILC class. (Tr. 1412-1413).

To account for customer revenues, in its cost of service study, FPL assumes that all customers receive firm service, even though, as discussed above, this is not the case for CILC customers. So, to prevent a mismatch between the costing (firm) and pricing (nonfirm) assumptions, FPL restates the CILC revenues to the level they would otherwise be if service were provided on a firm basis. The amount of the restated revenues is based on FPL's analysis of the incentive payments to each of the CILC classes. (Tr. 1413).

While FIPUG agrees with the theory upon which FPL has restated CILC revenues for purposes of its cost of service study, in practice, FPL as made two errors. First, it did not appropriately quantify CILC incentive payments. Second, the nonfirm credits were not appropriately allocated. (Tr. 1414).

First, FPL's restated revenues do not reflect the revenues that each CILC class would generate under a firm rate. That is, FPL has not correctly reflected the cost differential between firm and nonfirm service. In particular, incentive payments to CILC-1T and CILC-1D are understated, while payments to CILC-1G are overstated. (Tr. 1414-1415). The impact of these understated payments for the CILC-1T and CILC-1D classes is that the earned return attributed to these classes is understated. The appropriate payments should be those shown in Mr. Pollock's testimony. (Tr. 1415).

Second, as discussed in detail in Issue No. 170, nonfirm credits should not be allocated to nonfirm customers because not only is this inconsistent with FPL planning principles but also violates the principle of cost causation.

ISSUE 167: Should the CILC rate be reopened?

FIPUG: *Yes. The CILC rate should be reopened and credits to this class should be increased. (See Issue No. 169). As to reopening the rate, circumstances have greatly changed since the CILC rate was closed in 1996. Equipment costs for new generation were much lower in 1996 than they are now. Thus, additional CICL load is now very cost-effective. This is an option that should be available to customers and to the state of Florida.

In addition, the payments to current (and potentially new CILC) customers should be raised to compensate such customers for the capacity they provide. While FPL recruits new customers to its CDR Rider program, such customers are paid much more for their capacity than CILC customers. Thus, CILC payments should be raised to the same level as CDR.*

DISCUSSION OF ISSUE 167

The CILC rate is closed now and has been closed since 1996. The rate was closed in Order No. PSC-96-0468-FOF-EG. In that Order, the Commission noted that for ***the years 1995 through 2000***, FPL could add up to 137 MWs of incremental CILC load and thus had reached the cost-effective level of participation.

However, in the 16 years since that order, circumstances have dramatically changed. First, FPL continues to add nonfirm load on its CDR program. This program is similar to the CILC program, but the CDR has a higher payment. (Tr. 1431).

In addition, costs for new generating equipment, upon which the rate is based in part, have increased dramatically since 1996. The avoided unit currently being used to establish the capacity payments in Schedule QS-2 is estimated to cost $930/kW. Rising equipment costs mean that additional CILC load is now very cost-effective and should be reopened. (Tr. 1431-1432).

As Mr. Pollock notes in his testimony, interruptible service is receiving increasing attention form legislative and regulatory policymakers. For example, the Energy Policy Act of 2005 (EPACT) encourages the development of demand response programs, which include nonfirm service. (Tr. 1432).

Further, interruptible power is an important resource for the state of Florida. As noted earlier, when capacity is needed to serve firm load customers, interruptible customers statewide may be called upon (with or without notice and without limitation as to the frequency and duration of curtailments) to discontinue service so that the lights will stay on for the firm customer base. Such interruption often causes production to be shut down resulting in losses for the interruptible customer. (Tr. 1433).

In order to encourage the further development of this important resource, the Commission should reopen the CILC rate. No reason has been proffered for not reopening the rate. While both the CILC and CDR programs are demand reduction programs, (Tr. 2184), the CILC program has a different rate structure and creates different customer incentives. The CILC includes a lower demand charge for on peak demand and has other options that certain customers might prefer. It provides the customer with some different options. (Tr. 1452-1453).

FPL's witness Deaton provides no substantive rebuttal to FIPUG regarding the propriety of reopening the CILC rate. She simply states that the issue should not be addressed here. As discussed in Issue No. 169, neither FPL nor any other party moved to strike this issue, testimony has been taken regarding the issue, and it is ripe for determination in the context of this rate setting proceeding.

ISSUE 168: Is FPL's proposed design of the demand and non-fuel energy charges for the CILC rate appropriate?

FIPUG: *FPL's proposed demand charges significantly deemphasize demand. This results in a corresponding, but much larger increase, in energy charges. This results in high load factor customers receiving larger base rate increases than the class average. It would also send the wrong price signal and discourage load management. The demand charge (and the energy charge) should be revised to reflect unit costs.

FPL has improperly emphasized energy charges and failed to base such charges on appropriate unit costs. For example, for the GSLD-1 and GSLD-2 rates, the non-fuel energy charges would be 143% and 156% higher, respectively, than their costs. Because demand charges are understated, energy charges are overstated, resulting in a significant amount of demand-related costs being collected in the energy charge. The triple digit increase FPL seeks would inappropriately and adversely affect high load customers. FPL's proposal to recover the entire step increase, if any, for the Cape Canaveral Modernization project through energy charges is entirely inappropriate. This would have the effect of raising energy charges by 38% to over 200%.*

DISCUSSION OF ISSUE 168

Demand and non-fuel energy charges are designed to recover base rate non-fuel costs. Demand charges are billed relative to a customer's maximum metered (kW) demand in the billing month, while the non-fuel energy charges are billed on the kWh purchased. (Tr. 1427). FPL's proposed design of these charges would substantially increase (by triple digits in some cases) energy charges and deemphasize demand charges. (Tr. 1427; Exh. No. 291). And as discussed in Issue No. 143, FPL proposes to recover the entire Cape Canaveral step increase through higher charges, which is inappropriate.[24]

FPL's rate design of these charges is inappropriate because it results in high load factor customers receiving larger base rate increases than the corresponding class average. Deemphasizing demand charges sends the wrong price signals and discourages load management. Allowing demand-related costs to be collected in energy charges will create revenue (and income) instability. That is, FPL has underpriced the demand charge and overpriced the energy charge. Energy charges exceed unit costs and demand charges are underpriced. For example, FPL's proposed non-fuel energy charges would be 143% and 156% higher than the corresponding non-fuel energy costs, respectively. FPL's approach is inconsistent with cost-based ratemaking and should not be accepted. (Tr. 1428-1429).

While FPL states that it followed its cost of service study closely in designing rates (Tr. 5003), the discussion above makes it clear that this is not the case. In fact, FPL admits that it designed these charges to "mitigate the impact to low load customers…." (Tr. 5003). However, this is not a justification for the large deviation from the cost of service study.

To correct the problem in FPL's design of these charges, the charges, consistent with cost causation principles, should closely reflect customer-related, demand-related and energy-related

[24] FIPUG incorporates its discussion of Issue No. 143 in this issue.

unit costs as derived from FPL's cost of service study. (Tr. 1428). Any increase allocated to the GSLD(T)-1 class should be entirely in the demand charge. The GSLD(T)-3 and CILC energy charges should be increased only by the amount necessary to reflect the unit cost. Any remaining revenue deficiency should be recovered in the Demand Charge. (Tr. 1430-1431).

ISSUE 169: Should the Commercial/Industrial Demand Reduction Credit Rider (CDR) credit be increased?[25]

FIPUG: *Yes. Nonfirm customers provide a valuable service to FPL and defer the need for future capacity. The CDR credit has been increased since 2000. However, the costs for new generation, upon which the credit is based, have changed dramatically. The current credit produces a benefit/cost ratio of 3.1. If this ratio were set at 1.2, the program would still be cost-effective. Thus, the credit should be increased to $12.07 per kW.*

DISCUSSION OF ISSUE 169

The Evidence

There has been *no substantive evidence* whatsoever presented in this case which contradicts the position of FIPUG that nonfirm credits should be increased to $12.07 per kW. SFHHA and FEA support FIPUG's position on this issue. OPC, FRF, Algenol, Pinecrest, Hendricks, and Saporito take no position on this issue. Staff's position states that it "takes no position pending evidence adduced at hearing."[26] The only competent, substantial evidence adduced at hearing supports FIPUG's position that the CDR and CILC payments should be increased.

FPL takes no substantive position and has presented no substantive evidence on this issue. It simply wants to play "kick the credit can down the road" and try to toss this issue to yet another proceeding. In contrast to Mr. Pollock's testimony on this topic, FPL offers two paragraphs in rebuttal. (Tr. 5007-5008). FPL's two paragraphs *do not* take issue with FIPUG's

[25] It should be noted that it was agreed upon by the parties that the CILC payment would also be addressed within this issue.
[26] Order No. PSC-12-0428-PHO-EI at 167.

substantive testimony and exhibits that demonstrate that nonfirm credits have not been increased in 12 years, nor with the evidence of record that nonfirm programs are cost effective, nor with FIPUG's position that such programs provide value to all FPL ratepayers and that the credits associated with nonfirm programs should be increased.

Further, FPL did not move to strike this issue from the proceeding, (Tr. 2188), nor did any other party, including Staff. Rather, FPL's position is: "not here, try a different docket." This is the docket in which FPL's rates will be set. Obviously, rates for some classes, such as CILC and CDR, are affected by the amount of credit they receive for the provision of nonfirm service. Testimony has been filed and the issue joined. It is ripe for decision and the Commission should not disregard substantive testimony and punt this issue to another place to be decided at some future point in time.

Finally, FPL and others have waived any right to defer this issue to another docket. The issue was identified in the multiple informal issue identification conferences and properly made an issue in the case. Neither Staff, any party nor FPL objected to the inclusion of the issue. In reliance upon the issue being addressed, FIPUG retained and paid an expert witness to provide testimony on this specific issue and to travel from out of state to attend the hearing. Furthermore, FIPUG made this issue its chief focus during its opening statement and conducted both direct and cross-examination on the issue. (Tr. 139-146).

The case of *Destin Savings Bank v. Summerhouse of FWB, Inc.*, 579 So.2d 232, 235 (Fla. 1st DCA 1991) sets forth the elements necessary for a valid waiver as the following:

> Waiver is defined as an intentional relinquishment or abandonment of a known right or privilege, or conduct that warrants an inference of the intentional relinquishment of a known right. In order to establish a valid waiver, the following elements must be satisfied: (1) the existence at the time of the waiver of a right, privilege, advantage, or benefit that may be waived; (2) the actual or

> constructive knowledge thereof; and (3) an intention to relinquish that right, privilege, advantage or benefit.

Here, both FPL and Staff knew the proposed increase to the nonfirm credit, Issue No. 169, was an issue specifically raised and delineated in the case. FPL could have provided testimony or other evidence about the issue and could have cross-examined witness Pollock about his testimony on the issue, but opted not to do so. FPL stated that while it considered moving to strike the issue, it decided not to do so. (Tr. 2187). The key elements of a waiver have been met.

Finally, FIPUG suggests that to not decide this matter, an issue that is important to both FIPUG's members and the military bases in FPL's service territory, would be a disservice to the parties who actively participated in the case. All procedural rules were complied with; the issue was identified; evidence was presented; the issue has been briefed and is ripe for decision. The Administrative Procedure Act, Chapter 120, Florida Statutes, does not give an administrative law judge or this Commission, when serving in a fact finding role, the discretion or option to not consider an issue that is properly presented and ripe for decision. The issue should be decided and the credit increased to $12.07 – as presented in the unrebutted testimony of FIPUG expert witness Pollock.

<u>Nonfirm Customer Credits Should Be Increased</u>

As discussed above, nonfirm customers may be curtailed when needed for FPL to meet firm demand on its system. The curtailment conditions in the CILC tariff are as follows:

> The Customer's controllable load served under this Rate Schedule is subject to control when such control alleviates any emergency conditions or capacity shortages, either power supply or transmission, or whenever system load, actual or projected, would otherwise require the peaking operation of the Company's generators. Peaking operation entails taking base loaded units, cycling units or combustion turbines above the continuous rated output, which may overstress the generators.

(Tr. 412).

Similarly, the curtailment provisions for CDR load are:

- Control Condition:
- The Customer's controllable load served under this Rider is subject to control when such control alleviates any emergency conditions or capacity shortages, either power supply or transmission, or whenever system load, actual or projected, would otherwise require the peaking operation of the Company's generators. Peaking operation entails taking base loaded units, cycling units or combustion turbines above the continuous rated output, which may overstress the generators.

Thus, nonfirm customers may be shut off at FPL's direction. FPL President, Mr. Silagy, testified that such customers provide a valuable service to FPL and its ratepayers because these customers allow FPL to defer the construction of power plants and thus reduce capital expenditure. (Tr. 419, 422). Both CDR and CILC customers are required to have load control equipment installed to provide FPL direct control over the customer's electrical load. This equipment is paid for by the customer through an additional customer charge. (Tr. 1435).

As FPL witness Deaton acknowledged, the CDR program was established in 2000. At that time the credit was $4.75 per kW. In 2004, the credit was reduced from $4.75 per kW to $4.68 per kW. (Tr. 2189). To this day, the credit remains $4.68. (Tr. 2190). While other commodities, as well as generation plant, have increased in cost, the nonfirm credits have not kept pace. It is time for an upward adjustment.

The CILC program is very similar in its benefits to CDR. However, currently, the average CILC customer credit is $3.79 per kW of load control demand and $4.79 per CP-kW. As such, CILC customers are being paid *even less* than CDR customers who are currently paid $4.68 per Kw month credit. To eliminate discrimination, the CILC incentive payments should be increased to at least the same level as CDR payments discussed above. (Tr. 1434-1435; Exh. No. 293).

To encourage businesses to expand and locate in Florida, nonfirm load must be appropriately priced. As Mr. Pollock testified, the CDR credit is cost effective at $12.07 per kW and the Commission should increase it to that level in this docket with a corresponding increase to CILC. (Tr. 1436).

ISSUE 170: Should CILC and CDR credits be allocated to non-firm loads?

FIPUG: *No. Nonfirm customers provide capacity to FPL when it needs additional capacity to maintain its firm loads. FPL calls upon this capacity by curtailing nonfirm capacity. In return for agreeing to curtail load when called upon by FPL, FPL pays these customers a credit. These credits can be viewed as a cost to provide service to firm loads. Therefore, the credits should be allocated only to firm loads. Otherwise, nonfirm customers are, in essence, paying a portion of their own credit.*

DISCUSSION OF ISSUE 170

As previously discussed, the CILC program provides a lower base rate to customers who agree to curtail load at FPL's direction. This allows FPL to maintain system reliability and serve firm customers when FPL cannot meet customer demand. (Tr. 1412). This reduced rate reflects the value of nonfirm service. (Tr. 1412-1413).

Nonetheless, FPL proposes to allocate the CILC credits to all classes, including the CILC class. This allocation is inconsistent with principles of cost causation because costs should only be allocated to customers that cause the costs to be incurred. Nonfirm customers provide capacity to FPL when it is needed by curtailing service. The nonfirm credits are the payment FPL makes to purchase capacity from these customers; thus, the credits are a *cost to serve firm load* and should not be allocated to nonfirm load. (Tr. 1416). The basis for FPL's view is that all customers benefit from the nonfirm programs and thus should pay for them. (Tr. 4930). As explained below, this reasoning is faulty because nonfirm credits represent payments to nonfirm customers for capacity provided to FPL to serve demand.

Exh. No. 283 shows that nonfirm credits should be allocated in proportion to *firm* loads. It would be inappropriate to allocate the credits to total loads, including controllable load, because that would effectively charge nonfirm customers for the production plant costs they avoid. This would be contrary to the principle of cost causation. (Tr. 1418).

This approach is also inconsistent with the way FPL plans its system. As admitted by FPL witness Ender, FPL removes nonfirm load when determining the need for new capacity. (Tr. 4942). Thus, it does not incur production capacity costs to serve interruptible customers, and no such costs should be allocated to them. The fundamental principle of utility cost allocation is that costs are allocated to those customers that cause them to be incurred. Nonfirm customers do not cause capacity costs to be incurred, and thus those costs should not be allocated to them. (Tr. 1418). Exh. No. 284 shows the revised production demand allocation factors excluding nonfirm load.

ISSUE 171: What is the appropriate level and design of the charges under the Standby and Supplemental Services (SST-1) rate schedule?

FIPUG: *No position.*

ISSUE 172: What is the appropriate level and design of charges under the Interruptible Standby and Supplemental Services (ISST-1) rate schedule?

FIPUG: *No position.*

ISSUE 173: What is the appropriate method of designing time of use rates for FPL?

FIPUG: *No position.*

ISSUE 174: What are the appropriate customer charges for January 1, 2013?

FIPUG: *No position.*

ISSUES 175 - 182: DROPPED

ISSUE 183: What are the appropriate demand charges for January 1, 2013?

FIPUG: *See Issue No. 168.*

ISSUE 184: What are the appropriate energy charges for January 1, 2013?

FIPUG: *See Issue No. 168.*

ISSUE 185: What are the appropriate lighting rate charges for January 1, 2013?

FIPUG: *No position.*

ISSUE 186: What is the appropriate effective date for FPL's revised rates and charges, prior to a Base Rate Step adjustment, if any, associated with the Canaveral Modernization project?

FIPUG: *If any increase is granted for this project and it comes on line in the test year, the increase should occur when the plant comes on line. If it comes on line after the test year, FPL may seek recovery in its next rate case.*

ISSUE 187: What are the appropriate charges after the Canaveral Modernization Project comes on line?

FIPUG: *The appropriate charges, if any, should use the same cost of service methodology as the main portion of the rate case and should reflect the correct allocation and computation of demand and non-fuel energy charges recommended by FIPUG witness Pollock. See Issue No. 140.*

OTHER ISSUES

ISSUES 188 - 191: DROPPED

ISSUE 192: Should FPL be required to file, within 90 days after the date of the final order in this docket, a description of all entries or adjustments to its annual report, rate of return reports, and books and records which will be required as a result of the Commission's findings in this rate case?

FIPUG: *Category 1 Stipulation. FIPUG agrees with the position stated.*

ISSUE 193: Should this docket be closed?

FIPUG: *Yes, assuming that all appropriate documents have been filed, and all appeals, if any, have been resolved, this docket should be closed.*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of The Florida Industrial Power Users Group's Post-Hearing Statement of Issues and Positions and Post-Hearing Brief has been furnished by Electronic Mail this 21st day of September, 2012, to the following:

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