Steel Hector & Davis
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Matthew M. Childs, P. A.
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ORIGINAL
FILE COPY

February 16, 1989

Mr. Steve Tribble, Director
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32301

Re: Docket No. 890148-EI

Dear Mr. Tribble:

Enclosed herewith for filing is the original and fifteen (15) copies of Florida Power & Light Company's Motion to Dismiss in the above docket.

Respectfully submitted,

Matthew M. Childs, P. A.

MMC:bl
Enclosures
cc: All Parties of Record

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of the Florida Industrial Power Users Group to Discontinue Florida Power and Light Company's Oil Backout Cost Recovery Factor.	)	**Docket No. 890148-EI** **Filed: February 16, 1989**

MOTION TO DISMISS

Florida Power & Light Company ("FPL") hereby files this Motion to Dismiss Florida Industrial Power Users Group's Petition to Discontinue FPL's Oil Backout Cost Recovery Factor ("FIPUG Petition") and in support thereof states:

Introduction

The revenues collected and being collected by FPL with respect to its 500 kv transmission line project ("the OBO Project") are being recovered pursuant to Rule 25-17.016, F.A.C., and Order No. 11217 entered in Docket No. 820155-EU on October 1, 1982 which found that the Project qualified for cost recovery. FIPUG, without the citation to any applicable authority, proposes that this Commission cease the application of its Oil Backout Rule so that certain prior revenue recoveries would be refunded and all future recovery of revenue would terminate and only continue in the future if and when recovery through base rates could commence. In supporting its Petition as to these issues, FIPUG relies on the assertion that the Project has failed to achieve its "primary purpose" of the economic displacement of oil-fired generation and that the calculation of deferral benefits was based upon "illusory" generating units. FIPUG's Petition severely distorts the oil backout rule, misrepresents the

application and results of the "primary purpose test" and incorrectly applies the capacity deferral test. Arguments presented here by FIPUG are either the same or variants of those presented by FIPUG in Docket No. 820155-EU when the Project was qualified.

The principal relief that FIPUG requests this Commission grant with respect to revenue recovery is:

> a) refund all accelerated depreciation revenues associated with the inclusion of capacity deferral benefits in the calculation of net savings;
>
> b) terminate the oil backout charge; and
>
> c) instruct FPL that continued recovery of costs associated with the project must be accomplished through base rates.

THE OIL BACKOUT RULE MUST BE APPLIED

The oil backout rule permits the recovery of all costs associated with an oil backout project if the Commission determines that it qualifies. The Commission made that determination in Order No. 11217. In addition, if net savings are produced, then the utility is permitted to recover two-thirds thereof as accelerated depreciation. The accelerated depreciation simply serves to reduce the investment in the Project, to the extent any investment remains, thereby reducing the remaining revenue requirements on the investment in the Project. After a project has been fully depreciated, continued recovery on the investment in the Project ceases. The Rule did not contemplate that there would always be net savings or necessarily any net savings as FIPUG suggests. In describing the net savings to be collected, the Rule states:

> The revenues to be collected through the Oil Backout Cost Recovery Factor shall be the sum of ... plus two thirds of the actual net savings associated with the

project (if positive) to be applied as accelerated depreciation. (emphasis added)

Rule 25-17.016(4)(a). Thus, the Rule not only provides the revenues that "shall be" collected, it recognizes that there may be no positive net savings. FPL does not suggest that there are no net savings and will address that contention later. However, even if FIPUG's contention concerning the "primary purpose test" were correct, the Rule does not contemplate that recovery pursuant to the Rule would terminate. Instead, no accelerated depreciation could be taken. The relief requested by FIPUG of terminating the oil backout factor is contrary to Rule 25-17.016. This is prohibited by Section 120.68(11)(b), Fla. Stats.

In addition, the Rule does not contemplate, as FIPUG's arguments suggest, that continued application of the Rule as a means of cost recovery is or should be subject to any periodic review of actual results or, that the time frame for making that review is the first ten years of commercial operation of the Project. For example, in addressing the circumstance where costs of an oil backout project have been rolled into base rates, Section 4(d) of the Rule permits the continued recovery of accelerated depreciation "... until such time as the investment is fully repaid". This simply means that the time period during which accelerated depreciation may be taken may extend beyond the ten-year period analyzed to determine whether the Project qualifies. FIPUG desires to "force" its conclusion about net savings by using the same ten-year period used for the qualification decision and does so without explanation or justification.

A final point is worthy of note. FIPUG not only misapplies the "primary purpose test" it fails to note that this is a test only to determine whether a project has qualified for cost recovery pursuant to the Rule. There is no requirement, and FIPUG's petition is noticeably devoid of any authority on this point, for continued periodical reapplication of

the test to determine whether actual cost recovery will be permitted.

FIPUG's Participation in the Qualification Proceeding.

Although FIPUG's Petition does not mention it, Attachment 1 to the Petition reflects that FIPUG was an active participant in the qualification hearings "also contending that the project does not qualify under the Rule." Order No. 11217 at p.2. In addition in that proceeding:

> 1. FIPUG contended that the Rule required "the Commission to consider only fuel savings in determining whether the project qualified under the rule." Order No. 11217 at p. 3. Now, FIPUG asserts that there are no capacity deferral savings and, without explanation, subtracts the capacity payments to Southern from the fuel savings to produce fictional "fuel losses".
>
> 2. FIPUG contended "that rather than oil displacement, the primary purpose of this project was to meet increased load and improve system reliability." Order No. 11217 at p.4. Now, FIPUG contends that the primary purpose was not to meet increased load but to economically displace oil.
>
> 3. FIPUG contended that "unless the 'savings'" for capacity deferral are included, the project will show a negative 'net benefit' in nine of the ten years included in the analysis." FIPUG (Corrected) Petition for Reconsideration at paragraph 2. Attachment 1 hereto. Now, FIPUG asserts that the Commission's approval was based on FPL's projections that the lines would economically displace oil. FIPUG Petition at paragraphs 11 and 13.

In addition, in Docket No. 820001-EU, FIPUG contended that the oil backout factor should be allocated on the basis of demand. Order No. 11210. The Commission rejected this request. Order No. 11210 at p. 9. Now, FIPUG reconfigures the "primary purpose test" applied by the Commission, ignores its own correct contention that absent inclusion of capacity deferral benefits the project would show a " negative 'net benefit'" (as if this were a new

development) and now argues that it is unfair to apply the oil backout factor on a cents/kwh basis.

Much of what FIPUG now contends supports its Petition has already been argued to and decided by the Commission. FIPUG has ignored these arguments and rulings and simply seeks to reassault the Project as it did in 1982. FIPUG should not be permitted to relitigate decided issues.

FIPUG Misrepresents and Misapplies the "Primary Purpose Test"

FIPUG attaches great significance to its reconfigured "primary purpose test". Thus, it presents the following chain of "logic".

> 1. The Rule states that its primary purpose is the economic displacement of oil. (Petition at paragraph 7).
>
> 2. To qualify a Project, a utility must demonstrate that a Project's primary purpose is the economic displacement of oil. (Petition at paragraph 8).
>
> 3. Commission approval of the Project was based upon FPL's projections that the lines (the Project) would economically displace oil. (Petition at paragraph 11).
>
> 4. The projections on which approval and the extraordinary energy-based recovery of costs were based have not materialized. (Petition at paragraph 11).
>
> 5. The Project has not accomplished the purpose which led the Commission to qualify it under the rule. (Petition at paragraphs 11 and 13).
>
> 6. The Oil Backout Cost Recovery Mechanism should be discontinued and certain revenues should be refunded because the Project has not achieved its primary purpose. (Petition at paragraph 12).

FIPUG is simply wrong. The Commission specifically addressed the "primary

purpose test" in Order No. 11217. It is quite different from the "test" constructed by FIPUG here.[1] Rejecting the Staff and FPL position, the Commission concluded:

> In our mind, the issue [of determining whether the primary purpose is the displacement of oil] is best resolved by allocating the fuel costs of the project against the fuel savings and the capacity costs of the project against the capacity savings. We think it is appropriate to allocate costs and benefits in this case because the Company could have purchased the coal-by-wire power on a non-firm basis, thereby avoiding the capacity costs due Southern but also foregoing the deferred capacity benefits. If the net fuel savings exceed the cost of the project, the Company has met its burden of proof and demonstrated that the primary purpose of the project is oil displacement. The Company has done this in Exhibit 15(j).[2] (emphasis added).

Thus, if the fuel savings of the project from displacing oil-fired generation less the fuel costs of the energy which permitted that displacement exceed the cost of the transmission lines, the primary purpose has been met.

FIPUG attempts to make much of the fact that the fuel cost forecasts on which the project was qualified did not materialize. In point of fact they did not, however, FIPUG's Petition does not and cannot show that the primary purpose test is not continuing to be met even were that appropriate.

The Petition, at page 7, contains the following statements to support the contention that the primary purpose test has not been met:

> The fuel cost savings that were expected to result from the transmission line and the coal-by-wire purchases have not materialized. In fact, there have been very large

---

1/ FPL would also note that the so-called "primary purpose test" is a test for qualification; it is not a test for continued cost recovery under the rule.

2/ Attachment II hereto.

> losses in almost every year since FPL's use of the Oil Backout Cost Recovery Factor began. The cumulative losses through 1987 are $215,036,000 larger than FPL's original projection. (Source: Jeffry Pollock's Schedules 1, 2 and 3). (emphasis in original)

What Mr. Pollock has done is to deduct capacity deferral benefits as if they did not exist and subtract the capacity costs paid by FPL to Southern from the fuel savings. This approach is in direct conflict with the Commission's "primary purpose test". Instead of applying the Commission's "primary purpose test" whereby fuel savings are allocated to fuel costs and capacity savings are allocated to capacity costs, Mr. Pollock, and the mathematical results contained in the FIPUG Petition, reflect the allocation of capacity costs to fuel savings and the non-recognition of any capacity savings. The result is not only contrary to the application of the test to determine whether the Project qualified under the Rule originally, it is meaningless. Moreover, his conclusion is wrong. A review of the same OB-C1 schedules on which Mr. Pollock relies, and which are on file with this Commission shows that actual fuel savings through 1987 exceed $500,000,000 when calculated as called for by the Commission's "primary purpose test".

There are Capacity Deferral Savings

The second major prong of FIPUG's renewed attack on the oil backout cost recovery is the assertion that there are no capacity deferral savings from the purchase of 2,000 MW of firm capacity. FIPUG fails to explain that the Commission found that the purchases from Southern permitted the deferral of coal-fired generating units stating:

> The Company's commitment to purchase 1,000 MW of coal-by-wire from Southern in February 1981, permitted FPL to defer the Martin units to 1989 and 1990. The purchase of an additional 1,000 MW of firm power in February 1982 allowed further deferral of the Martin units and unsited units to 1992, 1993 and 1994.

The FIPUG Petition concedes that FPL purchases from Southern "are a vital cog" in meeting demand and providing reserve capacity and that these purchases are a "long-term source of capacity for FPL's system". Petition at p.9. However, and inconsistently with

these concessions, FIPUG maintains that these purchases have no capacity deferral value, or alternatively, that capacity deferral benefits should be based on less expensive alternatives "presently being pursued". Petition at pages 11 and 12. In "explaining" the availability of these less expensive alternatives, FIPUG asserts: (1) that "with the repeal of the Fuel Use Act FPL can now build new oil and gas-fired units to satisfy its requirements"; and, (2) "improved technology is now available enabling FPL to consider such options as combined cycle units..." Petition at page 10. Power Plants are not available instantaneously. What is "now" available is irrelevant. FIPUG fails to allege how FPL could have met its capacity needs in 1987 and 1988 without the "vital cog" of the purchases from Southern with an alternative only "now available" with the repeal of the Fuel Use Act or through improved technology. Moreover, by Order No. 13247 entered in Docket No. 830377-EU on May 1, 1984, the Commission rejected the suggestion by one Florida utility that a combined cycle unit with an in-service date of April 1992 would be the most economical choice. Order No. 13247 at page 4. The Commission also noted that FPL required additional capacity shortly after April 1992 and concluded that "the designated statewide avoided unit should be a jointly owned peninsular Florida base load coal plant consisting of two 700 MW units, with an in-service date of April 1, 1992." Order No. 13247 at page 4.

FPL presented its request to include capacity deferral benefits in the computation of net savings in its filing of January 6, 1987.

The Commission Should Not Discontinue Oil Backout Cost Recovery Until the Projects' Costs are Reflected in Base Rates.

The Rule permits, but does not require, that the costs of a qualified oil backout project be "rolled into" base rates. In fact, the Rule requires that such costs "shall continue to be recovered through the Oil Backout Cost Recovery until such time as they are included in base rates." Rule 25-17.016(4)(d).

In Docket No. 830465-EI, FPL proposed to include the cost of the transmission line and the related capacity charges in base rates. The Commission rejected FPL's request stating in part:

> Consequently, we favor keeping base rates as "pure" as possible, within the constraints of the Commission's rules and decline to accept FPL's proposal to roll oil-backout project costs into base rates at this time.

Order No. 13537. Under these circumstances, FIPUG's request that the recovery of costs of the Project be through base rates and that FPL terminate the oil backout charge should be dismissed. It is inconsistent with the Rule, contrary to the Commission's prior decision in Order No. 13537 and simply creates an intended gap in the ability to recover Project costs.

The Commission Should Not Direct that Recovery of Oil Backout Revenues Cease to be on a Cents/kwh basis.

As noted earlier, FIPUG made its first attempt to have oil backout cost recovery be on a demand charge basis in 1982. Since that time, FIPUG has sought to have the same result accomplished in Docket No. 820097-EU and Docket No. 830465-EI. On both occasions, FIPUG's requests were denied by the Commission. Order No. 11437 at page 43 and Order No. 13537 at page 60. FIPUG should be bound by the prior determinations of the Commission on this issue.

The Requests to Change the Regulatory Treatment of Project Costs and Revenue Requirements Should be Dismissed.

FIPUG, in somewhat uncharacteristically strong language, asserts that the investment, costs and revenues should be included in monthly surveillance reports and the Project should, perhaps, be subject to the "Tax Savings Refund Rule", Rule 25-14.003. In support of these requests, FIPUG asserts in part:

> The purpose of recovery of transmission line costs "outside base rates" was to make possible the accelerated depreciation of qualifying investments; ...

FIPUG Petition at page 14. FIPUG is simply wrong. As already noted, Rule 25-17.016(4)(d) expressly permits the continued recovery of accelerated depreciation even after a qualified project has been "rolled into" base rates. FIPUG also fails to point out that the tax expense to be recovered as a part of a qualified oil backout project is the "actual tax expense". Rule 25-17.016(4)(a). Thus, as tax rates change, the tax expense recovered is the actual tax expense and not the tax expense used to quantify base rate revenue requirements. In

addition, FIPUG fails to point out that the oil backout cost recovery factor revenues are to be "applied solely to the cost of the qualified oil backout project". Rule 24-17.016(4)(e).

FIPUG has failed to present a basis to change the regulatory treatment of Project costs and revenue requirements.

WHEREFORE, FPL respectfully requests that FIPUG's Petition to Discontinue FPL's Oil Backout Cost Recovery Factor be dismissed.

Dated this 16th day of February, 1989.

Respectfully submitted,

STEEL HECTOR & DAVIS
310 West College Avenue
Tallahassee, Florida 32301-1406
(904) 222-4192

Attorneys for Florida Power
& Light Company

By: _____
Matthew M. Childs, P. A.

CERTIFICATE OF SERVICE
Docket No. 890148-EI

I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Motion to Dismiss has been furnished by Hand Delivery and U. S. Mail to the following individuals on this 16th day of February, 1989:

Marsha E. Rule, Esq.
Division of Legal Services
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32301

John Roger Howe, Esq.
Assistant Public Counsel
Office of the Public Counsel
624 Fuller Warren Building
202 Blount Street
Tallahassee, Florida 32301

Joseph A. McGlothlin, Esq.
522 E. Park Avenue
Suite 200
Tallahassee, Florida 32301

By: 

ATTACHMENT I

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re:	The Petition of Florida Power & Light Company to Qualify its 500 kv line as an Oil Backout Project.	Docket #820155-EU

(CORRECTED) PETITION FOR RECONSIDERATION

The Florida Industrial Power Users Group (FIPUG), through its undersigned counsel, requests the Commission to reconsider its Order No. 11217, issued on October 1, 1982, and in support thereof states as follows:

1. Order No. 11217 concluded that Florida Power & Light Company's 500kv transmission line meets the qualification criteria of the Oil Backout Rule. In Order No. 11217, the Commission entered a finding that the project demonstrated a cumulative present value of expected net savings to ratepayers within the first ten years of commercial operation.

2. Essential to this finding was a determination that the company had properly quantified for inclusion in the analysis "savings" associated with the deferral of generating units from the 1987 time frame until 1992 and later. Document 3 of Exhibit 11 discloses that unless such "savings" are included, the project will show a negative "net benefit" in nine of the ten years included in the analysis.

3. Early in the case, the proposition was put forth by the Chairman that deferral of capacity additions would result in savings if the cost of money exceeded the rate of inflation of construction costs. It follows that to derive the amount of savings associated with deferral, the analysis must consider and compare the effects of the cost of money and the rate of inflation on the overall project. However, in Document 3, Exhibit 11, the company merely calculated the carrying charges through 1992, which would have been necessary under the original construction schedule; compared that with the new schedule through 1992; netted the foregone fuel displacement benefits occasioned by the deferral; and claimed the difference as "avoided costs". Bearing this in mind, consider three scenarios, all sharing a common characteristic with the company's presentation:

Attachment I

A. A business executive is told that if he can reduce his department's March expenses by $2,000, he will be given a bonus equal to 10% of the savings. The department needs a $2,000 typewriter, which the executive had planned to buy in March. He "defers" this purchase, claims a $200 bonus, and buys the $2,000 typewriter on April 1st.

B. Having been promised a car for graduation, a son asks his father for a $10,000 sports car that would require payments of $350 per month for four years. The father offers to share the "savings" if the son will agree to defer the purchase until his birthday ten months away. The son agrees, claims avoided costs of $3,500 and exacts $1,750 from the father. Ten months later the father buys the car, which has received two price increases and requires payments of $400 per month for four years.

C. A utility is told by the regulatory agency that it can collect from customers 2/3 of any savings achieved from deferring a unit for one year. The utility had planned to place the unit in service on January 1, 1983, and collect carrying charges of $10 million a year for twenty years. It defers the unit for one year and in 1983 collects from customers 2/3 of "saved" revenue requirements, or $6.7 million. The delay in construction increases costs. On January 1, 1984, the unit goes into service and rates are raised by $12 million per year, for twenty years.

The common denominator in these scenarios and in Florida Power & Light's application is that each is an example of spurious and illusory savings. Each involves an arbitrary, self-serving timeframe and each ignores the distinction between avoiding costs and deferring costs. None has any relevance at all to the proposition that savings will result from deferral if and to the extent that the cost of money exceeds the rate of inflation over time. The company's endorsement of the "truism" amounted to no more than lip service; its calculations ignored the fact that the carrying charges were being deferred, not avoided. Order No. 11217 observes that no witness disputed the proposition that deferral would lead to savings so long as the cost of money exceeded the rate of inflation. More to the point, in terms of the company's burden

of proof, is the fact that no witness addressed the elements of that proposition to the proper time period.

The company has failed to provide any evidence of the extent to which savings will result from the effects of the cost of money and the rate of increases of construction over time. (In fact, the only relevant indication of record is Mr. Scalf's exhibit alluded to in the order, which indicates that costs of deferral resulting from inflation will surpass savings by the year 2002.) Therefore, the Commission cannot determine whether such savings (if any) are sufficient to overcome the negative net benefits demonstrated by Document 3, Exhibit 11. Most importantly, failure of the Commission to repudiate this analysis will result in requests by the company to collect as its share of "savings" a portion of the carrying charges which will reappear in full measure in later periods.(1) Such a result would be a windfall for the company, and would prejudice the ratepayers, who would be required to pay an amount representing "saved" carrying charges in one period and then to bear the unit's (increased) full revenue requirements in later periods.

For this reason, FIPUG requests that the Commission:

(a) Reconsider its Order No. 11217;

(b) Find that Florida Power & Light Company failed to provide competent evidence quantifying any savings associated with the deferral of planned coal-fired generating units.

(c) Conclude that Florida Power & Light has failed to prove that the project would demonstrate a present value of expected net savings within 10 years, and that the project does not qualify under the Oil Backout Rule.

In the alternative, in the event the Commission concludes that the project is qualified notwithstanding the failure to properly quantify savings associated with deferred capacity, FIPUG requests that Order No. 11217 be modified to indicate that the simplistic difference in carrying charges under the original and altered construction schedules through 1992 shall not be accepted as the measure of "savings" which the company is entitled to share pursuant to the rule.

---

(1) The company [illegible] in the most recent fuel cost recovery hearing.

Jack O McMullen

Attachment I

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition For Reconsideration has been furnished by United States Mail this 18th day of October, 1982, to the following individuals:

JACK SHREVE, ESQUIRE
Office of the Public Counsel
Room 4, The Holland Building
Tallahassee, Florida 32301

BONNIE E. DAVIS, ESQUIRE
MICHAEL B. TWOMEY, ESQUIRE
Florida Public Service Commission
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MATTHEW M. CHILDS, ESQUIRE
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Joseph A. McGlothlin
JOSEPH A. McGLOTHLIN

LAWSON, McWHIRTER, & GRANDOFF
Post Office Box 3350
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(813) 224-0866

ATTACHMENT II

FLORIDA POWER & LIGHT COMPANY
500 kV Transmission Project

Comparative Analysis of Base Case versus Coal-By-Wire Case
Expected Savings Within First Ten Years of Commercial Operation
Based on FCG Oil Price Forecast

		Totals ($000)	Present Value ($000)	Howard Doc. No. 1 Source
A	Fuel Savings			
B	Direct Fuel Savings	$3,785,430	$1,766,731	Line E-J
C	Foregone Deferred Capacity Fuel Savings	2,138,125	740,617	Line Y-W
D	Fuel Related Savings	(250,850)	(233,269)	Line F-G-H-I
E	Total Fuel Savings (B-C+D)	$1,396,455	$ 792,845	
F	Capacity Savings			
G	Deferred Capacity Carrying Costs	$5,533,016	$1,974,409	Line V
H	Capacity Cost "UPS"	3,202,974	1,398,710	Line M
I	Wheeling Cost "UPS"	278,916	121,739	Line N
J	Total Capacity Savings (G-H-I)	$2,051,126	$ 453,960	
K	Transmission Project Costs			
L	Transmission Project Revenue Requirements	$ 845,932	$ 393,542	Line O
M	Transmission Project O&M	4,652	2,069	Line P
N	Total Transmission Project Costs (L+M)	$ 850,584	$ 395,611	
O	Total Net Benefits (E+J-N)	$2,596,997	$ 851,194	Line B'

Docket No. 820155-EU
FPL Witness: J.L. Howard
Late Filed Exhibit No. 15(3)
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