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Steel Hector & Davis
Tallahassee, Florida

Charles A. Guyton
(904) 222-3423

MEMORANDUM

TO: Marsha Rule, Joe McGlothin, Roger Howe, Gail Fels

FROM: Charlie Guyton

RE: Letter Ruling Request Draft Per Order No. 22268

DATE: January 8,1990

As you know, FPL was directed in Order No. 22268 to draft and distribute within 60 days of the vote in Docket No. 890148-EI a draft request for an IRS letter ruling on whether an amortization rate other than the Company's composite amortization rate may be applied to the amortization of investment tax credits associated with FPL's Oil Backout Project. Enclosed is the draft FPL proposes to send to the IRS.

As we understand Order No. 22268, all parties are to have an opportunity to participate in drafting the final request to the IRS. We propose the following schedule to facilitate that process:

January 24, 1990:	Comments, suggested revisions or secondary opinions submitted to FPL.
On or before January 31, 1990:	FPL contacts all parties to arrange meeting to discuss second draft.

Hopefully, the initial draft is sufficiently objective to avoid significant revisions or controversy. If additional meetings are necessary, they can be scheduled. If no meeting is necessary based on initial comments, it need not be scheduled. Please advise me as to whether you find the proposed approach satisfactory.

cc: Steve Tribble (w/encl.)
Beth Salak (w/encl.)
Anne Casseaux (w/encl.)

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Palm Beach, FL 33480
(305) 650-7200

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Suite 409
Boca Raton, FL 33432
(305) 394-5000
Fax: (305) 394-4656

DRAFT AS OF 1/5/90

January __, 1990

HAND DELIVERED

Internal Revenue Service
Associate Chief Counsel (Technical)
Attention: CC:IND:D:C
Room 6561
111 Constitution Avenue, N.W.
Washington, D.C. 20224

Dear Sir:

Based on the facts and authorities hereinafter set forth, Florida Power & Light Company (Company) respectfully requests that the Internal Revenue Service (Service) issue a ruling with respect to the Federal income tax consequences resulting from the adoption by the Florida Public Service Commission (FPSC) of Order No. 22268 (Order) (attached), which requires a rapid flow back of unamortized investment tax credits associated with certain property the costs of which have been fully recovered in rates. Revenues relating to that aspect of the Order which is the subject of this ruling request will be collected subject to refund until the Service issues its ruling.

The Company is uncertain as to whether the treatment of Investment Tax Credits (ITC) under the Order complies with the requirements of section 46(f) of the Internal Revenue Code of 1986 (Code) and Regulations section 1.46-6. Accordingly, the Company seeks a ruling from the Service on this issue.

For purposes of section 6110 of the Code, no information other than names, addresses and other identifying information, including the FPSC order number, need be deleted.

STATEMENT OF FACTS

A. Taxpayer

The Company (EIN #59-0247775) is an investor-owned public utility incorporated in the State of Florida and is a wholly-owned subsidiary of FPL Group, Inc. (EIN #59-2449419). The Company is engaged in the operation of an integrated electric public utility system involving the generation, transmission, distribution and sale of electric energy in thirty-five counties within the State of Florida.

The Company's address is 9250 W. Flagler Street, Miami, Florida 33174. FPL Group, Inc. files a consolidated Federal income tax return with its affiliated corporations, including the Company. Attached hereto as

Exhibit A is a complete list of companies which join with FPL Group, Inc. in the filing of a consolidated return. The return is filed with the Internal Revenue Service Center in Chamblee, Georgia on a calendar year basis using the accrual method of accounting. The Company is under the audit jurisdiction of the District Director of Internal Revenue in Ft. Lauderdale, Florida.

In 1972, the Company made a timely election, pursuant to section 46(f)(2) of the Internal Revenue Code of 1954, as amended, to use the ratable flow-through method of accounting and ratemaking for the ITC.

B. Proposed Regulatory Treatment for Unamortized Investment Tax Credit Relating to Certain 500 KV Transmission Lines

On January 29, 1982, the FPSC adopted Rule 25-17.16, Florida Administrative Code, the Oil-Backout Cost Recovery Factor Rule (Rule). The Rule was intended to allow for timely recovery of the cost of implementing supply side conservation projects primarily for the economic displacement of oil-generated electricity. All costs associated with a conservation project subject to the Rule, including straight-line depreciation expense over the used and useful life of the project, capital costs, actual tax expense and operating and maintenance expenses are to be recovered through the Oil-Backout Cost Recovery Factor (Factor). The Rule also allows additional amounts

to be recovered in rates and recorded on the regulatory books of account as depreciation expense in an amount equal to two-thirds of the actual net savings, if any, associated with an Oil-Backout project.

The following are simplified examples of how the Factor works. They are used for illustrative purposes only and the numbers therein do not represent actual data.

Example 1

An Oil-Backout project is constructed with depreciable capital costs (book basis) of $1,000,000 and a regulatory book life of 10 years. Prior to the property being placed in service, operations and maintenance costs for the first six months of operations are estimated to be $30,000 and the Company's after-tax rate of return on capital is 12 percent per year. The Factor would be set such that the revenue to be collected will cover all estimated costs for the six-month period including an after-tax return of $60,000 ($1,000,000 book basis x 12%/2).[1] Thus, assuming a statutory tax rate of 34 percent, revenue requirements to be recovered through the Factor would be $170,909, calculated as follows: $30,000 O&M costs + $50,000 straight-line depreciation for six months + $90,909 pre-tax return on investment ($60,000/ (1-.34)[2] = $90,909). This amount of

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1 For purpose of simplification, the beginning balance of net investment is used in the example rather than the monthly balances that would be actually used in computing the Factor. The net investment is the investment in the Project less the cumulative straight-line and cumulative accelerated depreciation allowed as of the end of the prior month.

2 This factor grosses-up revenue to yield an after-tax return. $90,909 x .34 = $30,909. The revenue requirement less $30,000 O&M costs and the $50,000 straight-line depreciation yields taxable income (for

(footnote continued)

$170,909 would be added to the Company's revenue requirements and charged to its customers. Any actual overcollection or undercollection of costs during the six-month period would be reflected as an offset or addition to the Factor to be charged to customers in the next six-month period.

Example 2

Net savings are computed by comparing all costs associated with the Oil-Backout Project including fuel costs and the revenue requirements computed as above with the costs the Company would have incurred if the Oil-Backout Project had not been built. These costs include avoided fuel costs and revenue requirements that would have been computed in a traditional rate case if additional generating capacity had been constructed instead of the Oil-Backout Project. Assume the same facts as in Example 1 and that net savings in the first six-month period of the third year are estimated to be $300,000. Two-thirds of the $300,000 in net savings, or $200,000, would be included in calculating the revenue requirements to be included in establishing the Factor. $200,000 would be recorded as additional depreciation of the Oil-Backout Project to be collected during the six-month period that the newly computed Factor would be in effect. Return on investment would be lower than in year 1, because there has been recovery of two years of book depreciation expense of $100,000 per year. Thus, the after-tax return on investment for the first six-month period in the third year would be (12%/2) x

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(footnote continued from previous page)
regulatory purposes) of $90,909. Thus, the revenue collected is sufficient to recover all costs plus the authorized after-tax rate of return ($90,909 less income tax of $30,909 = $60,000). For purposes of simplicity in the example, the effect of state income taxes is not computed and property, ad valorem and sales taxes are ignored. Also, other costs, including non-depreciable capital costs that may be associated with the Oil-Backout Project have been ignored. Such costs, associated with an Oil-Backout Project, however, are recovered through the Factor.

800,000 = $48,000.[3] Projected operations and maintenance costs are assumed to remain at $30,000 and it is further assumed that there was no overcollection or undercollection in the previous period. The Oil-Backout Factor would be established to recover revenue requirements of $352,727 ($30,000 O&M costs + $50,000 six months of straight-line depreciation over a regulatory book life + $200,000 additional depreciation + $72,727 return on net book investment ($48,000 after-tax return on investment/ (1-.34) = $72,727)).

As is indicated by the examples, the revenue requirements and, consequently, the Factor charged to customers to collect them, are increased as a result of the increased amounts treated as depreciation expense that are allowed once net savings occur.

The Commission granted approval for the Company to recover the cost of a 500 Kilovolt transmission line project (the Project) through the Oil-Backout Cost Recovery Factor, effective October 1, 1982. From that date forward, the costs of the Project, including depreciation, were recovered in rates through the mechanism provided by the Rule. The Project was built in three phases to import coal fired generation from Georgia, thereby deferring the need for the Company to build additional power plants. Facilities comprising Phase 1 of the

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3 For purpose of simplification, the beginning balance of net investment is used in the example rather than the monthly balances that would be actually used in computing the Factor. The net investment is the investment in the Project less the cumulative straight-line and cumulative accelerated depreciation allowed as of the end of the prior month.

Project were placed in service for tax purposes and the associated costs were first reflected in rates and on the regulatory books of account in 1982.[4] Phases 2 and 3 of the Project were placed in service for tax and regulatory purposes in subsequent years, and the entire Project was complete as of June 1985. From the date that each part of the property comprising the Project was placed in service for regulatory purposes until August 1987, depreciation for regulatory purposes was on a straight-line basis.[5]

A net savings was again achieved by the Project beginning in August 1987. The operation of the Rule, providing that the Factor rate be increased by two-thirds of actual net savings and recorded as recovery of additional depreciation expense, resulted in full recovery of depreciable capital costs by August 1989.[6] The Company has recovered approximately $270 million as accelerated

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4 Some of the Phase I property was placed in service for tax purposes in April and August of 1982. To the extent any associated costs were reflected in non-Oil-Backout rates , such costs were subsequently removed from such rates for recovery under the Rule.

5 There was an allowance for a minor amount of accelerated depreciation reflecting net savings for the period October - December 1982.

6 Based on the FPSC order, which reduced return on equity as of April 1, 1988, the net savings would be reduced and depreciable capital costs would not be fully recovered until October 1989. The Company has filed for reconsideration of this issue, which is currently pending.

depreciation that resulted from the recovery of two-thirds of the net savings.

Since the time the Project was placed in service, including the period accelerated depreciation was being recovered, the Company has amortized the investment tax credits generated by the Project over the composite book life of all utility property qualifying for the ITC without consideration of the accelerated recovery. Now that the depreciable capital costs associated with the Project have been fully recovered, the FPSC has ordered the Company to flow back the approximately $17 million of unamortized investment tax credits associated with the Project to the ratepayers over the six-month period beginning April, 1990. If such unamortized investment tax credits would continue to be flowed back to ratepayers based on the overall composite book life of all utility property qualifying for the ITC, the flow back would be over approximately the next 17 to 20 years, depending on date the associated property was placed in service.

RULING REQUESTED

The Company respectfully requests the Service to issue a ruling stating:

> Whether, under the facts as presented, a final determination by the FPSC that orders the Company to flow back in rates the unamortized ITC associated with the Project, the depreciable capital costs of which have been fully recovered

in rates, would violate the normalization requirements of Code section 46(f)(2).

STATEMENT OF LAW

The Revenue Act of 1971 added section 46(e), later redesignated as section 46(f) by the Tax Reduction Act of 1975, to the Internal Revenue Code of 1954 to prevent utility companies, with respect to public utility property, from flowing through ITCs immediately to customers in the form of lower rates. Section 46(f)(2) of the Code, which the Company has elected, provides the special rule for ratable flow through as follows:

> "SPECIAL RULE FOR RATABLE FLOW-THROUGH. - If the taxpayer makes an election under this paragraph within 90 days after the date of the enactment of this paragraph in the manner prescribed by the Secretary, paragraph (1) shall not apply, but no credit determined under subsection (a) shall be allowed by section 38 with respect to any property described in section 50 (as in effect before its repeal by the Revenue Act of 1978) which is public utility property (as defined in paragraph (5)) of the taxpayer --
>
> (A) COST OF SERVICE REDUCTION. -- If the taxpayer's cost of service for ratemaking purposes or in its regulated books of account is reduced by more than a ratable portion of the credit determined under subsection (a) and allowable by section 38 (determined without regard to this subsection), or
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> (B) RATE BASE REDUCTION. -- If the base to which the taxpayer's rate of return for ratemaking purposes is applied is reduced by reason of any portion of the credit determined under subsection (a) and allowable by section 38 (determined without regard to this subsection)."

Code section 46(f)(6) provides as follows:

> "RATABLE PORTION. For purposes of determining ratable restoration to base under paragraph (1) and for purposes of determining ratable portions under paragraph (2)(A), the period of time used in computing depreciation expense for purposes of reflecting operating results in the taxpayer's regulated books of account shall be used."

Code section 46(f)(5) provides, in part, that:

> "PUBLIC UTILITY PROPERTY. For purposes of this subsection, the term 'public utility property' means - (A) property which is public utility property within the meaning of subsection (c)(3)(B) ..."

Code section 46(c)(3)(B) provides, in part, as follows:

> "For purposes of subparagraph (A), the term 'public utility property' means property used predominantly in the trade or business of the furnishing or sale of -
>
> (i) electrical energy, water, or sewage disposal services, ***
>
> if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof, by an agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof."

Regulations section 1.46-6(g) provides as follows:

> "Ratable methods. (1) In general. Under this paragraph (g), rules are prescribed for purposes of determining whether or not, under section 46(f)(1), a reduction in the taxpayer's rate base with respect to the credit is restored less rapidly than ratably and whether or not under section 46(f)(2) the taxpayer's cost of service for ratemaking purposes is reduced by more than a ratable portion of such credit.
>
> (2) Regulated depreciation expense. What is 'ratable' is determined by considering the

period of time actually used in computing the taxpayer's regulated depreciation expense for the property for which a credit is allowed. 'Regulated depreciation expense' is the depreciation expense for the property used by a regulatory body for purposes of establishing the taxpayer's cost of service for ratemaking purposes. Such period of time shall be expressed in units of years (or shorter periods), units of production, or machine hours and shall be determined in accordance with the individual useful life system or composite (or other group asset) account system actually used in computing the taxpayer's regulated depreciation expense. A method of restoring, or reducing, is ratable if the amount to be restored to rate base, or to reduce cost of service (as the case may be), is allocated ratably in proportion to the number of such units. Thus, for example, assume that the regulated depreciation expense is computed under the straight line method by applying a composite annual percentage rate to 'original cost' (as defined for purposes of computing regulated depreciation expense). If, with respect to an item of section 46(f) property, the amount to be restored annually to rate base is computed by applying a composite annual percentage rate to the amount by which the rate base was reduced, then the restoration is ratable. Similarly, if cost of service is reduced annually by an amount computed by applying a composite annual percentage rate to the amount of the credit, cost of service is reduced by a ratable portion. If such composite annual percentage rate were revised for purposes of computing regulated depreciation expense beginning with a particular accounting period, the computation of ratable restoration or ratable portion (as the case may be) must also be revised beginning with such period. A composite annual percentage rate is determined solely by reference to the period of time actually used by the taxpayer in computing its regulated depreciation expense without reduction for salvage or other items such as over and under accruals."

DISCUSSION

A. Project Property Is Public Utility Property and No Faster Than a Ratable Flow Back of ITC Is Permitted.

The costs associated with the Project were and are recovered through the Oil-Backout Cost Recovery Factor (Factor) which is a separately computed rate that is rolled-in with other charges billed to ratepayers. For costs incurred prior to August 1987, the Factor was set to recover all related costs including depreciation expense computed using the straight-line method, a rate of return on the unrecovered capital costs of the Project and associated income taxes.

The Factor was adjusted (and rates increased) to reflect two-thirds of net savings that occurred beginning in August 1987.[7/] The increase in rates was recorded in the regulatory books of account as additional depreciation expense. Net savings were substantial, resulting in full recovery of depreciable capital costs remaining as of August 1987 over a twenty-five month period ending August 1989 instead of the longer, previously established, regulatory book life. The rapid recovery of costs

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7 Net savings were computed based on the difference between the actual revenue requirements of the Company and the estimated revenue requirements of the Company that would have existed if the Project had not been undertaken and the Company had constructed additional powerplants instead.

reversed previously reflected timing differences and created additional timing differences that have been reflected in the Company's regulated books of account as prepaid taxes. The Factor has always included a return on any unrecovered capital costs.

The Project property has been, and continues to be, used in providing electric service under rates established on a rate-of-return basis. Therefore, the Project property is public utility property as defined in Code sections 46(f)(5) and 46(c)(3)(B) and regulations thereunder. As such, the treatment of ITC associated with the Project is subject to the normalization requirements of Code section 46(f) and, as a result of the timely election of the Company in 1972, is specifically subject to the requirements of Code section 46(f)(2). Pursuant to Code section 46(f)(2), the Company's cost of service for ratemaking purposes and in its regulated books of account can be reduced to reflect no more than a ratable portion of the ITC.[8/]

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8 There is no impediment to a reduction of less than a ratable portion of the ITC

B. It is Not Clear Whether Immediate Flow Back of Unamortized ITC Violates Normalization Requirements.

1. Arguments In Support of a Finding That No Violation Occurs.

The computation of the "ratable" period is not immutably fixed at the time property is placed in service. Regulations section 1.46-6(g)(2) specifically contemplates recomputations of the ratable period, stating that:

> "If such composite annual percentage rate were revised for purposes of computing regulated depreciation expense beginning with a particular accounting period, the computation of ratable restoration or ratable portion (as the case may be) must also be revised beginning with such period."

It can be argued that under the Order the additional depreciation expense reflected in rates has the same effect as a revision of the composite annual percentage rate. This is due to the fact that under the Order, regulated depreciation expense is permitted in excess of the amount that would be permitted if only the composite annual straight-line percentage rate had been used. Although the composite annual straight-line percentage rate was not formally changed, arguably it was effectively changed.

This change occurred as of August 1987 such that substantially greater depreciation expense was reflected in rates and on the regulated books of account. Thus, it c n be argued, the portion of unamortized ITC being

reflected in rates could have been increased at that time and because it was not increased, a less than ratable portion of ITC was reflected in cost of service. No violation of normalization principles occurs as a result of a less than ratable flow back between August 1987 and August 1989. See, e.g., Letter Ruling 8601074 (October 9, 1985) holding that "Section 46(f)(2)(A) of the Code does not require that the flow-through to cost of service be ratable. It requires only that it be no faster than 'ratable.'"[9/] The FPSC's past practices and current proposal, in essence, allows a slower than ratable amortization in 1987, 1988 and 1989, with a final amount of flow back in 1990 that does not exceed the total amount of flow back over the same period (1987-1990) that would otherwise have been allowed.

Neither the Code nor the Regulations provide that if less than a ratable portion is flowed back in one year, then the difference cannot be made up in a later year or years.

Moreover, the intent of Congress in enacting the ITC normalization requirements is expressed in terms of permitting, with specified limitations, regulatory commissions to "divide" the benefits of the ITC between

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9 A Private Letter Ruling is not considered precedent, but does indicate the Service's thinking at a particular point in time. Rowan Companies v. United States, 452 U.S. 247 (1981).

the regulated company and the ratepayers. Senate Finance Committee Report No. 92-437, 1972-1 C.B. 559, 578; House Ways & Means Committee Report No. 92-533, 1972-1 C.B. 498, 510. It is not clear, however, whether an immediate or rapid "catch-up" is allowed in a later year or years if the flow back in earlier years is less than a ratable amount.

Section 1.46-6(g)(2) of the Regulations, requires a revision of the ratable restoration period when the composite annual percentage rate is revised. This provision should not be interpreted to require an alteration of the ratable restoration period in a situation when the composite annual percentage rate is either directly or indirectly increased. It is only when the composite annual percentage rate is decreased and the ratable restoration period is unchanged that there is a potential for a flow back of ITC to cost of service more rapidly then ratably.

In the final analysis, a violation of section 46(f)(2) occurs when ITC is flowed back to cost of service more rapidly than ratably. Regulations section 1.46-6(g)(2) provides that ratable "is determined by considering the period of time actually used in computing the taxpayer's regulated depreciation expense for the property for which the credit is allowed". The property

in question was fully depreciated on the Company's regulated books of account by the end of 1989. Therefore, it can be argued that the entire unamortized ITC with respect to the property could have been reflected in rates in 1989 while still meeting the "no more rapidly than ratably" standard. It should follow that any flow back after 1989 is not more rapid than ratable. Therefore, the standards of section 46(f)(2) and the regulations would not be violated.

Finally, it should be noted that a flow back of ITC related to Project property over the composite book life determined with reference to all of the Company's public utility property would be inconsistent with sound regulatory principles that also underlie the ratable flow back requirement of the Code. A flow back of the ITC over the same period during which ratepayers are charged for the capital costs of the property generating the ITC matches the benefits and the burdens.

2. Arguments In Support of a Finding That a Violation Would Occur.

The Company has been, and remains, concerned that the Service could find it to be violative of the normalization requirements of the Code to impute two-thirds of the net savings derived from the Oil Backout Project as depreciation for purposes of computing the ratable period over which unamortized ITC can be flowed

back. Regulations section 1.46-6(g)(2) defines regulated depreciation expense in terms of a period of time expressed in units of years (or shorter periods), units of production, or machine hours. "Net savings" does not appear to be within the scope of that definition. The imputation of net savings to regulated depreciation expense rather than to some other component of rates, therefore, does not appear to be addressed by Regulations section 1.46-6(g)(2). Thus, it is not clear that such imputation properly creates a change in ratable period for purposes of a flow back of unamortized ITC.

Regulations section 1.46-6(g)(2) also requires that when the composite annual percentage rate for purposes of computing regulated depreciation expense is revised, then the computation of ratable restoration or ratable portion must be made "beginning with the same period" as the change in depreciation expense. The Company, however, did not revise the amortization schedule as of the beginning of that period due to the concerns expressed above.

Project property, when placed in service for regulatory purposes, was included in the total amount of public utility property used in computing the composite book depreciation life for purposes of computing the ratable period for a flow back of ITC. When additional

depreciation expense was allowed with respect to Project property, however, there was not a recomputation of composite book life as applied to Project property or to the Company's other public utility property. Even now that zero depreciation expense is allowed with respect to Project property, no recomputation has been made. Because no change in the composite annual percentage rate has been put into effect, it is not clear that the regulations would permit ITC to be flowed back into cost of service more rapidly than would occur under continued use of the composite annual rate. Thus, the Company is concerned that the Service may conclude that a continued amortization of ITC based on the composite annual percentage rate of depreciation is required.

The Company is also concerned about the inherent inconsistency that the Service may conclude exists when property is included in the class of property with respect to which the annual composite percentage rate of depreciation is based and, at the same time, is segregated out of the composite body and assigned a more rapid ratable period for purposes of Code section 46(f). Although the regulations do not address the consideration one way or another, the Company is uncertain regarding the permissibility of such a procedure. There would appear to be a potential for a more rapid then ratable flow back to

occur when the composite annual depreciation rate is computed with reference to assets which are segregated out and depreciated separately. This uncertainty is further heightened by the inherent difficulty that exists even in determining what is the relevant ratable period. In other words, can a ratable period be computed with respect to depreciation expense that is the result of the imputation of "net savings" to the book depreciation expense component of cost of service? Did the ratable period for a flow back to rates of ITC associated with Project property change as of August 1987 when additional book depreciation expense was allowed? If so, did the ratable period change again as of September 1989 when book depreciation expense was reduced to zero or does a ratable period even exist once book depreciation expense is reduced to zero?

For the reasons discussed above, the Company is concerned with respect to whether the Order will result in its being found to be in violation of section 46(f) of the Code and respectfully asks for the Service's ruling.

PROCEDURAL MATTERS

The Company respectfully requests a conference prior to the issuance of a ruling. It is also requested that representatives of the FPSC and all parties to the

FPSC proceeding be allowed to attend this conference. In accordance with Revenue Procedure 88-6, the FPSC has reviewed this request and believes that it is adequate and complete.

To the best of the knowledge of the Company and the Company's representatives, the identical issue is not under examination by a District Director in any return of the Company (or of any taxpayer related to the Company within the meaning of Code section 267, or a member within the meaning of Code section 1504) and has not been so examined within the statutory period of limitation on assessment or refund of tax, and no closing agreement has been entered into on this issue by a District Director. To the best of the knowledge of the Company and the Company's representatives, the identical issue is not being considered by any Appeals Office of the Service in connection with a tax return of the Company for a prior period and has not been considered by an Appeals Office within the statutory period of limitation on assessment or refund of tax, and no closing agreement on this issue has been entered into by any Appeals Office. To the best of the knowledge of the Company and the Company's representatives, the identical or similar issue is not pending in litigation and has not been ruled on by the Service to the company or any predecessor of the Company, and no request

for ruling on this issue has been filed and later withdrawn.

If further information is needed, please contact Mr. Gary Kuberek of the Company at (305) 552-4333, or the Company's authorized representatives, Raymond F. Dacek, David E. Jacobson, or Randall V. Griffin at (202) 828-0100. Enclosed is a declaration in the form required by Revenue Procedure 90-1 signed by an officer of the Company and a power of attorney. Also enclosed is the requisite fee of $300 as required by Revenue Procedure 90-__.

Under penalties of perjury, I declare that I have examined the foregoing Request for Ruling, including accompanying documents and, to the best of my knowledge and belief, the facts presented in support of the requested ruling are true, correct, and complete.

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Assistant Controller
Florida Power and Light

SCHEDULE OF SUBSIDIARIES
FOR THE YEAR ENDED DECEMBER 31, 1999

59-2449419

COMPANY NAME	FEDERAL IDENTIFICATION NUMBER
FLORIDA POWER AND LIGHT COMPANY	59-0247775
LAND RESOURCES INVESTMENT CO.	59-1565989
ALANDCO INC.	59-2121183
CASCADE LAND AND DEVELOPMENT COMPANY	59-2339943
FPL GROUP CAPITAL INC	59-2576416
FPL INVESTMENTS INC	59-1519304
FPL HOLDINGS INC	59-2693420
QUALTEC, INC.	59-2661991
TELESAT CABLEVISION, INC.	59-2165658
TELESAT CABLEVISION OF SO. FLORIDA, INC.	59-2140120
ESI ENERGY INC	59-2558254
ENVECO, INC	59-2782980
HYDRO RESOURCES INC.	59-2792443
ESI GEOTHERMAL INC.	59-2819465
ESI GEOTHERMAL II, INC.	59-2819451
QUALTEC TESTING SERVICES, INC.	59-2844563
QUALTEC PROFESSIONAL SERVICES, INC.	65-0009711
AGRI + LAN INC.	65-0022441
GROUP CABLE, INC.	65-0022440
ESI DOUBLE "C", INC.	65-0024927
ESI KERN FRONT, INC.	65-0024992
ESI SIERRA, INC.	65-0024984
FPL ASIA, INC.	65-0022075
FPL TAIWAN I, INC.	65-0022064
FPL TAIWAN II, INC.	65-0022067
FPL TAIWAN III, INC.	65-0022070
FPL TAIWAN IV, INC.	65-0022072
FPL TAIWAN V, INC.	65-0022074
FPL TAIWAN VI, INC.	65-0022073
FPL ENERSYS, INC.	65-0020596
FPL ENERSYS SERVICES, INC.	65-0064000
QUALTEC TRAINING SERVICES, INC	65-0031542
ESI ENVIRONMENTAL SYSTEMS, INC	65-0073777
HYDRO RESOURCES II, INC	65-0091142
CABLE GP I, INC.	65-0073872
CABLE LP I, INC.	65-0073874
TURNER FOODS CORPORATION	65-0019752
TURNER CORPORATION	59-2197526
AGRICULTURAL MANAGEMENT SERVICES CO. INC.	04-2646511

SCHEDULE OF SUBSIDIARIES
FOR THE YEAR ENDED DECEMBER 31, 1989

59-2449419

COMPANY NAME	FEDERAL IDENTIFICATION NUMBER
COLONIAL PENN INVESTMENT ADVISORS CORP.	23-2818196
COLONIAL PENN PROPERTIES, INC.	23-2227121
COLONIAL PENN SERVICES CORP.	75-1512959
COLONIAL CLAIM SERVICES, INC.	25-1480726
COLONIAL PENN UNDERWRITERS, INC.	23-1677172
COLONIAL PENN WARRANTY SERVICES COMPANY	23-2374077
CPC AGENCY, INC.	59-1548883
GROUP ASSOCIATION PLANS, INC.	52-0796625
GROUP INSURANCE PLANS (NORTH CAROLINA), INC.	56-0848124
HAWTHORNE ADVERTISING, INC.	23-1691248
NAPOHIO AGENCY, INC.	52-1346860
NATIONAL ASSOCIATION PLANS, INC.	53-0233416
NEW YORK NATIONAL ASSOCIATION PLANS, INC.	14-1400063
SPECIAL ACCIDENT & HEALTH PLANS, INC.	13-1919937
WOMEN UNLIMITED, INC.	23-1900636
PGI AQUISITION CORPORATION	58-1773244
C.B.R. INFORMATION GROUP INC.	76 0145677
CREDIT BUREAU OF ORANGE COUNTY, INC.	14-1795239
CREDIT BUREAU OF LACROSSE, INC	39-0663860
CREDIT BUREAU OF WINONA, INC	39-1104216
CREDIT SERVICE OF LACROSSE, INC.	39-1145014
CREDIT BUREAU OF GREATER ST. PETERSBURG, INC.	59-1645836
CREDIT SERVICES INTERNATIONAL, INC.	74-1673748
C. B. MANAGEMENT, INC.	36-2284239
THE CREDIT BUREAU OF SALINAS, INC.	94-2580720
NORTH COAST CREDIT ASSOCIATION	94-0410290
CREDIT BUREAU DATA SERVICE, INC.	94-1682887
CCB MANAGEMENT OF TEXAS, INC.	74-2135257
CBR COLLETION SERVICES DIVISION, INC.	76-0042331
CREDIT BUREAU REPORTS, INC.	74-1645087
CENTRAL CREDIT CLEARING BUREAU, INC.	74-2479262
BONDED COLLECTION CORPORATION	35-1492907
CREDIT BUREAU OF SHASTA & TRINITY COUNTIES, INC.	94-1642479
CREDIT BUREAU OF ALASKA, INC.	92-0068254
AAA CREDIT SERVICES, INC.	65-0034524
INTERNATIONAL CREDIT SERVICES, INC.	58-1797177

SCHEDULE OF SUBSIDIARIES
FOR THE YEAR ENDED DECEMBER 31, 1989

59-2449419

COMPANY NAME	FEDERAL IDENTIFICATION NUMBER
AMS REALTY, INC.	59-2242745
AVON CITRUS NURSERY, INC.	59-2726768
DEER RUN CARETAKING SERVICES INC.	59-2710171
RIVER RUN CARETAKING SERVICES, INC.	59-2841015
TURNER AQUACULTURE, INC.	65-0036469
A I MIAMI, INC	65-0109947
FOURTH AVENUE WEST, INC	APPLIED-FOR
FOURTH AVENUE EAST, INC	APPLIED-FOR
PALMS INSURANCE COMPANY, LTD	98-0081419
PALMETTO INSURANCE COMPANY, LTD	APPLIED-FOR
ESI LP, INC	65-0125962
ESI VICTORY, INC	65-0125823
COLONIAL PENN GROUP, INC.	51-0101991
COLONIAL PENN HOLDINGS, INC.	51-0267007
ASSOCIATED BANCARD-HOLDERS TRAVEL SERVICE, INC	52-1331818
ASSOCIATION ADMINISTRATORS, INC.	36-2554459
COLONIAL EXCHANGE, INC.	23-2177669
ALLIED CONSUMER SERVICES CORP.	22-2328026
ASSOCIATED BANCARD-HOLDERS, INC.	22-2328248
ASSOCIATED INSURANCE MARKETERS INT'L, INC.	22-2241685
COLONIAL PENN CORPORATION	23-2177666
COLONIAL PENN DEVELOPERS, INC.	23-2426401
COLONIAL PENN DISTRIBUTORS CORP.	23-2218194
COLONIAL PENN CAPITAL HOLDINGS, INC.	23-2339210
BAY LOAN AND INVESTMENT BANK	23-2328677
COLONIAL PENN GROUP DATA CORP	23-1682058
COLONIAL PENN INSURANCE COMPANY	23-2044095
COLONIAL PENN FRANKLIN INSURANCE COMPANY	22-1721971
PRAXIS GROUP, INC.	23-2278035
CBE INFORMATION SERVICES, INC. (FORMERLY UHET)	22-2725260
DAMAR CORPORATION	95-2762012
SELECT MAIL OF AMERICA, INC. (FORMERLY MSM, INC.)	22-2725261
REAL ESTATE DATA, INC.	23-2143957
COLONIAL PENN COMMUNITIES, INC.	23-1857783
MICROFICHE PUBLISHERS, INC.	94-1751558
REDI REALTY SERVICES, INC.	59-2707746
SANBORN MAP COMPANY, INC	13-2750107
CPI INVESTMENT, INC.	23-2426607
COLONIAL PENN HERITAGE INSURANCE COMPANY	95-2743473

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of the Florida Industrial Power Users Group to Discontinue Florida Power & Light Company's Oil Backout Cost Recovery Factor.	)	DOCKET NO. 890148-EI ORDER NO. 22268 ISSUED: 12-5-89

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
THOMAS M. BEARD
BETTY EASLEY
GERALD L. GUNTER
JOHN T. HERNDON

ORDER DENYING DISCONTINUANCE OF FLORIDA POWER & LIGHT COMPANY'S OIL BACKOUT COST RECOVERY FACTOR

BY THE COMMISSION:

In connection with the February, 1989 hearing in Docket No. 890001-EI, the Florida Industrial Power Users Group (FIPUG) raised issues relating to discontinuance of Florida Power & Light Company's (FPL's) Oil Backout Cost Recovery Factor (OBCRF). FIPUG also filed a separate petition in this docket on January 27, 1989, which challenged FPL's past and present collection of oil backout cost recovery revenues pursuant to Rule 25-17.016, Florida Administrative Code. FIPUG also sought consolidation of the two dockets by a Motion to Consolidate Dockets or Hold Certain Issues in Docket No. 890001-EI in Abeyance.

The parties agreed to defer FIPUG's issues in Docket No. 890001-EI until the August, 1989 hearing in order to allow for discovery. Thereafter, the Commission ordered consolidation of Dockets No. 890148-EI and 890001-EI for hearing purposes only, with Docket No. 890148-EI to be heard by the full Commission on the last day of the scheduled hearings in Docket No. 890001-EI. Docket No. 890148-EI was later rescheduled to the first day of the hearing, August 22, 1989, so that all Commissioners could be present.

We are compelled to note the contradictory nature of these arguments, particularly in light of the admission of FIPUG's witness, Mr. Jeffrey Pollock, that "the Project has enabled FP&L to import firm coal-by-wire capacity and to defer construction of the Martin Unit Nos. 3 and 4." Nonetheless, we will address each of these arguments below.

(1) Martin Cost Estimates. FPL's cost estimates for the Martin Units are based on the parameters of a 1979 Bechtel contract, updated for actual inflation and cost of capital. These figures were used in the original oil backout qualification proceeding precisely because they represented the contract cost of Martin Units 3 and 4 to FPL.

In three previous oil backout proceedings (beginning with the April-September, 1987 period), FPL applied those cost estimates in calculating the actual net savings as allowed by the Oil Backout Rule. FIPUG and Public Counsel, both parties to the proceedings, did not contest their use. The Commission approved the OBCRF, thereby at least tacitly approving the cost estimates. There is no evidence in the record upon which to base any adjustment to the estimates. We believe that the Martin Unit 3 and 4 cost estimates are reflective of the construction costs FPL would have incurred had the units been built during the 1981-1987 time period, and are appropriately applied in calculating the OBCRF.

(2) Deferred Units' In-Service Dates. Had FPL not built the 500 kV line project, thus enabling the purchase of equivalent capacity from the Southern Company, construction of the Martin units would have begun in 1980 and 1982 to meet a Martin Unit 3 in-service date of June, 1987 and Martin Unit 4 in-service date of December, 1988.

FIPUG's witness, Mr. Pollock, suggests that FPL should have revisited its decision to construct (or not construct) the Martin Units and move outward in time their in-service dates. We are wholly unpersuaded by his speculative argument.

The record shows that, absent the project and UPS purchases: (a) from 1982 through 1988 the Martin units were the most economic choice for FPL to meet its projected capacity needs; (b) the units would have been needed to meet load and reserve requirements in 1987 even in the face of lower load forecasts; and (c) it would have been uneconomic for FPL to

In summary, we find that the Martin Coal Units 3 and 4 have been deferred as a result of the project and the original Southern Company purchases, and that FPL has appropriately included capacity deferral benefits in the calculation of Actual Net Savings, 2/3 of which is recovered as additional depreciation on the 500 kV lines.

Return on Equity

Rule 25-17.016(4)(e), Florida Administrative Code, requires the utility to use its actual cost of capital for the recovery period of the oil backout project. FPL has interpreted "the actual cost of capital" with respect to the return on equity to mean the 15.6% return on equity authorized in its last rate case. (Docket No. 830465-EI). However, the oil backout rule clearly states that only the actual costs associated with a project are subject to recovery through the OBCRF. Mr. Pollock contends that a 15.6% ROE does not represent the actual cost associated with the oil backout project.

We agree with FIPUG on this issue. FPL recovers all other costs under the oil backout project based on current rates. For example, FPL uses its current cost of debt in its oil backout filing whenever the cost of debt changes. There is no economic reason to recognize changes in the cost of debt, one capital structure component, but ignore the change in the cost of equity, another capital structure component.

While cost of equity testimony was not presented in this docket, Mr. Pollock's uncontroverted testimony indicates that FPL's actual cost of common equity is lower than 15.6%. Mr. Pollock stated that he is unaware of any regulatory commission which has authorized a 15% or higher ROE since 1987. In addition, he stated that the median authorized ROE has ranged from 12.8% to 13.0%, and that most awards have been in the 12.0% to 14.49% range. Finally, Mr. Pollock testified that the current Federal Energy Regulatory Commission benchmark ROE is 12.44%.

Perhaps the most convincing evidence that FPL's actual cost of equity is significantly lower than 15.6% is FPL's voluntary reduction of ROE in 1988 (Order No. 18340) and 1989 (Order No. 20451). FPL was entitled to use its authorized equity return of 15.6% for purpose of the tax savings rule (Rule 25-14.003, Florida Administrative Code), calculating AFUDC rates, and as

the calculation of the revenues to be refunded should end September 30, 1989. The amount to be refunded will be determined at the February, 1990 hearing in Docket No. 900001-EI for inclusion in the April-September, 1990 OBCRF.

ITC Amortization

Accelerated depreciation is the driving factor for investment tax credit (ITC) amortization. We find that additional ITC amortization should be refunded to FPL's customers as a result of the accelerated depreciation recovered by FPL.

FPL amortizes its ITC's generated by the oil backout investments by using a composite amortization rate. The composite amortization rate is developed on a company-wide basis by dividing the book depreciation expense by the depreciable assets that generated the ITC's. The current amortization rate is 4%, which implies a life of 25 years on a composite basis. If only the oil backout assets were considered, the depreciable life would have been considerably shorter since the oil backout assets were recovered over a seven year period, and ratepayers paying for oil backout assets would have received the benefit of the amortization.

The Internal Revenue Code (IRC) and applicable Regulations require that ITC's for an Option 2 utility such as FPL's project earn a weighted rate of return for ratemaking purposes and be amortized above-the-line. The ITC amortization must be no more rapid than ratable (over the depreciable book life). The Regulations allow the use of a composite rate. FPL's current approach does not violate the IRC or the Regulations.

Customers who paid for recovery of the accelerated depreciation of the oil backout assets should receive the benefits of the associated ITC amortization. The amortization method used by FPL will not accomplish this goal, as admitted by FPL's witness, Mr. Donald Babka, on cross-examination.

Thus, there is a mismatch of the ratepayers who paid for the recovery of the oil backout assets and the ratepayers who will receive the benefit of the ITC amortization. In addition, the ratepayers are required to pay a return on the unamortized balance of ITC's.

ruling, shall file a copy thereof in this docket.

Capacity Charge Collection

FIPUG argues that FPL should be required to collect capacity charges for the Southern System UPS charges through base rate mechanisms. We disagree.

Rule 25-17.016(4)(d) Florida Administrative Code states:

> Once approved by the Commission, the costs of a qualified oil-backout project shall continue to be recovered through the Oil-Backout Cost Recovery Factor until such time as they are included in the base rates of the utility.

Thus, FPL must continue to recover the Southern System UPS charges through the OBCRF until such time as they are included in base rates, which would normally be at the time of the utility's next rate case.

Oil Backout Tax Savings

FIPUG questioned whether there were any oil backout Project tax savings due to the change in the federal corporate income tax rate. We find that there are no tax savings associated with the oil backout project. However, as previously discussed, use of a 15.6% return on equity overstates FPL's cost of equity capital and is therefore inappropriate at this time.

For 1987 and 1988, FPL was required to refund tax savings in accordance with Rule 25-14.003, Florida Administrative Code. In that rule, "tax savings" are defined as the "difference between the tax expenses for a utility calculated under the previously effective corporate income tax rates and those calculated under the newly effective, reduced corporate income tax rates." For oil backout purposes, the utility has included current tax rates in its factor and has been recovering income taxes related to oil backout at the current income tax rates. Therefore, tax savings related to oil backout do not exist.

SCHEDULE OF SUBSIDIARIES
FOR THE YEAR ENDED DECEMBER 31, 1989

59-2449[illegible]

COMPANY NAME	FEDERAL IDENTIFICATION NUMBER
FLORIDA POWER AND LIGHT COMPANY	59-0247775
LAND RESOURCES INVESTMENT CO.	59-1565989
ALANDCO INC.	59-2171183
CASCADE LAND AND DEVELOPMENT COMPANY	59-2338947
FPL GROUP CAPITAL INC	59-2576415
FPL INVESTMENTS INC	59-1519304
FPL HOLDINGS INC	59-2593420
QUALTEC, INC.	59-2661991
TELESAT CABLEVISION, INC.	59-2165658
TELESAT CABLEVISION OF SO. FLORIDA, INC.	59-2140120
ESI ENERGY INC	59-2559254
ENVECO, INC	59-2782980
HYDRO RESOURCES INC	59-2792443
ESI GEOTHERMAL INC.	59-2819465
ESI GEOTHERMAL II, INC.	59-2819451
QUALTEC TESTING SERVICES, INC.	59-2844563
QUALTEC PROFESSIONAL SERVICES, INC.	65-0009711
AGRI + LAN INC.	65-0022441
GROUP CABLE, INC.	65-0022440
ESI DOUBLE "C", INC.	65-0024927
ESI KERN FRONT, INC.	65-0024992
ESI SIERRA, INC.	65-0024984
FPL ASIA, INC.	65-0022075
FPL TAIWAN I, INC.	65-0022064
FPL TAIWAN II, INC.	65-0022067
FPL TAIWAN III, INC.	65-0022070
FPL TAIWAN IV, INC.	65-0022072
FPL TAIWAN V, INC.	65-0022074
FPL TAIWAN VI, INC.	65-0022077
FPL ENERSYS, INC.	65-0020596
FPL ENERSYS SERVICES, INC.	65-0064000
QUALTEC TRAINING SERVICES, INC	65-0031542
ESI ENVIRONMENTAL SYSTEMS, INC	65-0073777
HYDRO RESOURCES II, INC	65-0091142
CABLE GP I, INC.	65-0073872
CABLE LP I, INC.	65-0073874
TURNER FOODS CORPORATION	65-0019752
TURNER CORPORATION	59-2197526
AGRICULTURAL MANAGEMENT SERVICES CO. INC.	04-2646511

SCHEDULE OF SUBSIDIARIES
FOR THE YEAR ENDED DECEMBER 31, 1989

59-2449419

COMPANY NAME	FEDERAL IDENTIFICATION NUMBER
COLONIAL PENN INVESTMENT ADVISORS CORP.	23-2318196
COLONIAL PENN PROPERTIES, INC.	23-2227121
COLONIAL PENN SERVICES CORP.	75-1512959
COLONIAL CLAIM SERVICES, INC.	25-1480726
COLONIAL PENN UNDERWRITERS, INC.	23-1677172
COLONIAL PENN WARRANTY SERVICES COMPANY	23-2374077
CPC AGENCY, INC.	59-1548883
GROUP ASSOCIATION PLANS, INC.	52-0796625
GROUP INSURANCE PLANS (NORTH CAROLINA), INC.	56-0848124
HAWTHORNE ADVERTISING, INC.	23-1691248
NAPOHIO AGENCY, INC.	52-1348860
NATIONAL ASSOCIATION PLANS, INC.	53-0233416
NEW YORK NATIONAL ASSOCIATION PLANS, INC.	14-1400063
SPECIAL ACCIDENT & HEALTH PLANS, INC.	13-1919937
WOMEN UNLIMITED, INC.	23-1900866
PGI AQUISITION CORPORATION	58-1773244
C.B.R. INFORMATION GROUP INC.	76-0145677
CREDIT BUREAU OF ORANGE COUNTY, INC.	14-1795239
CREDIT BUREAU OF LACROSSE, INC	39-0663860
CREDIT BUREAU OF WINONA, INC	39-1134216
CREDIT SERVICE OF LACROSSE, INC.	39-1145014
CREDIT BUREAU OF GREATER ST. PETERSBURG, INC.	59-1645876
CREDIT SERVICES INTERNATIONAL, INC.	74-1675748
C. B. MANAGEMENT, INC.	36-2284239
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NORTH COAST CREDIT ASSOCIATION	94-0410290
CREDIT BUREAU DATA SERVICE, INC.	94-1682087
CCB MANAGEMENT OF TEXAS, INC.	74-2135257
CBR COLLETION SERVICES DIVISION, INC.	76-0042331
CREDIT BUREAU REPORTS, INC.	74-1645087
CENTRAL CREDIT CLEARING BUREAU, INC.	74-2479262
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CREDIT BUREAU OF ALASKA, INC.	92-0068254
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SCHEDULE OF SUBSIDIARIES
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TURNER AQUACULTURE, INC.	65-0036459
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FOURTH AVENUE EAST, INC	APPLIED-FOR
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COLONIAL PENN FRANKLIN INSURANCE COMPANY	22-1721971
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DAMAR CORPORATION	95-2762012
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COLONIAL PENN COMMUNITIES, INC.	23-1857783
MICROFICHE PUBLISHERS, INC.	94-1751558
REDI REALTY SERVICES, INC.	59-2707746
SANBORN MAP COMPANY, INC	13-2750107
CPI INVESTMENT, INC.	23-2426607
COLONIAL PENN HERITAGE INSURANCE COMPANY	95-2743473

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of the Florida Industrial Power Users Group to Discontinue Florida Power & Light Company's Oil Backout Cost Recovery Factor.	)	DOCKET NO. 890148-EI ORDER NO. 22268 ISSUED: 12-5-89

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
THOMAS M. BEARD
BETTY EASLEY
GERALD L. GUNTER
JOHN T. HERNDON

ORDER DENYING DISCONTINUANCE OF FLORIDA POWER & LIGHT COMPANY'S OIL BACKOUT COST RECOVERY FACTOR

BY THE COMMISSION:

In connection with the February, 1989 hearing in Docket No. 890001-EI, the Florida Industrial Power Users Group (FIPUG) raised issues relating to discontinuance of Florida Power & Light Company's (FPL's) Oil Backout Cost Recovery Factor (OBCRF). FIPUG also filed a separate petition in this docket on January 27, 1989, which challenged FPL's past and present collection of oil backout cost recovery revenues pursuant to Rule 25-17.016, Florida Administrative Code. FIPUG also sought consolidation of the two dockets by a Motion to Consolidate Dockets or Hold Certain Issues in Docket No. 890001-EI in Abeyance.

The parties agreed to defer FIPUG's issues in Docket No. 890001-EI until the August, 1989 hearing in order to allow for discovery. Thereafter, the Commission ordered consolidation of Dockets No. 890148-EI and 890001-EI for hearing purposes only, with Docket No. 890148-EI to be heard by the full Commission on the last day of the scheduled hearings in Docket No. 890001-EI. Docket No. 890148-EI was later rescheduled to the first day of the hearing, August 22, 1989, so that all Commissioners could be present.

On February 15, 1989, FPL moved to dismiss FIPUG's petition. FPL's Motion was denied in Order No. 21361 on the grounds that FIPUG had stated a cause of action upon which it was possible to grant relief.

At the hearing in this matter, FPL reurged its Motion to Dismiss. The Commission granted the motion in part, dismissing that portion of FIPUG's petition regarding the continued qualification of FPL's Oil Backout Project and the continuation of FPL's Oil Backout Cost Recovery Factor.

In its petition, FIPUG requested that the Commission grant several forms of relief: determine that FPL's oil backout transmission project has failed to achieve the "primary purpose" which led the Commission to qualify it under Rule 25-17.016, Florida Administrative Code; disallow prospective application of the oil backout charge for recovery of costs associated with FPL's 500 kV transmission lines and order FPL to refund to customers all accelerated depreciation revenues associated with the inclusion of FPL's deferred Martin coal units in calculation of net savings pursuant to the oil backout rule; order FPL to terminate its oil backout charge; direct FPL to reflect the investment and revenues associated with its 500 kV lines in its surveillance reports and finally, instruct FPL that recovery of costs associated with the 500 kV transmission line must henceforth be accomplished through its base rates. Some of these claims were dismissed, as discussed above. For the reasons discussed below, we decline to grant the remaining relief requested by FIPUG, but find that FPL is not justified in charging a 15.6% return on the equity portion of its capital invested in its 500 kV transmission lines.

Capacity Deferral

FIPUG argues that all accelerated depreciation collected through the OBCRF must be refunded because the capacity deferral benefits from which the accelerated depreciation derives were not realized. The Actual Net Savings as defined in Rule 25-17.016, (two thirds of which are recovered as accelerated depreciation) are overstated, FIPUG alleges, because: (1) the construction cost estimates used by FPL for the Martin Units are too high; (2) the deferred units' in-service dates (1987 and 1988) should be deferred even further in time; (3) the Martin 700 MW Coal Units are not present in FPL's current generation expansion plan; and (4) the deferred units are "phantom plants" and thus don't exist at all.

We are compelled to note the contradictory nature of these arguments, particularly in light of the admission of FIPUG's witness, Mr. Jeffrey Pollock, that "the Project has enabled FP&L to import firm coal-by-wire capacity and to defer construction of the Martin Unit Nos. 3 and 4." Nonetheless, we will address each of these arguments below.

(1) Martin Cost Estimates. FPL's cost estimates for the Martin Units are based on the parameters of a 1979 Bechtel contract, updated for actual inflation and cost of capital. These figures were used in the original oil backout qualification proceeding precisely because they represented the contract cost of Martin Units 3 and 4 to FPL.

In three previous oil backout proceedings (beginning with the April-September, 1987 period), FPL applied those cost estimates in calculating the actual net savings as allowed by the Oil Backout Rule. FIPUG and Public Counsel, both parties to the proceedings, did not contest their use. The Commission approved the OBCRF, thereby at least tacitly approving the cost estimates. There is no evidence in the record upon which to base any adjustment to the estimates. We believe that the Martin Unit 3 and 4 cost estimates are reflective of the construction costs FPL would have incurred had the units been built during the 1981-1987 time period, and are appropriately applied in calculating the OBCRF.

(2) Deferred Units' In-Service Dates. Had FPL not built the 500 kV line project, thus enabling the purchase of equivalent capacity from the Southern Company, construction of the Martin units would have begun in 1980 and 1982 to meet a Martin Unit 3 in-service date of June, 1987 and Martin Unit 4 in-service date of December, 1988.

FIPUG's witness, Mr. Pollock, suggests that FPL should have revisited its decision to construct (or not construct) the Martin Units and move outward in time their in-service dates. We are wholly unpersuaded by his speculative argument.

The record shows that, absent the project and UPS purchases: (a) from 1982 through 1988 the Martin units were the most economic choice for FPL to meet its projected capacity needs; (b) the units would have been needed to meet load and reserve requirements in 1987 even in the face of lower load forecasts; and (c) it would have been uneconomic for FPL to

defer those units rather than finish construction by the time the load forecasts were lowered. We believe that given the economic and technical circumstances during the 1980-1982 time period, FPL would have begun construction of the Martin Units absent the Oil Backout Project.

(3) Martin 700 MW Coal Units Absent from FPL's Current Generation Expansion Plan. Mr. Pollock correctly notes that the Martin Unit Nos. 3 and 4, both 700 MW pulverized coal plants, are absent from FPL's most current generation expansion plan. However, FPL's witness, Mr. S.S. Waters, confirmed that the utility's determination of need for electrical power plant pending before this Commission shows two units labelled Martin No. 3 and 4. These units utilize combined cycle technology (385 MW each) rather than pulverized coal. Mr. Waters explained the reasons for that change and affirmed that both the "old" and "new" Martin units were and are planned to run at very high capacity factors.

The only effective change to Martin Units 3 and 4 which has occurred in the current expansion plan is a technology substitution. In light of this, we find that Mr. Pollock's argument that the "old" units' absence from the current plan means they were not deferred is incorrect.

(4) "Phantom Plants". Mr. Pollock states that "[t]he Martin units have not been, and may never be, built." However, Mr. Waters explained that the deferral of the units:

> is the premise upon which capacity deferral benefits are based; the Martin Coal Units were not built due to the commitment to purchase power from the Southern Companies and FPL's ability to move that power over the Project.

(Tr. 394-395.)

FIPUG argues that capacity deferral benefits cannot be derived from plants which do not exist or are "illusory." The fact that the units were not built is the very benefit intended. This "avoided unit" concept is the same rationale we use to set firm capacity pricing for cogenerators.

In summary, we find that the Martin Coal Units 3 and 4 have been deferred as a result of the project and the original Southern Company purchases, and that FPL has appropriately included capacity deferral benefits in the calculation of Actual Net Savings, 2/3 of which is recovered as additional depreciation on the 500 kV lines.

Return on Equity

Rule 25-17.016(4)(e), Florida Administrative Code, requires the utility to use its actual cost of capital for the recovery period of the oil backout project. FPL has interpreted "the actual cost of capital" with respect to the return on equity to mean the 15.6% return on equity authorized in its last rate case. (Docket No. 830465-EI). However, the oil backout rule clearly states that only the actual costs associated with a project are subject to recovery through the OBCRF. Mr. Pollock contends that a 15.6% ROE does not represent the actual cost associated with the oil backout project.

We agree with FIPUG on this issue. FPL recovers all other costs under the oil backout project based on current rates. For example, FPL uses its current cost of debt in its oil backout filing whenever the cost of debt changes. There is no economic reason to recognize changes in the cost of debt, one capital structure component, but ignore the change in the cost of equity, another capital structure component.

While cost of equity testimony was not presented in this docket, Mr. Pollock's uncontroverted testimony indicates that FPL's actual cost of common equity is lower than 15.6%. Mr. Pollock stated that he is unaware of any regulatory commission which has authorized a 15% or higher ROE since 1987. In addition, he stated that the median authorized ROE has ranged from 12.8% to 13.0%, and that most awards have been in the 12.0% to 14.49% range. Finally, Mr. Pollock testified that the current Federal Energy Regulatory Commission benchmark ROE is 12.44%.

Perhaps the most convincing evidence that FPL's actual cost of equity is significantly lower than 15.6% is FPL's voluntary reduction of ROE in 1988 (Order No. 18340) and 1989 (Order No. 20451). FPL was entitled to use its authorized equity return of 15.6% for purpose of the tax savings rule (Rule 25-14.003, Florida Administrative Code), calculating AFUDC rates, and as

an equity ceiling for surveillance purposes, but voluntarily reduced this ROE to 13.6%. We very much doubt that FPL would stipulate to an ROE of 13.6% for its non-oil backout rate base if 13.6% were less than the company's actual cost of equity capital.

Given current market conditions, we believe that FPL's actual cost of equity capital is lower than 13.6%. However, in the absence of cost of equity testimony in this docket, we note that the 13.6% offered by this utility in the 1987, 1988 and 1989 tax savings dockets is closer to its actual cost of equity than the 15.6% ROE authorized in Docket No. 830465-EI. Therefore, we find that FPL is not justified in charging a 15.6% return on the equity portion of its capital invested in the 500 kV transmission lines.

We find that the 13.6% ROE used for this utility in the tax savings docket more closely approximates FPL's actual cost of equity capital, and that excess revenues collected from April 1, 1988 through September 30, 1989 using the 15.6% ROE should be refunded to customers, with interest. This timeframe reflects the stipulation between FIPUG and FPL in Docket No. 890001-EI. (Attachment A to Order No. 20784):

> c. FPL agrees that if any adjustment is made to FPL's OBCRF as a result of the proceedings in a later scheduled hearing in Docket No. 890001-EI and/or Docket No. 890148-EI, as a result of consideration of the "Issues," any amounts ordered to be refunded shall be subject to refund as though the Commission had considered and reached a decision on the "Issues" in the hearing held on February 22 in Docket No. 890001-EI...

The hearing referenced in this stipulation covered fuel adjustment periods beginning April 1, 1988. That is, the oil backout cost recovery amounts for the periods beginning April 1, 1988 were never finally approved. In keeping with the intent and spirit of this stipulation, we find that a 13.6% ROE should be used to calculate the oil backout revenue requirements beginning April 1, 1988. Beginning October 1, 1989, the OBCRF was calculated using a 13.6% ROE; therefore,

the calculation of the revenues to be refunded should end September 30, 1989. The amount to be refunded will be determined at the February, 1990 hearing in Docket No. 900001-EI for inclusion in the April-September, 1990 OBCRF.

ITC Amortization

Accelerated depreciation is the driving factor for investment tax credit (ITC) amortization. We find that additional ITC amortization should be refunded to FPL's customers as a result of the accelerated depreciation recovered by FPL.

FPL amortizes its ITC's generated by the oil backout investments by using a composite amortization rate. The composite amortization rate is developed on a company-wide basis by dividing the book depreciation expense by the depreciable assets that generated the ITC's. The current amortization rate is 4%, which implies a life of 25 years on a composite basis. If only the oil backout assets were considered, the depreciable life would have been considerably shorter since the oil backout assets were recovered over a seven year period, and ratepayers paying for oil backout assets would have received the benefit of the amortization.

The Internal Revenue Code (IRC) and applicable Regulations require that ITC's for an Option 2 utility such as FPL's project earn a weighted rate of return for ratemaking purposes and be amortized above-the-line. The ITC amortization must be no more rapid than ratable (over the depreciable book life). The Regulations allow the use of a composite rate. FPL's current approach does not violate the IRC or the Regulations.

Customers who paid for recovery of the accelerated depreciation of the oil backout assets should receive the benefits of the associated ITC amortization. The amortization method used by FPL will not accomplish this goal, as admitted by FPL's witness, Mr. Donald Babka, on cross-examination.

Thus, there is a mismatch of the ratepayers who paid for the recovery of the oil backout assets and the ratepayers who will receive the benefit of the ITC amortization. In addition, the ratepayers are required to pay a return on the unamortized balance of ITC's.

As of August 1989, $17,780,000 of ITC's remain unamortized due to FPL's method of ITC amortization, even though the plant generating the ITC's (the 500 kV line) has been fully recovered. This amount should have been amortized at the same rate the oil backout assets were recovered. Therefore, the unamortized balance should be returned to ratepayers as soon as is practicable, which we find to be through the OBCRF to be established for the April, 1990 through September, 1990 time period. This period was chosen to account for the ITC amortization currently included in the calculation of the OBCRF for October 1, 1989 through March 31, 1990. If this amortization is not considered, it is possible that too much amortization could be passed to the ratepayers, resulting in a normalization violation.

Mr. Babka repeatedly stated his concern that the utility's entire unamortized ITC balance of $453 million could be placed at risk if an amortization rate specific to the oil backout clause was used. He further requested that FPL be allowed to get a letter ruling from the IRS regarding use of an amortization rate specific to the oil backout clause. This conservative approach would ensure that the ratepayers are not harmed in the long run by loss of the ITC's.

We believe that our ruling would not cause a violation of normalization requirements. However, to ensure that the ratepayers are not harmed in the long run by the remote possibility of loss of $453 million of ITC's, we will allow FPL to request a letter ruling on this issue, with monies placed subject to refund, with interest, while the letter ruling is pending. The "subject to refund" provisions should begin April 1, 1990, when the new OBCRF is put into effect. We will require that FPL submit a draft of the ruling request to Commission Staff and the parties to this docket within 60 days of the date of the vote in this docket. All parties and Staff will be allowed to participate in drafting the final version of the request to be presented to the Commission for approval. If the parties cannot agree upon the language to be included in the letter ruling request, our Staff will address the alternatives in a recommendation to the Commission, and we will address it at an agenda conference. The parties should be allowed to participate in all phases of the letter ruling process, including any conferences of right. FPL shall notify Commission Staff and the parties of any communication with the IRS on this matter, and upon receipt of the final letter

ruling, shall file a copy thereof in this docket.

Capacity Charge Collection

FIPUG argues that FPL should be required to collect capacity charges for the Southern System UPS charges through base rate mechanisms. We disagree.

Rule 25-17.016(4)(d) Florida Administrative Code states:

> Once approved by the Commission, the costs of a qualified oil-backout project shall continue to be recovered through the Oil-Backout Cost Recovery Factor until such time as they are included in the base rates of the utility.

Thus, FPL must continue to recover the Southern System UPS charges through the OBCRF until such time as they are included in base rates, which would normally be at the time of the utility's next rate case.

Oil Backout Tax Savings

FIPUG questioned whether there were any oil backout Project tax savings due to the change in the federal corporate income tax rate. We find that there are no tax savings associated with the oil backout project. However, as previously discussed, use of a 15.6% return on equity overstates FPL's cost of equity capital and is therefore inappropriate at this time.

For 1987 and 1988, FPL was required to refund tax savings in accordance with Rule 25-14.003, Florida Administrative Code. In that rule, "tax savings" are defined as the "difference between the tax expenses for a utility calculated under the previously effective corporate income tax rates and those calculated under the newly effective, reduced corporate income tax rates." For oil backout purposes, the utility has included current tax rates in its factor and has been recovering income taxes related to oil backout at the current income tax rates. Therefore, tax savings related to oil backout do not exist.

Discontinuance of the Oil Backout Cost Recovery Factor

FIPUG further argued that Rule 25-17.016(6), Florida Administrative Code, requires the discontinuance of the Oil Backout Cost Recovery Factor when FPL's transmission line costs are fully recovered. We find that it does not. While FIPUG correctly states that the OBCRF must terminate when costs of the project have been recovered, the line itself is only one component of the entire project. Although the transmission line should now be fully depreciated, the Oil Backout Rule requires that cost recovery continue until all project costs are fully recovered or are included in rate base.

We further find that FIPUG's argument that the recovery of oil backout project costs through an energy-based charge is unfair and unduly discriminatory is barred by the doctrines of res judicata and administrative finality. We have consistently rejected this claim in the past. The doctrine of administrative finality mandates that we reject it once more. As FPL pointed out in Appendix A of its brief, entitled "FIPUG's Six Prior Arguments That An Energy Based Oil Backout Charge is Unfair or Inequitable", FIPUG made this same argument in five previous dockets: Docket No. 810241 (the adoption of the oil backout rule); Docket No. 820155-EU (FPL and Tampa Electric Company's oil backout project qualification); Docket No. 820001-EU (FPL's initial oil backout cost recovery in the fuel docket); Docket No. 820097-EU (FPL's 1982 rate case); and Docket No. 830465-EI (FPL's 1984 rate case). We reject FIPUG's attempt to raise the same arguments in this docket. We note that, absent inclusion of the project in rate base, FIPUG's requested relief to discontinue recovery of oil backout project costs in an energy-based oil backout charge is inconsistent with Rule 25-17.016 and therefore not permitted by Section 120.68(12)(b), Florida Statutes.

Rule 25-17.016 (4)(e), Florida Administrative Code, requires that "The Oil-Backout Cost Recovery Factor applicable to a qualified oil-backout project shall be estimated every six months in conjunction with the Fuel and Purchase Power Cost Recovery Clause...." and that [a] true-up adjustment, with interest, shall be made at the end of each six-month period to reconcile differences between estimated and actual data." Thus, FIPUG's claim that this rule does not specify how project costs be recovered is confusing. Although the rule does not specify that the oil backout cost recovery factor be applied on

an energy basis, an energy-based charge is consistent with the rule. Indeed, it is difficult to conceive of any non-energy based recovery scheme which would be consistent with this section of the rule. We believe that FIPUG's position on this issue is inconsistent with the rule.

Further, FIPUG may not how challenge the use of the Martin Coal units in calculating deferred capacity savings to be used in the calculation of Actual Net Savings since it has, in three prior proceedings in which FIPUG was a party, failed to raise the issue, not objected to stipulated Factors and failed to request reconsideration. However, had FIPUG objected in any of the three prior proceedings in which deferred capacity savings were calculated using the deferred Martin Coal units, the rule would have required the same result: once approved, recovery of the project continues. Although FIPUG is not precluded from contesting calculations derived using the Martin Unit cost estimates in upcoming periods, we will not allow FIPUG to contest the fact of approval. In fact, FIPUG's requested refund of oil backout revenues would constitute illegal retroactive ratemaking at this point, with the exception of project expenses collected after March 1988, which are still properly subject to Commission scrutiny.

We disagree with FIPUG's position that all oil backout revenues may be properly refunded. FIPUG points to the Florida Supreme Court decision in Gulf Power Co. v. Florida Public Service Commission, 487 So. 2d 1036 (Fla. 1986) as support for the position that funds collected through the fuel adjustment clause may be refunded. However, that case dealt with the refund of fuel expenses imprudently incurred. The Supreme Court upheld the Commission's order of a $2,200,000 refund of excessive fuel costs, pointing out that the "authorization to collect fuel costs close to the time they are incurred should not be used to divest the commission of the jurisdiction and power to review the prudence of these costs." (Id. at 37) Thus, the decision was predicated on the Commission's ability to review the prudence of the utility's fuel expenditures, which is not analogous to the relief requested by FIPUG: retroactive disapproval of the project for cost recovery purposes. FIPUG has presented no evidence that FPL imprudently incurred expenses. Rather, FIPUG's claims amount to an attack on the application of the Oil Backout Rule rather than a request for scrutiny of project expenses.

Based on the foregoing, it is

ORDERED that, except insofar as relief is granted herein,

the Petition of the Florida Industrial Power Users Group to Discontinue Florida Power & Light Company's Oil Backout Cost Recovery Factor is denied. It is further

ORDERED by the Florida Public Service Commission that Florida Power & Light Company recalculate its Oil Backout revenue requirements and Oil Backout Cost Recovery Factor for the period April 1, 1988 through September 30, 1989, using a 13.6% return on equity rather than 15.6% as previously calculated. It is further

ORDERED that Florida Power & Light Company submit testimony in support of its recalculated Oil Backout revenue requirements and Oil Backout Cost Recovery Factor in connection with the February, 1990 hearing in Docket No. 900001-EI. It is further

ORDERED that the amount to be refunded to Florida Power & Light Company's ratepayers due to the recalculated revenue requirements and factor will be determined at the February, 1990 hearing in Docket No. 900001-EI, and shall be included in the utility's April - September 1990 Oil Backout Cost Recovery Factor. It is further

ORDERED that, beginning April 1, 1990, Florida Power & Light Company shall place subject to refund a sum of money equal to the revenue effect of the unamortized balance of Investment Tax Credits existing at that date, plus interest from that date forward. It is further

ORDERED that Florida Power & Light Company request a letter ruling from the Internal Revenue Service regarding use of an amortization rate specific to Rule 25-17.016, Florida Administrative Code, in accordance with the terms and provisions of this Order. It is further

ORDERED that this docket shall remain open for further proceedings pending Florida Power & Light Company's receipt of the letter ruling from the Internal Revenue Service as ordered herein.

BY ORDER of the Florida Public Service Commission, this 5th day of DECEMBER, 1989.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.