

**Diamond Williams**

**From:** Kim Hancock [khancock@kagmlaw.com]  
**Sent:** Thursday, July 28, 2011 4:24 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** Keino Young; Anna Norris; mwalls@carltonfields.com; bhuhta@carltonfields.com; mbernier@carltonfields.com; allan.jungels@tyndall.af.mil; jwb@bbrslaw.com; ataylor@bbrslaw.com; rmiller@pcsposphate.com; kelly.jr@leg.state.fl.us; Charles Rehwinkel; sayler.erik@leg.state.fl.us; mcglathlin.joseph@leg.state.fl.us; john.burnett@pgnmail.com; alex.glenn@pgnmail.com; jessica.cano@fpl.com; bryan.anderson@fpl.com; jwhitlock@enviroattorney.com; gadavis@enviroattorney.com; Vicki Gordon Kaufman; Jon Moyle  
**Subject:** Docket No. 110009  
**Attachments:** FIPUG Response in opposition to MTS 7.28.11.pdf

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

- a. The name, address, telephone number and email for the person responsible for the filing is:

Vicki Gordon Kaufman  
 Keefe Anchors Gordon & Moyle  
 118 North Gadsden Street  
 Tallahassee, FL 32301  
 (850) 681-3828  
[vkaufman@kagmlaw.com](mailto:vkaufman@kagmlaw.com)

- b. This filing is made in Docket No. 110009.  
 c. The document is filed on behalf of The Florida Industrial Power Users Group.  
 d. The total pages in the document are 5 pages.  
 e. The attached document is FIPUG'S RESPONSE IN OPPOSITION TO FPL'S MOTION TO STRIKE.

Kim Hancock  
[khancock@kagmlaw.com](mailto:khancock@kagmlaw.com)



Keefe, Anchors, Gordon and Moyle, P.A.  
 The Perkins House  
 118 North Gadsden Street  
 Tallahassee, Florida 32301  
 (850) 681-3828 (Voice)  
 (850) 681-8788 (Fax)  
[www.kagmlaw.com](http://www.kagmlaw.com)

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DOCUMENT NUMBER-DATE

05273 JUL 28 =

7/28/2011

FPSC-COMMISSION CLERK



**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Nuclear Power Plant  
Cost Recovery Clause

Docket No. 110009-EI

Filed: July 28, 2011

**FIPUG'S RESPONSE IN OPPOSITION TO FPL'S MOTION TO STRIKE**

The Florida Industrial Power Users Group (FIPUG), pursuant to rule 28-106.204, Florida Administrative Code, files this response in opposition to Florida Power & Light Company's (FPL) motion to strike testimony and issues the Office of Public Counsel (OPC) has sponsored. As grounds therefore, FIPUG states:

1. FPL has filed a motion to strike Issues 3, 4 and 5a as well as the testimony of OPC witness Jacobs related to those issues. These issues relate to FPL's analysis and treatment of costs for its Extended Power Uprate (EPU) projects.<sup>1</sup>

2. FPL's motion is directed to issues and a witness sponsored by OPC. FIPUG files this response because it supports the OPC witnesses' testimony, but more importantly because FPL's motion is a misstatement of the law and an attempt to dangerously narrow the scope of matters which the Commission may consider in this on-going nuclear cost recovery proceeding.

3. FPL's motion exceeds some 20 pages; however, it makes essentially 4 arguments.
- a. Parties may not "collaterally attack" the Commission's Need Order;
  - b. Review of the disputed issues violates the nuclear cost recovery rule;
  - c. FPL is "entitled" to recover all prudently incurred costs; and
  - d. The issues and testimony implicate unauthorized risk sharing.

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<sup>1</sup> FPL has EPU projects at its Turkey Point and St. Lucie power plants.

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4. First, FPL argues that all issues raised which relate to the EPU project are a collateral attack on the Commission's determination of need order<sup>2</sup> approving the EPU project. Is it apparently FPL's view that the grant of a determination of need forecloses any further inquiry into a project's cost or timetable and essentially provides FPL with a blank check.

5. Of course, nothing could be further from the truth and such an assertion contradicts the nuclear cost recovery statute upon which FPL seeks to rely. FPL's view would render the nuclear statute and the Commission's rule obsolete. In FPL's opinion, whatever it tells the Commission in a determination of need docket, long before any work is done on the project, is immune from further examination. If that is the case, FPL should be held to the costs and timing it provided to the Commission in the need determination docket. FIPUG doubts that FPL would support this position.

6. In a determination of need matter, the Commission determines whether a proposed project is needed and whether such project is the best way in which to meet ratepayers' needs considering other options.<sup>3</sup> It is not, and never has been, the Commission's approval of costs incurred or approval of the management or prudence of the project.

7. The issues before the Commission are not a "relitigation" of FPL's decision to "fast track" the EPU project. Despite FPL's protestations, the Commission Need Order did not approve or even discuss a "fast track" approach for the project. Nor did the Commission approve the CPVRR analysis as the only methodology to be used in the nuclear cost recovery docket.

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<sup>2</sup> Order No. PSC-08-0021-FOF-EI (Need Order).

<sup>3</sup> Section 403.519, Florida Statutes.

8. FPL can point to nowhere in the Need Order where the issues to which it objects are addressed. Thus, there is no collateral attack<sup>4</sup> on the Commission's Need Order; rather, OPC's issues and testimony raise matters which are part and parcel of the Commission's determinations in this cost recovery docket.

9. Contrary to FPL's second point, the issues and testimony to which it objects not only do not run afoul of the nuclear cost recovery rule, but are precisely the type of issues the rule contemplates. For example, section 25-6.0423(5)(c)1-4, Florida Administrative Code, requires FPL to submit detailed cost information. Of what consequence is such information, if the Commission has already determined in the need case that FPL's costs, which by their very nature depend on the calculation and analysis used to arrive at such costs, are not subject to review? Does FPL suggest that the nuclear cost recovery rule is simply a math exercise? Similarly, section 25-6.0423(5)(c)5 requires detailed analysis of the long-term feasibility of the project. Again, such feasibility depends on the analysis used to support it.

10. Further, the Need Order itself states that the Commission will look at the reasonable and prudent costs of the project in the nuclear cost recovery docket. (Need Order at 5.) No determination of cost or schedule management is made in a determination of need docket nor can such findings be found in the Need Order upon which FPL attempts to rely.

11. Third, FPL argues it is entitled to recover all prudent incurred costs. However, FPL then makes the huge leap that any costs it comes up with, which of necessity must rest on the methodology chosen to analyze such costs, must be prudent and thus may not be challenged. Of course, whether or not project costs are prudent turns upon whether the analysis upon which FPL bases its claim makes sense. Methodology is part and parcel of the prudence determination. FPL's circular reasoning must be rejected.

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<sup>4</sup> Similarly, there can be no administrative finality as to issues which remain to be determined.

12. Finally, FPL's claim that the disputed issues and testimony raise some sort of risk sharing mechanism<sup>5</sup> is misplaced at best. There is no risk sharing suggested; rather the issue is FPL's decision to "fast track" the EPU project and whether costs that flow from that decision are imprudent. Again, this issue is appropriate for determination in the nuclear cost recovery docket – where actual dollars will be collected from ratepayers.

**WHEREFORE**, FPL's motion to strike should be denied and the issues and testimony discussed herein should be part of the nuclear cost recovery hearing.

s/ Vicki Gordon Kaufman  
Vicki Gordon Kaufman  
Jon C. Moyle, Jr.  
Keefe, Anchors, Gordon & Moyle  
118 North Gadsden Street  
Tallahassee, FL 32301  
(850) 681-3828 (Voice)  
(850) 681-8788 (Facsimile)  
[vkaufman@kagmlaw.com](mailto:vkaufman@kagmlaw.com)  
[jmoyle@kagmlaw.com](mailto:jmoyle@kagmlaw.com)

Attorneys for FIPUG

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<sup>5</sup> It is incorrect to state that the Commission has rejected out of hand any sort of risk sharing mechanism. However, that is not at issue in FPL's motion.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of FIPUG's Response in Opposition to FPL's Motion to Strike has been furnished by Electronic Mail and United States Mail this 28<sup>th</sup> day of July, 2011, to the following:

Keino Young  
Anna Norris  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

J. Michael Walls  
Blaise N. Huhta  
Matthew Bernier  
Carlton Fields Law Firm  
Post Office Box 3239  
Tampa, Florida 33601-3239

Captain Allan Jungels  
AFLSA/JACL-ULFSC  
139 Barnes Drive, Suite 1  
Tyndall AFB, Florida 32403-5319

James W. Brew  
F. Alvin Taylor  
Brickfield, Burchette, Ritts & Stone, P.C.  
1025 Thomas Jefferson Street, NW  
Eighth Floor, West Tower  
Washington, DC 20007-5201

Randy B. Miller  
White Springs Agricultural Chemicals, Inc.  
15843 Southeast 78<sup>th</sup> Street  
Post Office Box 300  
White Springs, FL 32096

J. R. Kelly  
Charles Rehwinkel  
Joseph McGlothlin  
Erik L. Sayler  
Office of Public Counsel  
c/o The Florida Legislature  
111 West Madison Street, Room 812  
Tallahassee, Florida 32399

John T. Burnett  
R. Alexander Glenn  
Progress Energy Service Company, LLC  
Post Office Box 14042  
St. Petersburg, Florida 33733-4042

Bryan S. Anderson  
Jessica A. Cano  
Florida Power & Light Co.  
700 Universe Boulevard  
Juno Beach, Florida 33408-0420

Gary A. Davis  
James S. Whitlock  
Gary A. Davis & Associates  
Post Office Box 649  
Hot Springs, NC 28743

s/ Vicki Gordon Kaufman  
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Vicki Gordon Kaufman