

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Florida Power Corporation's earnings, including effects of proposed acquisition of Florida Power Corporation by Carolina Power & Light.

DOCKET NO. 000824-EI
ORDER NO. PSC-02-0142-PCO-EI
ISSUED: January 31, 2002

ORDER DENYING FLORIDA INDUSTRIAL POWER USERS GROUP'S
(FIPUG) MOTION TO COMPEL FLORIDA POWER CORPORATION
TO RESPOND TO FIPUG'S THIRD SET OF INTERROGATORIES
AND THIRD SET OF REQUESTS FOR PRODUCTION

On December 20, 2001, Florida Industrial Power Users Group (FIPUG) served its Third Set of Interrogatories and Third Set of Requests for Production on Florida Power Corporation (FPC). On December 31, 2001, FPC filed its Objections to certain interrogatories and production requests. On January 8, 2002, FIPUG filed a Motion to Compel (Motion) FPC to respond to FIPUG's third set of interrogatories (specifically, with respect to Nos. 35 and 37) and third set of production requests (specifically, with respect to Nos. 36 and 38). On January 14, 2002, FPC filed a Response to FIPUG's Motion to Compel (Response). On January 15, 2002, FPC filed an Attachment to its Response, consisting of a journal entry reflecting the Commission's decision in Docket 001835-EI, Petition for Approval of Revised Annual Accrual for Nuclear Decommissioning Costs by Florida Power Corporation.

Interrogatory No. 35 and Production Request No. 36

FIPUG's Interrogatory No. 35 states:

Please provide the delivered fuel cost for each FPC generating unit used to supply retail customer's energy requirements broken out by the following factors: (a) Commodity costs (annual expense, MMBtus purchased and \$/MMBtu); (b) Transportation costs (annual expense, MMBtus purchased and \$/MMBtu); (c) Handling costs (annual expense, MMBtus purchased and \$/MMBtu); and (d) List whether or not the fuel supplier and transporter of fuel is an affiliate of FPC.

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FIPUG's Production Request No. 36 states:

For each FPC generating unit where either the commodity supplier or the transporter of fuel is an affiliate of FPC, please provide all documentation in FPC's possession which shows that the commodity price, or transportation charge, is priced at or below market. Include all analyses or summaries of requests for proposals undertaken to establish the commodity and transportation service market price.

FPC objected to both Interrogatory No. 35 and Production Request No. 36 as irrelevant, immaterial and not reasonably calculated to lead to the discovery of admissible evidence in a proceeding concerning base rates as FPC does not recover the fuel costs in base rates.

In its Motion, FIPUG asserts that the interrogatory is material to this case because FPC has apparently removed fuel revenues and some expenses from its filing that are not recovered through base rates. However, FPC's adjustments appear to have resulted in an unexplained reduction to projected Net Operating Income (NOI). The requested information is sought to analyze whether FPC has properly removed fuel expenses and revenues and made the appropriate adjustments to its projected NOI. Further, FIPUG states in its Motion that Commission Staff has identified an issue related to fuel revenues and expenses, as has FIPUG. With respect to subsection (d) of the interrogatory, FIPUG asserts that it is seeking information relevant to addressing preliminary issues identified by both staff and FIPUG regarding whether adjustments should be made to base rates to account for FPC's affiliate transactions. With respect to Production Request No. 36, FIPUG adopted the argument set forth with respect to Interrogatory No. 35, that is, FIPUG is seeking information relevant to addressing preliminary issues as to whether adjustments should be made to base rates to account for FPC's affiliate transactions.

In its Response, FPC states that each of the interrogatories and requests for production FIPUG's Motion seeks to compel are not appropriate to this docket, but are issues which were either (1) considered directly and appropriately as part of the fuel adjustment docket, or (2) were finally determined by the Commission

in Docket No. 001835-EI. The only "fuel" at issue in the instant case is the amount recoverable in base rates for fuel inventory. The analysis of FPC's fuel-related expenses and recovery are appropriately handled annually through the fuel and purchased power cost recovery clause docket. FPC states that the "unexplained reduction" in its projected NOI is already addressed in its response to FIPUG's First Set of Interrogatories No. 16. FPC alleges that it has therefore responded to the question relevant to this proceeding, and that it should not be additionally burdened by having to respond to discovery not appropriate to this docket.

Furthermore, with respect to subsection (d) of Interrogatory No. 35, FPC states that the subject transactions are distinguished from other types of affiliate transactions in that, subject to Rule 25-6.1351, Florida Administrative Code, they are specifically addressed in fuel adjustment proceedings. Therefore, it would be irrelevant to raise the issue in the context of this rate proceeding, where the Commission would not address such transactions.

Similarly, FPC's Response provides that Production Request No. 36 can not lead to admissible evidence when it expressly relates to an issue reserved by the Commission for fuel adjustment proceedings pursuant to Rule 25-6.1351, Florida Administrative Code.

Pursuant to Rule 1.280, Florida Rules of Civil Procedure, "parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action." FPC has not claimed that a response to these discovery requests would violate a privilege, but has demonstrated that the information sought is not relevant to the subject matter of this proceeding. Further, it appears that information has been provided by FPC which is responsive to FIPUG's concern regarding FPC's proposed NOI, which is at issue in this proceeding. Upon review of the pleadings and consideration of the arguments, FPC shall not be compelled to respond further to FIPUG's Interrogatory No. 35 or Production Request No. 36.

Interrogatory No. 37 and Production Request No. 38

FIPUG's Interrogatory No. 36 states:

Provide all assumptions used to develop CR3's decommissioning expense and depreciation expense.

FIPUG's Production Request No. 38 states:

Concerning the Crystal River nuclear unit, please provide, on electronic spreadsheets, the development of the nuclear decommissioning expense and the annual depreciation expense.

FPC objected to Interrogatory No. 36 as being a compound question consisting of two separate interrogatories, and requested clarification of the request as to the relevant year for which the information was sought. FPC objected to Production Request No. 38 as being irrelevant, immaterial and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding, as the matter has already been determined by the Commission in Docket No. 001835-EI.

In its Motion, FIPUG asserts that these discovery requests seek information with which to analyze FPC's compliance with the Commission's decision in Docket No. 001835-EI. In addition, FPC states that Commission staff has identified an issue addressing what adjustment, if any, should be made to the test year rate base to reflect the Commission's decision in Docket No. 001835-EI.

In its Response, FPC agrees to provide information relating to Crystal River Unit 3's depreciation expense. However, FPC asserts that any question regarding nuclear decommissioning has been addressed and finally determined by the Commission in Docket No. 001835-EI. FPC notes that its initial filing in this case was made prior to the Commission's decision in Docket 001835-EI. As such, FPC's filing does not reflect that decision and will have to be modified accordingly. However, all that is left for FPC to reflect its compliance with that decision in the form of a journal entry on FPC's books and records, and adjust the final revenue requirements in this proceeding. To that end, on January 15, 2002, FPC filed an

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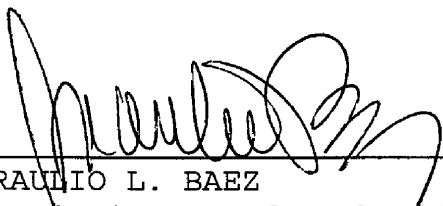
Attachment to its Response, consisting of a journal entry reflecting the Commission's decision in Docket 001835-EI.

Upon review of the pleadings and consideration of the arguments, FPC has demonstrated that the information sought is not relevant to the subject matter of this proceeding. The Attachment to FPC's Response appears to provide information which is responsive to FIPUG's request concerning FPC's compliance with the Commission's decision in Docket No. 001835-EI. In its Response, FPC further agrees to provide information relating to Crystal River Unit 3's depreciation expense, as requested by Production Request No. 38. Therefore, FPC shall not be compelled to respond further to FIPUG's Interrogatory No. 37 and Production Request No. 38, with the exception of the information FPC has agreed to provide relating to Crystal River Unit 3's depreciation expense.

Based on the foregoing, it is

ORDERED by Commissioner Braulio L. Baez, as Prehearing Officer, that Florida Industrial Power Users Group's Motion to Compel Florida Power Corporation to Respond to Discovery is denied, as set forth in the body of this order.

By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 31st day of January, 2002.



BRAULIO L. BAEZ
Commissioner and Prehearing Officer

(S E A L)

JSB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.