

# Steel Hector & Davis

Tallahassee, Florida

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January 9, 1990

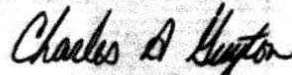
Mr. Steve Tribble  
Division of Records and Reporting  
Florida Public Service Commission  
101 East Gaines Street  
Tallahassee, FL 32301

**RE: Docket No. 890148-EI**

Dear Mr. Tribble:

Enclosed for filing is the original and fifteen (15) copies of Florida Power & Light Company's Response to FIPUG's Cross-Motion for Reconsideration in Docket No. 890148-EI.

Very truly yours,



Charles A. Guyton

- ACK
- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU CAG:do
- CTR Enclosures
- EAG cc.
- LEG 6
- LIN \_\_\_\_\_
- OPC \_\_\_\_\_
- RCH \_\_\_\_\_
- SEC 1
- WAS \_\_\_\_\_
- OTH \_\_\_\_\_

Counsel for all parties of record

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition of the Florida )  
Industrial Power Users Group to )  
Discontinue Florida Power & Light )  
Company's Oil Backout Cost )  
Recovery Factor )  
\_\_\_\_\_ )

Docket No. 890148-EI

Filed : 1-09-90

**FLORIDA POWER & LIGHT COMPANY'S RESPONSE  
TO FIPUG'S CROSS-MOTION FOR RECONSIDERATION**

Pursuant to Florida Administrative Code Rules 25-22.060(3)(c) and 25-22.028(4), Florida Power & Light Company ("FPL") responds to FIPUG's Cross-Motion for Reconsideration in this proceeding:

1. FIPUG's Cross-Motion for Reconsideration fails to satisfy the Commission's standard for reconsideration. It does not present a mistake, oversight or misapprehension of fact or law that would justify changing the original decision.
2. Both aspects of Order No. 22268 for which FIPUG seeks reconsideration were exhaustively litigated before the Commission. FIPUG's arguments for reconsideration are nothing more than restatements of the arguments it raised at trial; they were properly rejected then on the weight of the evidence and cannot form the basis for reconsideration.
3. FIPUG's arguments to reconsider the decision not to refund accelerated depreciation because FPL used the original

cost estimates and in-service dates for the Martin units were fully litigated. The preponderance of the evidence supported FPL's position on this issue See FPL's Posthearing Brief at 22-31.

4. FIPUG's argument that the Commission improperly shifted the burden of proof on these issues is simply wrong. First, it is clear that the Commission weighed the conflicting evidence on these issues and found FPL's position more convincing. Second, while FPL had the burden of proof in the original cost recovery proceedings to justify its Martin cost estimates, in this proceeding FIPUG was the petitioner collaterally attacking prior Commission decisions. As the party presenting the affirmative position, FIPUG always had the ultimate burden of persuasion in this proceeding. Order No. 22268 properly concludes that FIPUG failed to carry its burden.

5. FIPUG's arguments regarding the recovery of UPS capacity payments through the Oil Backout Cost Recovery Factor were also completely aired at the hearing and in posthearing filings. The evidence in the case supports the Commission's decision to continue the recovery of UPS capacity payments through the Factor. See FPL's Posthearing Statement of Issues and Positions, Issue 5, pp.7-9. Moreover, the recovery of UPS capacity payments through the Factor is not inconsistent with the Oil Backout Rule. Id. Finally, in light of the Commission's decision in FPL's last rate case to refuse FPL's

request to recover these costs through base rates, it would be manifestly unfair to FPL to discontinue the Oil Backout recovery of these costs when FPL's base rates are clearly not designed to recover these costs.

6. FIPUG's Cross-Motion stands in stark contrast to FPL's Motion. Unlike FIPUG's Cross-Motion, FPL's Motion for Reconsideration clearly demonstrates that the Commission made a mistake in construing the stipulation between FPL and FIPUG as giving it authority to order a refund of FPL's Oil-Backout return on equity for prior periods. Unlike FIPUG's Cross-Motion, FPL's Motion demonstrates that a refund of an Oil-Backout equity return for prior periods was never raised as an issue in the proceeding. FIPUG's Cross-Motion for Reconsideration should be denied, and FPL's Motion for Reconsideration should be granted.

Respectfully submitted,

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Attorneys for Florida Power  
& Light Company

By: Charles A. Guyton  
Charles A. Guyton

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition of the Florida )  
Industrial Power Users Group )  
to Discontinue Florida Power ) Docket No. 890148-EI  
& Light Company's Oil Backout )  
Cost Recovery Factor )

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 9th day of January, 1990,  
a true and correct copy of Florida Power & Light Company's  
Response to FIPUG's Cross-Motion for Reconsideration in Docket  
No. 890148-EI was served by hand delivery\* and by U. S. Mail\*\*  
on the persons listed below.

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*Charles A. Houghton*

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