**State of Florida**





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-**M-E-M-O-R-A-N-D-U-M**-

**DATE:** FEBRUARY 4, 1999

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

**FROM:** DIVISION OF ELECTRIC AND GAS (JENKINS, BALLINGER)

DIVISION OF LEGAL SERVICES (JAYE)

**RE:** DOCKET NO. 990002-EI - ENERGY CONSERVATION COST RECOVERY CLAUSE.

**AGENDA:** 02/16/99 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\EAG\WP\990002.RCM

 **CASE BACKGROUND**

Pursuant to Order No. PSC-96-0468-FOF-EG, issued April 4, 1996, in Docket No. 960130-EG the Commission granted FPLs request to limit the availability of its CILC program to existing customers and those which had entered into a CILC agreement as of March 19, 1996. Section seven of the CILC agreement states:

Within two (2) years of this Agreement, the Customer agrees (i) to perform necessary changes to allow control of a portion of the Customers load and/or (ii) to install or have in place backup generation equipment to contribute to the Controllable Demand level. Schedule CILC-1 cannot apply earlier than this date unless the Company so agrees. Should the Customer fail to complete the above work by the above-specified date, or should the customer fail to begin taking service under Schedule CILC-1 during that year, this Agreement shall become null and void unless otherwise agreed by the Company.

Staff contends that the CILC program should have been completely closed within two years of the March 19, 1996 vote. The two years gives customers time to install or adopt whatever measures allowing them to withstand interruptions and receive the lower rate.

Staff raised this issue with FPL during the November 1998 ECCR proceedings. Since discovery was still pending, the issue was deferred from that proceeding and staff was directed to pursue this issue in an expedited manner. The following recommendation is based on both formal discovery and informal meetings between the staff and FPL.

To expediate the matter, staffs recommendation relies in part, on FPL verbal statements and not on formal interrogatories. Should FPL change its verbal statements prior to or at the Agenda, staff will ask for a deferral to allow time for formal discovery.

 **DISCUSSION OF ISSUES**

**ISSUE 1:**   Should Florida Power and Light Companys (FPL) Commercial/Industrial Load Control (CILC) program be completely closed to new customers?

**PRIMARY RECOMMENDATION:**   Yes, adding approximately 100 customers, approximately 38 MWs, to the CILC rate fails the Ratepayer Impact Measure (RIM) cost-effectiveness test because there is no generating unit is avoided for the expenditure of roughly $ 2.4 million per year. These customers are singled out because the program was to be closed as of March 1998 pursuant to Order No. PSC-96-0468-FOF-EG issued April 4, 1996 in Docket No. 960130-EG. As a compromise, staff also recommends that any of these customers who expended money for studies or equipment within the last 12 months be allowed on the rate and FP&L be allowed to recover the additional expenditures through the conservation cost recovery clause even though no additional benefit is conveyed to customers. Primary staff is unsure whether the CILC rate increases or decreases peak demand and whether electric reliability will be improved or made worse due to the rate.[Jenkins]

**ALTERNATIVE RECOMMENDATION:**   While the incremental amount of CILC may not be cost-effective, staff would not want to impair reliability for either FPLs system or Peninsular Florida for the years 1999 and 2000. Therefore, the current CILC rate and associated Agreements, totaling approximately 38 MWs, should remain in effect until December 31, 2000. FPL has agreed to reduce the level of CILC in the future. [Ballinger]

**PRIMARY STAFF ANALYSIS:**   When the Commission granted FPLs petition in 1996, staff was under the impression that all existing CILC Agreements would be finalized within two years pursuant to section seven of the Agreement. To date, there remain over 100 outstanding customer Agreements with some dating back to 1991. According to FPL, these Agreements represent approximately 38 MW of controllable load. These customers are not currently taking service under the CILC rate schedule. Attachment 1 is a summary of information for each customer. Although FPL has never before requested confidentiality for the identities of its customers on the CILC rate, it requested confidentiality for the names of non-governmental customers this year.

In response to a staff interrogatory, FPL stated two reasons for extending the time frame of the Agreement. First, FPL stated that some customers had commitments, such as the purchase of backup generation. As shown in Attachment 2, only 19 out of the over 100 customers have actually spent any money in anticipation of taking service under the CILC rate. Staff is uncertain whether this money was spent on equipment or studies to determine the cost-effectiveness of the CILC rate to the particular customer or whether the customer spent the money recently and still intends to opt for the CILC rate. These Agreements amount to approximately 16 MW of controllable load.

Second, FPL stated that it was concerned about achieving its conservation goals. Achievement of its goals was touted as FPLs primary reason for not rendering the Agreements null and void. However, FPL is currently exceeding its Commercial/Industrial conservation goals by approximately 60 MW for the winter and 100 MW for the summer. FPL is scheduled to file new DSM goals next month. FPL has also conveyed to staff that these new goals will be less than the current goals and that the amount of CILC will be less as well.

In a meeting with FPL, the company stated that continuing the CILC program would allow FPL to reach the most cost-effective level of CILC. However, FPL also admitted that the incremental amount in isolation, approximately 38 MW, would not change any generation expansion plans currently anticipated. Therefore, it appears that there will be additional costs with no corresponding benefits for this incremental amount. The primary recommendation is based on this verbal statement by FPL. Should FPL change this statement prior to or at Agenda, staff will ask for a deferral to allow time for formal discovery.

In order to establish a maximum level of cost-effectiveness for the CILC program, it is necessary to evaluate the program in isolation from other DSM programs. Removing approximately 38 MW of non-firm load from FPLs system is a step towards reducing the states dependence on non-firm load from a Peninsular Florida basis.

The amount of Peninsular Florida non-firm load is an issue in the reserve margin docket, Docket No. 981890-EU, scheduled for a September 22-23, 1999, hearing. The issue arises because of the uncertainty surrounding the adequacy of planned generating reserve margin. The thinner the planned reserve margins, the more concern as to how much of that reserve margin consists of non-firm load. Currently, non-firm load is planned to consist of approximately 58% of the winter peninsular reserve margin. For FPL, non-firm load is currently planned to be approximately 41% of its winter reserve margin.

The alternate recommendation argues that 38 MWs of non-firm load, if all 100 customers sign-up, is better than no additional non-firm load. Primary staff disagrees because of the uncertainty of whether the CILC rate deters customers from switching to natural gas, including cogeneration. That is, the CILC rate may be making the reserve margin worse, not better. Attachment 3 contains excerpts of the Division of Research and Regulatory Reviews report on commercial and industrial DSM programs, including some FPL advertisements for the CILC program. These advertisements demonstrate that at least recently, FPL has used DSM as a competitive marketing tool.

FPL has offered to completely close the CILC tariff as of December 31, 2000, and to begin moving away from load management type programs in the future. This may help reduce the potential competitive applications of CILC and corresponding advertisements as shown in Attachment 3. However, primary staff contends that this program should have been completely closed out as of March 19, 1998. Therefore, primary staff recommends that the current CILC rate be discontinued as of the date of the Commission vote in the instant docket. However, as a compromise, if a customer can provide primary staff with verification of a purchase order for equipment or studies dated 12 months prior to and including the date of the Commission vote, primary staff will administratively approve these customers for eligibility under the CILC rate. This administrative approval will be with the understanding that FPL will recover its costs not withstanding the fact that adding the approximate 100 customers to the CILC rate fails the RIM screening test.

**ALTERNATIVE STAFF ANALYSIS:**  Alternate staff concurs with the primary staff that the incremental amount of CILC, approximately 38 MWs, may not be cost-effective and that Peninsular Florida utilities may be too dependent on non-firm load. Alternate staff also shares the same belief that Order PSC-96-0468-FOF-EG issued April 4, 1996, in Docket No. 960130-EG, required that the CILC rate be closed as of March 19, 1998, unless FPL could demonstrate that it was prudent to extend the deadline to certain customers. Times have changed since 1996 and cost-effectiveness is not the primary reason for continuing the current CILC program.

 The 38 MWs remaining of CILC may not materialize by the year 2000 as planned for by FPL. This is because it is in the control of the customer to make the decision and investments necessary to take service under the CILC rate. However, if the primary recommendation is approved, it is a certainty that these MWs will not be available for load control over the next two years. Staff has raised concerns about the reliability of Peninsular Floridas electric system in several forums. While the 38 MWs are minimal from a reliability standpoint, it would be better to at least have the opportunity to enhance reliability. In addition, FPL is already the least dependent, from a percentage basis, on non-firm load of the peninsular investor-owned utilities. FPL has indicated to staff that they are going to be moving away from load management programs. This will be reflected in their upcoming DSM goals filings and should allow for an orderly reduction in the amount of non-firm load as a percentage of reserve margin.

The primary recommendation is that staff administratively approve or deny customers wishing to take service under the CILC rate. The requirement to have a purchase order is not contained in the current CILC tariff. This would put the Commission squarely between a utility and its customers and could lead to prolonged litigation and complaints. FPL has agreed to inform its customers of the December 31, 2000, deadline by letter immediately following the Commission vote in this matter. While this probably should have been done in 1996, this will allow FPL to administer its tariff.

Therefore, while the incremental amount of CILC may not be cost-effective, alternative staff would not want to impair reliability for either FPLs system or Peninsular Florida for the years 1999 and 2000. Given that FPL has agreed to reduce the level of CILC in the future and in order to avoid customer confusion, the current CILC rate and associated Agreements, totaling approximately 38 MW, should remain in effect until December 31, 2000. Any customer who is not taking service under the current CILC rate by this date would no longer be eligible for the current CILC rate.

**ISSUE 2:**  Should this docket be closed?

**RECOMMENDATION:** No. This docket should remain open for the Commission to continue to monitor both energy conservation programs and the associated costs of the affected utilities.

**STAFF ANALYSIS:**  This docket should remain open for the Commission to continue to monitor both energy conservation and the associated costs of the affected utilities.