Marguerite McLean 080677-EI

From: ROBERTS.BRENDA [ROBERTS.BRENDA@leg.state.fl.us]

Sent: Wednesday, August 11, 2010 1:26 PM

To: Filings@psc.state.fl.us

Cc: Anna Williams; Barry Richard; Bethany Burgess; Brian Armstrong; Bryan Anderson; cecilia_bradley@oag.state.fl.us; D. Marcus Braswell ; Dan Moore; Jack Leon; Jean Hartman; Jennifer L. Spina; John McWhirter; John Moyle; John T. Butler (John.Butler@fpl.com); John T. LaVia; Ken Hoffman; Kenneth L. Wiseman; Lino Mendiola; Lisa Bennett; Lisa M. Purdy; Mark F. Sundback; Marlene Stern; Martha Brown; Mary F. Smallwood; Natalie F. Smith (Natlie_Smith@fpl.com); Richard Ungar; Schef Wright; Scott E. Simpson; Shayla L. McNeil; Stephanie Alexander; Stephen Stewart; Tamela Ivey Perdue; Vickie Gordon Kaufman (vkaufman@kagmlaw.com); Wade Litchfield

Subject: e-filing (Dkt. Nos. 080677-EI & 090130-EI)

Attachments: 080677.OPC's Request for Oral Argument out of Time.pdf

Electronic Filing

a. Person responsible for this electronic filing:

Joseph A. McGlothlin, Associate Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400
(850) 488-9330
mcglothlin.joseph@leg.state.fl.us

b. Docket No. 080677-EI

In re: Petition for rate increase by Florida Power & Light Company.

Docket No. 090130-EI
In re: 2009 depreciation study by Florida Power & Light Company.

c. Document being filed on behalf of Office of Public Counsel

d. There are a total of 17 pages.

e. The document attached for electronic filing is OPC's Request for Oral Argument Out of Time.
(See attached file: 080677.OPC's Request for Oral Argument out of Time.pdf)

Thank you for your attention and cooperation to this request.

Brenda S. Roberts
Office of Public Counsel
Telephone: (850) 488-9330
Fax: (850) 488-4491

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida Power & Light Company.	DOCKET NO. 080677-EI
In re: 2009 depreciation and dismantlement Study by Florida Power &	DOCKET NO. 090130-EI DATED: August 11, 2010

OPC'S REQUEST FOR ORAL ARGUMENT OUT OF TIME

The Citizens of the State of Florida, through the Office of Public Counsel, submit their Request for Oral Argument Out of Time, and state:

1. On March 17, 2010, the Commission entered Order No. PSC-10-0153-FOF-EI (hereinafter "Final Order") in this docket. In the Final Order, the Commission granted in part Florida Power & Light Company's ("FPL") petition for authority to increase base rates, and authorized FPL to increase base rates and charges so as to generate addition base revenues in the amount of $75.47 million annually.

2. On April 1, 2010, FPL filed a pleading that it styled "Motion For Reconsideration and Request For Clarification of Order No. PSC-10-0153-FOF-EI." Within the "reconsideration" portion of its pleading, FPL asserted that the Final Order reflected several calculation errors that had the effect of understating revenue requirements by approximately $42 million annually. In its Request for Clarification, FPL informed the Commission that, while the Final Order included $753 million of annual depreciation expense in overall revenue requirements, when it applied the prescribed depreciation rates to plant accounts FPL calculated only $624 million of annual depreciation expense.

FPL asked the Commission to clarify the amount of depreciation expense that it intended to include in FPL's annual revenue requirements. In its pleading, FPL suggested that any difference in revenue requirements that results from the Commission's disposition of its pleading be handled through an adjustment to the magnitude of the $223 million annual amortization of the $1.2 billion depreciation reserve surplus that the Commission ordered FPL to amortize over four years in the Final Order.

3. In OPC's response to FPL's pleading, OPC noted that FPL's request for clarification of the depreciation expense amount was unaccompanied by any information that would shed light on the nature and source of the discrepancy between the amount of depreciation expense that the Commission included in its determination of annual revenue requirements, on the one hand, and the significantly lower amount that FPL's implementation of the depreciation rates generated, on the other. For that reason, OPC said in its Response that it was not able to state a position regarding the appropriate resolution of the discrepancy. In its Response, OPC agreed with FPL that, in the event the Commission determines that FPL's annual revenue requirements should be modified as a result of FPL's pleading, it would be preferable to implement the Commission's decision through an adjustment to the magnitude of the annual amortization of the depreciation reserve surplus rather than to alter base rates at this point. OPC did not request oral argument on FPL's pleading at the time it filed its Response.

4. After FPL filed its Motion for Reconsideration/Request for Clarification and parties had submitted their responses to FPL's pleading, the Commission Staff served data requests

on FPL related to FPL's assertions. FPL requested Staff to provide FPL with Staff's work papers on the subject of depreciation expense. OPC requested and received the responses of FPL and Staff, respectively. OPC attended meetings during which the Commission Staff and representatives of FPL discussed their respective calculation methodologies. OPC also provided the FPL's discovery responses and Staff's work papers to its consultant, Jacob Pous, who earlier had testified on the subject of depreciation expense during the evidentiary hearing in this docket.

5. On July 22, 2010, the Commission Staff submitted its recommendation on FPL's Motion for Reconsideration/Request for Clarification. With respect to the alleged "calculation errors" associated with FPL's Motion for Reconsideration, Staff recommends that the Commission conclude that the revenue requirements determined in the Final Order be increased by approximately $42 million annually (and that the level of amortization of depreciation reserve surplus be modified accordingly). OPC has not performed independent analyses of the claimed calculation errors, and takes no position on that aspect of Staff's recommendation.

6. With respect to FPL's Request for Clarification, Staff recommends that the Commission conclude that FPL has not met its burden of demonstrating that resolution of the $129 million discrepancy between the $753 million of depreciation expense included in the Final Order and the $624 million of annual depreciation expense that FPL calculates by applying the final depreciation rates to plant accounts is warranted. Based on OPC's consultant's recent review of Staff's work papers, which OPC acquired only after the

deadline for responses to FPL's pleading had passed, OPC respectfully disagrees with this portion of Staff's recommendation. OPC wishes an opportunity to apprise the Commission of the reasons for OPC's disagreement. OPC is aware that Commission Rule 25-22.0022, F.A.C. states that a party is to request oral argument at the time it files a motion or response to a motion. However, the rule contemplates circumstances in which parties have had a full opportunity to formulate their litigation positions by the time they file the pertinent motion or response. In this instance, OPC was prevented by the dearth of information available at the time its response was due from assessing the discrepancy described in FPL's pleading. Under the circumstances, OPC asserts the Commission should permit OPC to request oral argument out of time, and grant that request. (OPC notes that in its recommendation Staff states that no party has requested oral argument, and therefore participation by the parties during the agenda conference would be discretionary with the Commission. OPC requests the Commission to exercise its discretion and allow OPC to address FPL's Request for Clarification when the Commission takes up Staff's recommendation.)

7. In further support of this Request, OPC offers both procedural and substantive observations. Procedurally, OPC takes issue with the premise that, where FPL has demonstrated a discrepancy of $129 million in depreciation expense between the Final Order and implementation of that Order, FPL has the "burden of proof" to demonstrate a need to resolve the matter. Rather, where the fact of a discrepancy of that magnitude has been shown, OPC submits all parties and the Commission should simply attempt to get to the bottom of the matter.

8. Substantively, OPC wishes through oral argument to apprise the Commission of two matters included in Staff's work papers that indicate to OPC's consultant that the Commission may have overstated the amount of depreciation expense that should be included in FPL's annual revenue requirements. The first is an indication that, when performing the calculation of the remaining life depreciation rate, in the course of apportioning the reserve imbalance among plant accounts so as to make the theoretical reserve equal to the book reserve and offsetting FPL-proposed capital recovery schedules Staff may have double counted $314 million of the $1.2 billion depreciation reserve surplus. If this proves to have been an error, the annual effect of rectifying the error would be to reduce depreciation expense by approximately $64 million. The second item is a statement in a Staff work paper to the effect that, rather than amortizing $894 million of reserve surplus over four years, Staff instead intended to amortize $500 million over four years and to amortize the balance of $394 million over 22 years. If this proves to have been an error, rectifying the error would result in a downward adjustment to depreciation expense of approximately $80 million. OPC is attaching to this Request an affidavit by Mr. Pous, in which Mr. Pous identifies and discusses these two separate items that, in his opinion (based on the information provided to him) indicate that the Final Order may have overstated annual depreciation expense. If Mr. Pous' assessment is borne out, it is possible that the resolution of the depreciation expense discrepancy identified in FPL's Request for Clarification may decrease depreciation expense (and related revenue requirements) in a manner that offsets any increase in revenue

requirements that would be associated with a decision on the reconsideration portion of FPL's motion in its favor.

9. To be clear: OPC does not assert that either of the items that Mr. Pous identifies in his affidavit definitely proves that the Commission overstated depreciation expense in its Final Order. For the reasons stated in his affidavit, Mr. Pous did not have sufficient information with which to make such a definitive claim. However, OPC does assert that the matters warrant careful attention and analysis. If the Commission decides not to permit OPC or other parties to participate through oral argument when it considers FPL's pleading, the Commission at a minimum should direct Staff to evaluate the items that Mr. Pous raises in his affidavit. OPC further asserts that, rather than assigning a "burden of proof" to FPL or OPC, the emphasis of the Commission should be to take the steps necessary to understand and resolve the significant $129 million discrepancy that FPL identified in its Request For Clarification.

10. In OPC's Response to FPL's Motion For Reconsideration/Request For Clarification, OPC suggested that, rather than modifying base rates at this juncture, the Commission should rectify any difference between the revenue requirements of the Final Order and its decision on FPL's pleading through an adjustment to the $223 million annual amortization of the $1.2 billion depreciation reserve surplus that the Commission required in the Final Order. At the time OPC filed its Response, it was not clear whether the Commission's resolution would be to increase revenue requirements or decrease them; OPC's support of the remedy of adjusting the annual amortization applied to both

contingencies. Consistent with that position, and regardless of whether the Commission's decision on all issues raised by FPL's pleading results in an upward or downward adjustment to annual revenue requirements, OPC continues to support an adjustment to the annual amortization amount as the appropriate vehicle with which to address such a discrepancy.

11. The following parties have indicated their positions prior to the filing of this request. FPL opposes OPC's request. FIPUG and the Federal Executive Agencies support OPC's request. The Florida Retail Federation, Attorney General, and SFHHA do not object to OPC's request.

WHEREFORE, OPC requests the Commission to grant oral argument on this matter and consider the points raised in Mr. Pous' affidavit.

J.R. Kelly
Public Counsel

Joseph A. McGlothlin

Joseph A. McGlothlin
Charlie Beck
Patricia A. Christensen

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400
(850) 488-9330

Attorneys for Florida's Citizens

DOCKET NOS. 080677-EI & 090130-EI
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing **OPC'S REQUEST FOR ORAL ARGUMENT OUT OF TIME** has been furnished by U.S. Mail to the following parties on this 11th day of August, 2010.

R. Wade Litchfield
Florida Power & Light Company
215 South Monroe Street, Suite 810
Tallahassee, FL 32301-1859

Anna Williams
Jean Hartman
Lisa Bennett
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Kenneth L Wiseman, Mark F. Sundback
Jennifer L. Spina, Lisa M. Purdy
Andrews Kurth LLP
1350 I Street NW, Suite 1100
Washington, DC 20005

Robert Scheffel Wright, Esq.
John T. LaVia, II, Esq.
Young van Assenderp, P.A.
225 South Adams Street, Suite 200
Tallahassee, FL 32301

John W. McWhirter, Jr.
Florida industrial Power Users Group
c/o McWhirter Law Firm
P.O. Box 3350
Tampa, FL 33601

John T. Butler
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408-0420

Barry Richard
Greenberg Traurig, P.A.
101 East College Avenue
Tallahassee, FL 33201

Bryan S. Anderson
Senior Attorney
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408-0420

Robert A. Sugarman
D. Marcus Braswell, Jr.
Sugarman & Susskind, P.A.
100 Miracle Mile, Suite 300
Coral Gables, FL 33134

Bill McCollum
Cecilia Bradley
Office of Attorney General
The Capitol-PL01
Tallahassee, FL 32399-1050

Vicki Gordon Kaufman
Jon C. Moyle, Jr.
Keefe Law Firm
118 North Gadsden Street
Tallahassee, FL 32301

Brian P. Armstrong, Esq.
Marlene K. Stern, Esq.
Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, FL 32308

Stephanie Alexander
Tripp Scott, P.A.
200 West College Ave., Suite 216
Tallahassee, FL 32301

South Florida Hospital and
Healthcare Association
6030 Hollywood Blvd.
Hollywood, FL 33024

Tamela Ivey Perdue, Esq.
Associated Industries of Florida
516 North Adams Street
Tallahassee, FL 32301

Captain Shayla L McNeil
AFLOA/JACL-ULT
AFCESA
139 Barnes Drive, Suite 1
Tyndall Air Force Base, FL 32403

Joseph A. McGlothlin

Joseph A. McGlothlin
Associate Public Counsel

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida Power & Light Company.	DOCKET NO. 080677-EI
In re: 2009 depreciation and dismantlement Study by Florida Power &	DOCKET NO. 090130-EI DATED: August 11, 2010

STATE OF TEXAS
COUNTY OF TRAVIS

AFFIDAVIT

Jacob Pous, after having first been duly sworn, deposes and states:

1. My name is Jacob Pous. My business address is 1912 West Anderson Lane Suite 202, Austin, Texas. Earlier in this docket, I appeared as an expert witness on depreciation matters on behalf of the Office of Public Counsel ("OPC").
2. After Florida Power & Light Company ("FPL") submitted its Motion For Reconsideration/Request For Clarification in this proceeding, OPC provided to me FPL's pleading, FPL's responses to the Commission Staff's discovery requests related to FPL's pleading, and the work papers underlying the recommendation on depreciation-related issues that the Staff provided to FPL and OPC at their request. OPC asked me to review these materials and assess FPL's assertion of a $129 million discrepancy in annual depreciation expense between the $753 million that the Commission included in revenue requirements in Order No. PSC-10-0153-FOF-EI ("Final Order") and the smaller $624 million of annual depreciation expense that FPL calculated when it applied a functional

level composite of the individual depreciation rates that the Commission prescribed in the Final Order to its functional level plant investment.

3. My ability to conduct a detailed analysis of the source of the discrepancy was limited by the fact that certain electronic work papers obtained from Staff contained "hard coded" values, by which term I mean that the electronic work papers contained many values that were not accompanied by the formulas that the Staff employed to calculate those values. In addition, in my review I did not analyze 100% of the accounts that were the subject of Staff's calculations; rather, I sampled Staff's work papers in an effort to locate and identify any methodological errors that might explain some or all of the $129 million difference that FPL described. In the course of my review, I observed two matters that indicate the possibility of such methodological problems. If the items that I observed were adopted and incorporated in the calculations underlying the Final Order, the Commission-adopted annual depreciation expense will have been overstated by a significant amount. I will describe these matters here, and will attach the work papers that are the subjects of my comments as an exhibit to this Affidavit.

4. The first observation relates to the calculation methodology that Staff employed to calculate individual depreciation rates for plant accounts, and for generation investment by unit by plant account. By rule, the Florida Public Service Commission has adopted a "remaining life" methodology. Under this methodology, the undepreciated portion of the investment (less net salvage) in an account is divided by the remaining life of the asset to derive an annual depreciation rate. Any surplus or deficiency associated with the account necessarily becomes rolled into the calculation. I observed in Staff's work papers that, while Staff referred to the rates they derived as remaining life rates, within the actual

calculation Staff divided the undepreciated amount of investment in an asset—not by the remaining life of the asset—but by the entire service life. This is the methodology that one would use to calculate a "whole life" rate. However, if an essential first step is taken in the process, this approach can legitimately be used to develop a depreciation rate that is identical to that which would result from the "remaining life" formula. The one circumstance in which the whole life calculation corresponds to the remaining life calculation is when the analyst first apportions the entire reserve surplus or deficiency among the various plant accounts, such that the theoretical reserve will equal the book reserve.

5. Performed correctly, the apportionment effectively and accurately eliminates the reserve imbalance on an account basis before the depreciation rate calculation is made. When this apportionment is done, there is an equivalency between the whole life depreciation rate and the remaining life depreciation rate. (By way of illustration, consider the calculation of a depreciation rate on Day One of an asset's life. Because no imbalance between the theoretical and actual reserves has developed, and because the whole service life is also the remaining life, the whole life calculation is identical to the remaining life calculation.) The whole life calculation has the advantage of relative ease of calculation, as compared to the remaining life calculation. The Staff work papers reflect the intent of Staff to apportion the entire reserve surplus among the various accounts, so as to effectively remove the entire imbalance and thereby achieve an equivalency between whole life and remaining life calculations, thus enabling the employment of the whole life formula as a valid calculation. And, in fact, at page 86 of the Final Order, it is clear

that this is the approach that was intended. For ease of reference, I am attaching Page 86 of the Final Order as Exhibit A.

6. For the whole life formula to achieve the equivalency noted above and be appropriate, Staff needed to apportion precisely the $1.2 billion reserve surplus determined by the Commission before deriving the depreciation rate. However, it appears to me that the Staff may have double counted $314 million of the $1.2 billion—by first apportioning the entire $1.2 billion reserve surplus among the plant accounts and then applying $314 million of the reserve surplus to offset FPL's proposed capital recovery schedules associated with early retirements of nuclear investment, the Cape Canaveral and Riviera power plant modifications, and certain retired meters. (See Exhibit A) Using $314 million once as an offset to the above noted specific capital recovery amounts and then possibly again within the $1.2 billion apportioned among accounts in an effort to make the remaining life and whole life rates equivalent would result in a distortion of the intended approach. It would have led to an overstatement of the undepreciated balances to be recovered and an overstatement of annual depreciation expense in the amount of approximately $64 million ($314 million divided by the 4-year amortization period less $314 million divided by the remaining life of approximately 22 years).

7. In its Final Order, the Commission directed FPL to amortize the total depreciation reserve surplus (net of $314 million of capital recovery items) over a period of four years. My second observation relates to a notation on Staff's work paper that indicates that Staff may have departed from this parameter when it derived depreciation rates. The notation states that, of the $894 million to be amortized, only $500 million would be amortized over four years; the balance of $394 million would be spread over twenty-two years.

Within the work paper, Staff associated the $500 million amount with "credits." The settlement agreement associated with FPL's last rate case provided for $125 million per year of credits to depreciation expense, or a total of $500 million; however, those credits expired prior to the test year of this case and have no place in the calculation. The twenty-two years corresponds to the overall average remaining life that I referenced in my testimony, but it has no place in the calculation of the annual amortization, which the Commission required to take place over a period of four years. In my limited review, I have not been able to ascertain whether Staff implemented the approach delineated in the notation. If Staff in fact incorporated this mistaken parameter in the calculations, the result would be a significant error, as spreading the $394 million over four years as ordered by the Commission (rather than the twenty-two years in Staff's notation) would increase the amortization (and thus lower annual depreciation expense) by approximately $80 million per year. I have appended the Staff work paper on which I base this observation as Exhibit B.

8. The two items that I have identified and described are separate and unrelated subjects. Addressing one of the issues does not obviate the need to address the other.

FURTHER AFFIANT SAYETH NAUGHT.

Jacob Pous

Jacob Pous

I hereby certify that on this 11th day of August, 2010, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Jacob Pous, who is personally known to me, and he acknowledged before me that he has read the foregoing Affidavit, and the same is true and correct based on his personal knowledge.

SARA ELLEN COLEMAN
NOTARY PUBLIC
State of Texas
Comm. Exp. 04/13/2013

Sara Ellen Coleman
NOTARY PUBLIC
State of Texas, at Large

My Commission Expires:

4/13/2013

The financial metrics affected by the proposed adjustment are the cash from operations to interest ratio (CFO/Interest) and the cash from operations to debt ratio (CFO/Debt). The debt to total capital ratio is unaffected by the proposed adjustment. FPL's corporate credit rating is single A flat from S&P, single A1 from Moody's Investor Service (Moody's), and single A flat from Fitch Ratings (Fitch). Pursuant to S&P's rating methodology, FPL's business profile is rated as excellent and its financial profile is rated as intermediate. Based on these designations, the ratings criteria published by S&P and Moody's for FPL's current credit ratings include the following cash flow metric standards.

Table 8

	S&P A rating	Moody's A rating
CFO/Interest	3.0x – 4.5x	4.5x – 6.0x
CFO/Debt	25% – 45%	22% – 30%

OPC witness Lawton testified that, while the proposed adjustment to address the reserve imbalance will decrease FPL's cash flow metrics, he did not believe it will harm the Company's financial integrity. Witness Lawton demonstrated that FPL's CFO/Interest ratio will decrease from 6.7x to 5.9x and the Company's CFO/Debt ratio will decrease from 45 percent to 40 percent. That said, this analysis does not take into account additional adjustments that will impact cash flow. However, witness Lawton argued that even if all of OPC's proposed adjustments were made, there is no basis to conclude that FPL's credit rating would fall below investment grade. FPL witness Pimentel agreed that even a two-notch downgrade for FPL would still result in a triple B plus rating, which would remain firmly investment grade. Moreover, none of the rating agencies have indicated that they would downgrade FPL's credit rating even if we denied the entire rate increase.

In this case, FPL's net reserve imbalance is a $1.2 billion surplus. The reserve surplus is of such a magnitude that its existence results in abnormal depreciation rates. Where significant reserve surpluses and deficits exist, corrective reserve transfers between accounts or amortization of the reserve imbalance should be considered. Whether the reserve imbalance is a surplus or a deficit, it violates the matching principle and represents a subsidy, and thus should be corrected.

As mentioned above, we calculated a theoretical reserve for each account within each production unit, and each transmission, distribution, and general plant account. Comparing the theoretical reserve to the book reserve resulted in various account surpluses and deficits that we netted to a bottom-line reserve surplus amount of $1.2 billion. As a result of this netting, each account's reserve is placed at its theoretically correct position. The theoretically correct reserve position is reflected in the depreciation rates contained in Table 3 and Table 6 above.

FPL, FIPUG, and OPC suggested that we transfer a portion of the reserve surplus to offset the expenses associated with its proposed capital recovery schedules. We agree. Accordingly, $314.2 million of the reserve surplus shall be transferred to offset the unrecovered costs associated with FPL's proposed capital recovery schedules. This reduces the reserve imbalance to an $894.6 million surplus.

FPL Composite Depreciation Rates

	Expenses	Composite Rate	Investment
	Steam		
Dep	74,157,230		3,036,663,361
Amort	561,076		3,558,507
	74,718,306		3,040,221,868
		0.0245766	
		2.5	
	Nuclear		
Dep	76,615,892		3,970,492,936
Amort	5,571,201		36,635,748
		0.02051022	
	82,187,093		4,007,128,684
		2.1	
	Other Production		
Dep	178,717,027		4,332,064,393
Amort	491,650		3,025,148
		0.04133909	
	179,208,677		4,335,089,541
		4.1	
	Transmission		
Dep	85,255,486		3,122,536,022
		0.02730328	
		2.7	
	Distribution		
Dep	308,397,259		10,050,556,895
Amort	11,270,766		81,524,246
		0.03155009	
	319,668,025		10,132,081,141
		3.2	
	General		
Dep	24,166,619		672,093,362
Amort	57,833,488		345,368,089
		0.08059284	
	82,000,107		1,017,461,451
		8.1	

Surplus Amort	1,208.8	
Less - Recovery Sch.	314.200	
	894.600	
Less credits:	500.000	Amortize at $125 m over 4 yrs
	394.600	Amortize at $17.9 m over 22 yrs

Investments and expenses are from
Copy of FPL Working file for Pat L (2).xls, worksheet D NEED

staff composite rates.xls

EXHIBIT B