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100358-EI

From: Patrick Wiggins [wigglaw@gmail.com]
Sent: Thursday, September 02, 2010 4:59 PM
To: Filings@psc.state.fl.us
Subject: Electronic Filing I Docket 100358-EI /AFFIRM'S RESPONSE TO Florida Power & Light Company's Study Report on Review and
Attachments: AFFIRM RESPONSE FPL 100358.pdf; AFFIRM RESPONSE FPL.tif

Electronic Filing

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Docket No. 100358-EI

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c.

Documents are being filed on behalf of AFFIRM

d.

There are a total of 34 pages in each of the the attached documents.

e.

The first document attached for electronic filing **is** a black and white color copy of AFFIRM's Response to Florida Power & Light Company's Study Report on Review and
Analysis of a Potential Multi-Period Time-of-Use Rate for Commercial
& Industrial Customers. in PDF form. The second is in the same document in TIFF format because PDF unable to copy color.

Copies provided to parties of record in separate transmittal.

Thank you,

Patrick K. Wiggins

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9/2/2010

Response of the
Association for Fairness in Rate Making

to

FPL Study Report Review and Analysis of a Potential Multi-Period Time-of-Use Rate for Commercial & Industrial Customers

Docket No. 100358-E1

September 2, 2010

Background and Introduction

In Order No. PSC-10-0153-FOF-EI dated March 17, 2010 (the "Order"), the Florida Public Service Commission (the "Commission") directed Florida Power & Light Company ("FPL") to work with the Association for Fairness in Rate Making ("AFFIRM") and any other interested parties to explore multi-period commercial time-of-use ("TOU") rates that would address concerns raised by AFFIRM in FPL's 2009 petition for an increase in rates (Docket No. 080677-EI). FPL was instructed to report back to the Commission by August 1, 2010. Because August 1, 2010 was a Sunday, FPL timely complied with the Commission's Order by filing a report and associated attachments consisting of 72 pages (the "FPL Report") on August 2, 2010.

Although FPL and AFFIRM were unable to reach agreement on the issue of multi-period commercial TOU rates, FPL did engage in discussions with AFFIRM and other interested parties, including members of the Commission's staff.

Prior to the filing of the FPL Report, a separate Commission proceeding (Docket No. 100358-EI) was established with respect to the issue of multi-period commercial TOU rates.

This report (the "AFFIRM Report") is submitted to the Commission to set forth the position of AFFIRM with respect to multi-period commercial TOU rates. For purposes of this AFFIRM Report, the terms Summer Months, Winter Months, On-Peak Period (or Hours) and Off-Peak Period (or Hours) shall have the meanings set forth in FPL's GSDT-1 Rate. In addition, as much of the discussion with this AFFIRM Report will address the hours in which peaks occur or energy is being used, in order to avoid confusion between AM and PM hours, the AFFIRM Report will use the convention adopted by the Federal Energy Regulatory Commission ("FERC"), which is to state time periods in military time. As an example, the hour ending 5:00 PM will be stated as Hour Ending 1700, or more simply, as the HE 1700.

AFFIRM respectfully requests that upon an evaluation of the AFFIRM Report, the Commission should issue an Order directing FPL to develop and immediately implement and offer a new appropriately structured and priced time of use rate for medium sized business customers, substantially in the form described herein. In the alternative, the Commission should issue an Order directing FPL to modify its existing GSDT-1 rate, substantially in the form described herein. Upon a filing of a new or revised TOU rate by FPL in response to any such Commission Order, AFFIRM should be afforded adequate opportunity to respond to the Commission with respect to the structure and pricing of such new or revised TOU rate.

Executive Summary

The FPL Report contends that the assertions made by AFFIRM as to the necessity or usefulness of multi-period commercial TOU rates are wrong. FPL states that it offers several TOU rate plans to medium sized (20 kW to 499 kW) commercial and industrial customers. On the basis of its analyses, FPL contends that there is no need to implement a new multi-period commercial TOU rate plan.

This report (the "AFFIRM Report") is filed on behalf of AFFIRM to contend and amply demonstrate that the menu of TOU rates currently offered by FPL to its medium sized business customers is highly ineffective, discriminatory, and in need of revision. The FPL TOU rates are unfair and discriminatory because such rates fail to satisfy the basic objective of properly and effectively placing the burden of cost of electric service on the customer that is responsible for causing the related cost of electric service.

From AFFIRM's perspective, the discussions between FPL and AFFIRM were unproductive, as the two parties were unable to find agreement on even the smallest of issues. FPL believes its existing GSDT-1 and other time sensitive rates for medium sized commercial customers to be appropriately structured and offering adequate opportunity for cost reduction. FPL further believes that the loads of QSRs and similarly situated customers are not differentiated from the load of the medium sized commercial customer class as a whole, and accordingly, it is not appropriate to develop a new or different rate for QSRs or other customers with similar load characteristics.

By contrast, AFFIRM takes the position that the existing rates promulgated by FPL are badly structured in that such rates make little attempt to correlate electric service pricing with cost causation. FPL attempts to justify its existing rate structures by performing analyses that consider only the existing On-Peak and Off-Peak Periods as a whole, thereby avoiding more focused analyses that would reveal important hour-by-hour differentials that exist within the On-Peak Periods. FPL has made no attempt to provide an economic justification for its determination of the appropriate hours that comprise the On-Peaks. (It is important to note that the Commission itself shares in the culpability for the inappropriate determination of On-Peak and Off-Peaks Periods. The Commission continues to rely on Order No. 9661, issued November 26, 1980 in Docket No.790793-EU, for the determination of On-Peak and Off Periods for TOU rates, even though the facts and circumstances which led to such determination thirty years ago may no longer be applicable or pertinent. It should be noted that the Commission has previously approved TOU rates offered by Gulf Power Company with four separate pricing components, a departure from the Commission's 1981 Order.)

The analyses discussed and submitted by FPL in this investigation of multi-period time of use rates are inappropriate and inapplicable for the reason that FPL has performed general analyses of the peaks and loads for the entirety of each defined On-Peak and Off-Peak Period, but has not performed the more focused analyses that would reveal hour by hour differences within the defined On-Peak and Off-Peak Periods. Accordingly, FPL's conclusions are wrong. FPL prepared its analyses with the intention of supporting its pre-ordained conclusion that FPL's rates are appropriate and should not be changed. However, the appropriate analyses in this investigation, which FPL did not present, should be those that examine whether FPL's existing rates can be improved such that there is a better correlation between the revenue burden and the associated causation of costs. Upon appropriate analyses of FPL's existing rates, it can be seen that there is an opportunity to create multi-period commercial TOU rates that will

better allocate costs to the cost causers and that will provide corresponding benefits to FPL in the form of better control over demand related costs.

Appropriate Application of Ratemaking Principles

The "Electric Utility Cost Allocation Manual", published in January 1992 by the National Association of Regulatory Utility Commissioners ("NARUC"), states in relevant part at page 12:

> "Cost of service studies are among the basic tools of ratemaking. While opinions vary on the appropriate methodologies to be used to perform cost studies, few analysts seriously question the standard that service should be provided at cost. Non-cost concepts and principles often modify the cost of service standard, but it remains the primary criterion for the reasonableness of rates.
>
> The cost principle applies not only to the overall level of rates, but to the rates set for individual services, classes of customers, and segments of the utility's business. Cost studies are therefore used by regulators for the following purposes:
>
> • To attribute costs to different categories of customers based on how those customers cause costs to be incurred.
>
> • To determine how costs will be recovered from customers within each customer class."

Under the heading of "Peak Demand Methods," the Electric Utility Cost Allocation Manual states in relevant part at page 41:[1]

> "Cost of service methods that utilize a peak demand approach are characterized by two features: First, all production plant costs are classified as demand-related. Second, these costs are allocated among the rate classes on factors that measure the class contribution to system peak **A customer or class of customers contributes to the system maximum peak to the extent that it is imposing demand at the time of --- coincident with – the system peak. The customer's demand at the time of the system peak is that customer's "coincident" peak.** The variations in the methods are generally around the number of system peak hours analyzed, which inturn (sic) depends on the utility's annual load shape and on system planning considerations **(emphasis added)**".

The discussion in the Electric Utility Cost Allocation Manual that follows the cited language above focuses on different methods to allocate demand-related costs based on peak demands, including the Single Coincident Peak Method (1-CP), the Summer and Winter Peak Method, and the Sum of the Twelve Monthly Coincident Peaks Method (12-CP).

The substance of the above cited language from NARUC's Cost Allocation Manual is that each customer should be responsible for paying revenues that are as closely aligned as possible with the costs that are caused by that customer, as calculated by each customer's coincident contribution to the system

[1] Interestingly, the preface to the Electric Utility Cost Allocation Manual indicated that Joe Jenkins from the Florida PSC headed up the Embedded Cost Working Group that authored the section on Peak Demand Methods.

peak. The optimal methodology to determine the coincident contribution of a customer or a customer class to the system peak is to examine and determine for each monthly peak hour the contribution of each customer or customer class to the load in that peak hour.

It is a widely accepted principle that a customer's contribution to a system peak is the demand of that customer at a time coincident with the system peak. However, FPL's zealous defense of its existing rate structure blithely disregards the principle of matching revenues with associated costs for purposes of maintaining the structure of FPL's time sensitive business rates.

The Cost of Service Study submitted by FPL and approved by the Commission in Docket No. 080677-EI used the 12 CP and $1/13^{th}$ Method for allocation of demand-related costs.[2] In order to provide for consistency and reasonableness in rate making, the use of the 12 CP method to allocate demand-related costs correspondingly requires that rates be established based upon FPL's twelve monthly system peaks, rather than based solely upon FPL's summer one hour peak and FPL's winter one hour peak. If FPL's demand-related costs are allocated using a 12 CP method, FPL's use of any other method to allocate the burden of cost would be inconsistent and inappropriate.

FPL submitted to the Commission two graphs, one reflecting FPL's summer peak hour and the other FPL's winter peak hour, for each year 2006 through 2009. The argument made by FPL is that for rate making purposes, the summer TOU hours should be determined in accordance with FPL's summer peak hour, and the winter TOU hours should be determined in accordance with FPL's winter peak hour. The use of these graphs is inappropriate, inapplicable and just flat-out wrong because it is inconsistent for FPL to use one method (12-CP) to allocate costs that will be borne by each customer class, and then for FPL to use a different method (the Summer and Winter Peak method) to allocate the burden of such costs among the customers.

Among other issues, the submission of a graph showing only FPL's Winter Peak Day implies that electric service in the other Winter Months follows a similar pattern. As discussed below, nothing could be further from the truth.

Quick Service Restaurants (QSRs) and Similarly Situated Customers

FPL asserts that AFFIRM requested the creation of a new TOU rate only for QSRs. That assertion is not true. At all times, AFFIRM has requested the development of a new TOU that would be appropriately designed to reflect the beneficial electric service characteristics of AFFIRM's QSR members, as well as QSRs that are not its members and other similarly situated FPL customers. AFFIRM recognizes that other types of medium sized electric customers have electric service characteristics that are similar to QSRs and that are beneficial to a regulated electric utility. These similar characteristics include, but are not limited to, operating on weekends and holidays for extended hours on each day that a location is open for business.

QSRs are not a completely homogeneous group when it comes to electric service. Most QSRs share certain common electric characteristics, such as significant refrigeration and outdoor lighting loads, as well as air-conditioning loads. But QSRs and their electric load patterns are dissimilar to the extent that

[2] It should not be construed that AFFIRM agrees with the use of this method as the best means by which to allocate demand-related costs.

they have different modes and hours of operation. Among the AFFIRM Members, Waffle House operates twenty four hours per day every day of the year but the other AFFIRM Members do not operate around the clock. Among YUM! Brands (KFC, Pizza Hut, Taco Bell, A&W and Long John Silver's) and the Wendy's/Arby's Group, there is only limited breakfast service.

There are numerous other differences in the operation of some QSRs. Pizza Hut has many locations that have no seating and provide only "to go" service, while other locations provide both table service and "to go" service. Some QSRs cook primarily with electricity, even when natural gas service is available. Some QSRs, such as sandwich shops, perform little or no cooking on premises. Some brands are not open for business on Sundays. Many QSRs offer an extensive breakfast menu, while others do not. As a result of the varied operations of different QSRs, a "typical" load pattern for QSRs does not exist. However, despite the lack of a typical QSR load pattern, QSRs do share the traits of extensive refrigeration and outdoor lighting that result in use of a disproportionate share of energy during off-peak periods, at least in the service territories of electric utilities that have appropriately defined off-peak periods.

Initially, without conferring with AFFIRM, FPL indicated its intention to perform extensive research in order to determine whether the load shapes of QSRs vary from the load shape of the medium sized commercial class as a whole. On the basis of limited available data, FPL indicated and continues to contend that the load shapes of its QSR customers are no different that the load shapes of the remainder of its medium sized business class. FPL reached this erroneous conclusion because FPL only examined summarized loads during the entire duration of each On-Peak or Off-Peak Period. FPL did not examine the differences in hourly loads within any given On-Peak or Off-Peak Period.

The following sections explain AFFIRM's position that FPL's existing time-sensitive rates are improperly structured and result in a discriminatory apportionment of the revenue burden.

Summer Months

During the Summer Months of April through October, the On-Peak Period is defined in the GSDT-1 Rate as the nine hour period from noon until 9:00 PM. All hours during the Summer Months that are outside the On-Peak Period are designated as Off-Peak.

Any determination of On-Peak hours for the Summer Months that relies on the summer peak hour is inconsistent with the use of a 12 CP Method to allocate demand related costs. When a 12 CP Method has been used to allocate costs, an appropriate analysis requires an examination of the peak hour in each month of each year.

Attachment 1 to this AFFIRM Report is a table that provides monthly system peak load data during the seven Summer Months for each year from 1994 to 2009, a period of sixteen years. The subject data was reported by FPL on Page 401b of FPL's FERC Form No. 1 for each subject year. Upon the request of the Commission or any other party to this proceeding, copies of the source documents can be made available.

Given seven Summer Months per year for sixteen years, we determined from the date the hour in which each of the 112 monthly peaks during the Summer Months has occurred. Importantly, 111 of the 112 monthly peaks during the Summer Months occurred during the three hour period from the HE 1600 to

the HE 1800, with a distribution of 15 monthly peaks (13.4%) in the HE 1600, 86 monthly peaks in the HE 1700 (76.8%), and 10 monthly peaks in the HE 1800 (8.9%). (The monthly peak in June 1996 occurred in the HE 1500. The monthly peak in June 1997 occurred at the HE 1700, but on a Saturday, outside of the On-Peak Period.) In fourteen of the sixteen years (87.5%) from 1994 to 2009, the annual summer peak occurred in the HE 1700. In the other two years, the annual summer peak occurred in the HE 1600.

The FPL Report states, in the fifth full paragraph, at page 3:

> "FPL's analysis of the system load data from 2006 through 2009 shows that the current TOU rating periods are indeed accurate and correct. FPL's summer peak day has a long relatively flat peak between the hours of 12 noon and 9 p.m."

FPL offers no explanation of why a "long relatively flat peak" from the HE 1300 to HE 2100 is the most effective means by which to satisfy the primary criterion for the making of TOU rates, which criterion is the measurement of the coincident contribution of a customer or customer class to the coincident peak of FPL. In fact, this FPL assertion raises more questions that it answers. Is measurement over a "long" period likely to provide the best correlation between cost causation and the cost causer? If so, then why not use a longer period, such as eleven or thirteen or fifteen hours? Is a "relative flat" period likely to provide the best correlation between cost causation and the cost causer? If "flat" is good, is "flatter" better and "flattest" best? If "flattest" is best, why not use a single hour, which is perfectly flat, or any period shorter than nine hours, each of which would be flatter than the nine hour On-Peak Period?

What is meant when FPL states that the current TOU rating periods are "accurate and correct"? Does that mean that FPL has tested other rating periods and that the nine hour On-Peak Period is the period that reflects the optimal correlation between FPL's monthly system peaks and the customer's coincident contribution to those monthly system peaks? If FPL has tested other periods and found them to be inferior, where are those studies to be found? AFFIRM's conclusion is that the selection of the nine hour On-Peak Period is entirely arbitrary and unsupported by any empirical evidence.

As noted before, FPL has focused attention on only the peak summer day, whereas its use of a 12 CP allocation of demand-related costs requires analyses of the peaks in each summer month. Second, a peak is a single hour, not a collection of hours. In case there is any doubt that the peak is a single hourly measurement, check the Cost of Service Study submitted by FPL in Docket No. 080677-EI. For purposes of the 12 CP allocation, FPL used the measurement of the single peak hour in each month, not the average of the measurements over a nine hour On-Peak Period.

The FPL Report reiterates FPL's position in its conclusion at page 14 by stating:

> "**The use of the current time-of-use periods (seasonal and hourly) is reflective of the FPL system load and is therefore appropriate**. While FPL acknowledges that a summer peak period of noon to 9:00 pm is significant, it is nonetheless reflective of FPL's actual system load. Other jurisdictions around the United States may have shorter and more intense on-peak periods that lend themselves to intermediate "shoulder peak" periods. However, Florida, and FPL's service territory in particular, are anything but typical when compared to the rest of the country."

Once again, the argument of FPL is unsupported by evidence and in fact raises more questions than it answers. If the loads of FPL are "anything but typical" when compared to the rest of the country, what characteristics set the FPL load apart from other electric utilities? As one of the southernmost electric utilities in the nation, would FPL not be subject to greater load swings than electric utilities in states with milder weather? If FPL has greater load swings that other electric utilities, wouldn't that weigh in favor of more pronounced short peak periods than other electric utilities? AFFIRM does not contest the fact that FPL's existing TOU rating periods are reflective of FPL's loads, but rather AFFIRM contends that FPL's existing TOU ratings periods are not adequately reflective of FPL's loads.

Most importantly, and overriding any other consideration for the determination of appropriate TOU rating periods, FPL has made no showing or offered any evidence that the use of a "long relatively flat peak" is an effective means to satisfy the most important criterion in allocated demand-related costs, i.e., the determination of the coincident contribution of a customer or customer class to the system peak.

As stated above, the appropriate means to allocate demand-related costs is to examine the monthly peak hour and then determine the contribution of each customer or customer class in that hour. For ratemaking purposes, this approach is impractical because the utility is unsure when such monthly peak hour will occur. Accordingly, most utilities, including FPL, have adopted a "second-best" approach that measures the non-coincident peak of a customer or customer class during a period in which a peak is most likely to occur. This second-best approach rests on the assumption that if it is impossible or impractical to measure the exact coincident contribution of a customer to the monthly system peak, an acceptable surrogate for such measurement would be a customer's non-incident peak during a likely peak period as a percentage of the sum of the non-coincident peaks of all customers. This second best approach is in fact the methodology that is the foundation of FPL's GSDT-1 Rate.

However, the glaring weakness in the structure of FPL's GSDT-1 rate is the inclusion of measurements of the customer's non-coincident peaks in hours in which a system monthly peak hour is extremely unlikely to occur. As set forth on Attachment 1, over the past sixteen years, all of FPL's monthly summer peaks with two exceptions (one of which was a system monthly peak during an Off-Peak Period) have occurred within the three hour period from the HE 1600 to the HE 1800. If nearly all of FPL's system peaks in Summer Months for sixteen years, and every summer peak since July 1997, have occurred within a discernible three hour period, then the appropriate period to measure the customers' non-coincident contributions to such peaks is within that same three hour period.

The necessity of using only the three hour period from HE 1600 to HE 1800 is further supported by analyzing FPL's summer loads for 2006, 2007 and 2008 during the On-Peak Period from HE 1300 to HE 2100.

Attachment 2 is a spreadsheet showing FPL's system hourly load data for the monthly peak day in each of the Summer Months of 2006, 2007 and 2008. For each of the three years, the spreadsheet reflects the average monthly peak day loads for the three hour periods from HE 1300 through HE 1500, from HE 1600 to HE 1800, and from HE 1900 to HE 2100. As would be expected (because all of FPL's peak monthly loads occur in the HE 1600 to the HE 1800), the average monthly peak day loads in the periods from HE 1600 to HE 1800 (hereafter referred to as the "Three Hour Summer Peak") are the highest.

When the average monthly peak day loads for the three hour period HE 1300 to HE 1500 are compared to the Three Hour Summer Peak, the average loads for HE 1300 to HE 1500 are 94.9%, 95.8%, and 95.3% for 2006, 2007 and 2008, respectively, of the Three Hour Summer Peak. The MW differentials between the Three Hour Summer Peak and the three hour period HE 1300 to HE 1500, are 1018 MW for 2006, 851 MW for 2007, and 933 MW for 2008.

When the average monthly peak day loads for the three hour period HE 1900 to HE 2100 are compared to the Three Hour Summer Peak, the average loads for HE 1900 to HE 2100 are 93.1%, 92.3%, and 93.5% for 2006, 2007 and 2008, respectively, of the Three Hour Summer Peak. The MW differentials between the Three Hour Summer Peak and the three hour period HE 1900 to HE 2100, are 1384 MW for 2006, 1542 MW for 2007, and 1286 MW for 2008.

AFFIRM was unable to perform analyses for 2009 because FPL's 2009 peak load data on FERC Form 714 is inconsistent in several Summer Months with FPL's corresponding 2009 data on FERC Form 401b submittal.. (This discrepancy does not exist with the 2009 peak load data for the Winter Months.) FPL apparently submitted corrected 2009 data for purposes of FERC Form 401b, but did not submit the corresponding corrected 2009 load data for FERC Form 714.

Notwithstanding FPL's assertion that the nine hour period constitutes a "long relatively flat peak", there is a significant and material difference in the average peak day loads between the Three Hour Summer Peaks and the three hour period on each side of the Three Hour Summer Peak. (The three hour periods on each side of the Three Hour Summer Peak will hereafter be referred to as the "Wing Periods".) The differences are not only significant in percentage terms, but the real significance can be seen in the measurement of MW differences. A difference in average loads of 934 MW in the three hour period from HE 1300 to HE 1500, and of a whopping 1404 MW in the three hour period from HE 1900 to HE 2100 is huge. These MW differences are so large during the Wing Periods that when compared to the Three Hour Summer Peak, FPL has the opportunity to remove from service at least one generating unit, and possibly two, three or four generating units, and still serve the FPL load during the Wing Periods.

Example of the Discriminatory Nature of the Nine Hour On-Peak Period

By defining the On-Peak Period as a nine hour "long relatively flat peak" rather than the period in which contributions to the likely monthly system peaks can be determined, FPL discriminates against any customer, including a QSR, that has a non-coincident peak during the Wing Periods. This is illustrated by the following simple example, as set forth both numerically and graphically on Attachment 3.

Suppose that an Electric Utility has three, and only three, medium sized commercial customers, designated as Customers A, B and C. Each of these three customers has a monthly non-coincident peak of 100 kW and consumes 800 kWh over the nine hour On-Peak period. Each of these three customers has a different load pattern within the nine hour On-Peak period, as set forth on Attachment 3. For the sake of simplicity, it is assumed that the demand related charges applicable to the class of medium sized commercial customers for the subject month are a total of $3000.

The Electric Utility's coincident peak for the subject class during the subject month is 280 kW. However, each of the three customers in the class has a non-coincident peak during the nine hour period

of 100 kW, for a total of 300 demand billing units. With a cost of $3000 and 300 demand billing units, the cost to each customer is $10.00 per kW of billing demand.

However, as shown on Attachment 3, the contributions of each customer to the Electric Utility's coincident peak of 280 kW are 80 kW for Customer A, 100 kW for Customer B, and 100 kW for Customer C. If the cost of $3000 were allocated on the basis of contributions to the monthly peak of the customer class, there would be only 280 demand billing units, and the cost to each customer would be $10.7143 per kW of billing demand. Under this allocation, instead of each customer paying a demand charge for the subject month of $1000 (100 kW times $10.00 per kW), Customer B and Customer C would pay $1071.43 (100 kW times $10.7143 per kW) and Customer A would pay $857.14 (80 kW times $10.7143 per kW).

This example reveals that the 100 kW non-coincident peak demand of Customer A is treated as if such peak had occurred during the monthly system peak, even though such peak occurred well outside the system peak. In fact, the contribution of Customer A to the monthly system peak was 80 kW. The treatment of Customer A's non-coincident peak as if it were a coincident peak is unfair, unjust and discriminatory because it has the result of causing Customer A to cross-subsidize Customer B and Customer C in the amount of $142.86.

A further examination of the load shape of Customer A, which peaks during a Wing Period, reveals that Customer A's load has the effect of filling in the valleys of the system load shape, thereby contributing to the appearance of a "long relatively flat peak period" (see Attachment 3, page 5 of 6). If not for the smoothing effect of the "contra-load shape" of Customer A, the system load shape during the nine hour peak period would be significantly less flat (see Attachment 3, page 6 of 6). These graphs illustrate that the true peak period occurs only during the three hour period for the hours ending 1600, 1700, and 1800, when the load shape is equally flat with or without the load of Customer A.

This example illustrates the fact that FPL's defined nine hour On-Peak Period during the Summer Months has the effect of causing FPL customers (any FPL customers, including QSRs) whose individual peaks occur outside of the Three Hour Peak Period to cross-subsidize the FPL customers whose individual peaks occur during the Three Hour Peak Period.

The FPL Report provided load shapes for each month of 2009 for a sampling of five QSRs in order to show that the QSRs have load shapes similar to the commercial group as a whole. In light of the fact that FPL's system peaked at either the HE 1600 or the HE 1700 in each of the Summer Months of 2009, it is informative to review the times at which the sampling of FPL's QSRs peaked during those months, as shown immediately below:

2009	System Peak	QSR Peak
April	HE 1600	HE 1300
May	HE 1600	HE 1400
June	HE 1700	HE 1300
July	HE 1600	HE 2100
August	HE 1700	HE 1300
September	HE 1700	HE 2000
October	HE 1700	HE 2000

For rate making purposes, the primary criterion for the effective structuring of TOU rates is to choose a peak period that most effectively measures the coincident contribution of each customer or customer class to the system peak. The overwhelming evidence shows that during the Summer Months, FPL peaks only during the HE 1600, HE 1700, or HE 1800. Accordingly, for purposes of structuring an effective commercial TOU rate, the peak period in each Summer Month appropriately should be defined as the three hour period from HE 1600 to HE 1800.

FPL asserts that if new TOU rates were to be established as recommended by AFFIRM, other customers will experience economic harm. This is simply not true. It is true that certain other FPL customers will incur higher costs, but such higher costs will result from the elimination of the receipt of subsidies from other FPL customers. The elimination of overcharges levied on FPL customers that have individual peaks that are non-coincident with the Three Hour Peak Period, and the corresponding elimination of subsidies enjoyed by FPL customers that have individual peaks coincident with the Three Hour Peak Period, does not constitute economic harm. The FPL customers that have been enjoying such subsidies have no entitlement to such subsidies, and the higher amounts to be paid by certain FPL customers arise only because such subsidies have been eliminated. With the elimination of subsidies, the burden of revenues will be appropriately placed, pursuant to the matching principle, on those customers who are causing the demand-related costs.

Winter Months

While FPL's load shapes and peak during the Summer Months are relatively consistent (in shape and timing if not in magnitude), FPL's load shapes and peaks during the five Winter Months reflect substantial variations from each other. The On-Peak Hours during the Winter Months under the GSDT-1 Rate are defined as the four hour period from HE 700 to HE 1000 and a second four hour period from HE 1900 to HE 2200.

FPL's system load shapes for the Winter Months of November through March present a difficult (and likely insurmountable) problem in constructing a single rate design that would apply effectively to each individual winter month. Attachment 4 to this AFFIRM Report is a table that provides monthly system peak load data during the five Winter Months for each year from 1994 to 2009, a period of sixteen years. The subject data was reported by FPL on Page 401b of FPL's FERC Form No. 1 for each subject year.

An examination of the system peak load data for each Winter Month, as reflected on Attachment 4, reveals four significant factors that should be considered in the structuring of rates applicable to the Winter Months. These four factors are:

1. For the past sixteen years, no system peak load has occurred in a Winter Month in an HE 700, an HE 2100, or an HE 2200. The only time that a system peak load occurred in the HE 1000 was in January 1997, over thirteen years ago. In the past eight years, there has not been a single system peak load during a Winter Month occurring in the HE 700, the HE 1000, the HE 2000, the HE 2100, or the HE 22000.

2. A month by month examination of the system peak load data on Attachment 4 reveals a significant shift over time in the pattern of monthly peaks, particularly in the months of March and November.

   - For March, in the eight year period from 1994 to 2001, the system peak occurred in an On-Peak Period seven times (twice in the HE 800, twice in the HE 1900, and three times in the HE 2000). However, in the subsequent eight year period from 2002 to 2009, the March system peak occurred outside the On-Peak Period in all eight years (once in the HE 1500, three times each in the HE 1600 and the HE 1700, and once in the HE 1800).

   - For November, in the eight year period from 1994 to 2001, the system peak occurred seven times in the HE 1900, and once (1995) in an Off-Peak Period. But in the subsequent eight year period from 2002 to 2009, the November system peak occurred in an Off-Peak Period six times (once in the HE 1400, three times in the HE 1600, and twice in the HE 1700) and only twice in an On-Peak Period (both times in an HE 1900).

3. For December, the monthly system peaks have occurred in the HE 1900 in thirteen of the past sixteen years. A December monthly system peak has not occurred in an On-Peak Hour in the morning since the year 2000 (in 2003, the December monthly system peak was on a Sunday morning, an Off-Peak Period).

4. For January and February, the monthly system peaks for the past sixteen years have occurred twenty three out of thirty two times in the On-Peak morning hours, with six monthly system peaks in the On-Peak evening hours, and three monthly system peaks in Off-Peak Periods.

On the basis of the data presented above, it would be reasonable for FPL to project that in a year with a normal weather pattern, in the months of January and February, it is likely that a monthly system peak will occur in an HE 800 or HE 900. For ten of the past eleven years, the FPL system peak during the Winter Months has occurred during a January or February during an HE 800 or HE 900. The one exception to the system peak in the Winter Months occurring during a morning hour in January or February was 2004, when the system peak for the Winter Months occurred during November in an HE 1600, outside of the On-Peak Period.

Consistent with the discussion set forth above regarding the Summer Months, the fact that FPL usually peaks (and FPL expects and plans for a system peak) during January and February during the HE 800 and HE 900 means that a properly constructed TOU rate should designate the HE 800 and HE 900 as the on-peak hours during January and February. The HE 700 and HE 1000 should not be included in the on-peak hours for January and February because FPL does not experience a system peak in those hours.

Further, because the objective of effective rate making is to establish rates that reflect the coincident contribution of each customer or customer class to the system peak in a relevant time period (in this case, the months of January and February), it is totally irrelevant that FPL experiences a secondary system peak in such months. Consider the case whereby FPL peaks in the HE 800 during January, while an FPL customer experiences a non-coincident peak during an HE 1900. Under FPL's existing rate, that customer is deemed to have contributed to FPL's monthly system peak during an HE 800 because such customer had a non-coincident peak that occurred eleven hours later. This is patently unfair and

discriminatory and should not be allowed. AFFIRM recommends that for purposes of a properly structured commercial TOU rate, the existing definition of the On-Peak Period for January and February should be changed to an on-peak period consisting of the two Hours Ending 800 and 900.

Moreover, the fact that FPL is likely to experience a system monthly peak in January or February during an AM hour is carried forward by FPL into the rating periods for the months of November, December and March. By contrast to January and February, for the last nine years, FPL has not had a single monthly system peak in an AM hour in November, December or March. Accordingly, there is no relationship between any FPL customer's consumption of energy during an AM hour and the contribution to FPL's system peak during November, December or March. For this reason, it is patently unfair and discriminatory for rate making purposes to treat energy consumption during the existing AM On-Peak Period as if such consumption is a fair measurement of a customer's coincident contribution to the monthly system peak that is anticipated to occur during a PM hour.

While it is clear that AM hours should not be included in a properly constructed TOU rate for the months of November, December or March, it is more difficult to define the hours that should be treated as On-Peak hours for such months.

During March of 2000 and 2001, FPL had a monthly system peak during the HE 2000, currently designated as an On-Peak Hour. But over the subsequent eight years, FPL has not had a single March system peak occurring in an On-Peak Period. However, in seven of the past eight years, FPL's March peak has occurred in the HE 1600, the HE 1700, or the HE 1800. AFFIRM acknowledges that March is a mild weather month in Florida and that that the average loads in March are much lower than those experienced in the other months. Nevertheless, in order to remain consistent with the principle of establishing rates that recognize that demand-related costs are allocated based on a 12 CP formula, the Commission must determine an appropriate peak period for the month of March. For purposes of practicality, if the Commission were to adopt AFFIRM's recommendation that the appropriate On-Peak Period for the Summer Months is the three hour period from HE 1600 to HE 1800, then based on the monthly system peaks for March over the last eight years, March also should be classified as a Summer Month with the same Three Hour Peak Period.

Of all months in the year, the month of November shows the greatest variability in FPL's load shape. Over the past eight years, there have been six monthly system peaks occurring outside the On-Peak Period with three peaks in the HE 1600 and two peaks in the HE 1700. November also should be classified as a Summer Month with the same Three Hour Peak Period.

In distinct contrast to March and November, the month of December has a very reliable load pattern. In eight of the last nine years (all except 2003, when the monthly peak for December was on a Sunday morning), the system monthly peak for December has occurred in the HE 1900. For purposes of an appropriately structured commercial TOU rate, the on-peak period for December should be the HE 1900.

FPL's Existing Rate Structure Negates the Usefulness of Price Signals

The primary purpose of TOU rates is to create a rate structure that provides the best match between cost causation and the customers that should bear the corresponding revenue burden. The secondary, but still

very important, purpose of TOU rates is to provide price signals that will act as an incentive for customers to modify electric loads in order to reduce costs by either shaving loads during high cost periods or shifting loads to a lower cost period, with the intention that such load shaving or shifting will result in a corresponding cost reduction benefit to the electric service provider.

The NARUC's Electric Utility Cost Allocation Manual addresses itself to the importance of price signals by stating, in the first full paragraph at page 7:

> "In recent years it has become apparent that utilities have the option of influencing their demand curves as well as varying their sources of supply. Thus, a utility with base load capacity but a rising peak demand may be able to shift some of its peak load to off-peak hours, to make better use of its base load facilities, rather than building additional peaking units."

The existing structure of FPL's primary commercial TOU rate, which has a "long relatively flat" On-Peak Period, substantially negates the usefulness of price signals. At all times, the monthly system peak hour falls within the Three Hour Peak Period, but the defined nine hour On-Peak Period includes a three hour Wing Period on each side of the Three Hour Peak Period. Many businesses have the capability to modify their loads by shaving a peak or shifting consumption backward or forward for an hour or two, but very few businesses have the capability to shift load for a period of five hours, at least without material disruption to the business. However, a load shift of up to five hours is required to effect a cost savings when the serving electric utility prescribes a nine hour On-Peak Period.

Consider the example set forth in Attachment 3. Customer B has an individual peak of 100 kW at the HE 1700 that is coincident with the Electric Utility's monthly peak of 280 kW. If Customer B were to shift 5 kW of its peak load into the HE 1900, then Customer B would have a reduction in its peak demand from 100 kW to 95 kW, and the Electric Utility would have a corresponding peak load reduction of 5 kW. Along with similar load reductions from similarly situated customers, the aggregate effect of such load reductions would allow the Electric Utility to reduce costs by deferring additions to its generating fleet. Under ordinary circumstances, the incentive for Customer B to reduce its individual peak demand by 5 kW would be the opportunity to save the demand charge on 5 kW.

But these are not ordinary circumstances, because under the structure of FPL's GSDT-1 Rate and other base rates offered by FPL, the appropriate demand charge has been artificially reduced with a corresponding artificial increase in non-fuel energy charges during the On-Peak Period. Although the act of suppressing demand by 5 kW should save Customer B the cost of the avoided demand of 5 kW, Customer B loses a part of such benefit because a portion of the demand charge has been embedded in non-fuel energy rates. This shifting of costs between the demand charge and the base energy charge reduces the incentive for Customer B to reduce its demand because the price signal has been altered. In addition, the customer does not benefit from lower cost fuel related costs in the HE 1900 versus the HE 1700 because the hourly fuel costs have been averaged over a broad number of defined On-Peak Hours, which conceals the effect of higher fuel costs during the true peak hours in the Summer and Winter months.

By contrast to the circumstance of Customer B (described in the previous paragraph), consider the implications of a shift in load by Customer A, which has individual peaks at the HE 1300 and HE 2100

and a substantially lower load during the Three Hour Peak Period. If Customer A were to reduce its non-coincident demand by shaving 5 kW from each peak hour, or by shifting 5 kW from HE 1300 to HE 1200 and from HE 2100 to HE 2200, then Customer A would save the demand charges on 5 kW (which have been artificially reduced under FPL's rate structure) and Customer A would also save the non-fuel energy charges on 10 kWh (5 kWh shifted in both hours ending 1300 and 2100). (Note that the non-fuel energy charges have been artificially increased to counterbalance the artificial decrease in the demand charge.)

However, it should be noted that Customer A reacted to an inappropriate price signal resulting from the Electric Utility's treatment of the hours ended 1300 and 2100 as if such hours contained a monthly system peak. But neither of those hours contained a monthly system peak, so even though Customer A pays less revenue and the Electric Utility receives less revenue, the Electric Utility has no corresponding reduction in its demand related costs. In this instance, Customer A reacted to a signal that should never have been provided because reaction to such signal does not benefit the Electric Utility.

The FPL Report refers to the exact situation described in the previous paragraph and asserts that in this situation, Customer A is a "free rider", a customer that gains a cost reduction benefit absent a corresponding cost reduction benefit to FPL. However, if FPL has structured its rates properly to recognize only true on-peak hours, such situation that harm FPL could never occur.

The discussion above sets forth the fact that FPL's price signals are made signficantly less useful because the demand charge is artificially reduced and the non-fuel energy charge is correspondingly artificially inflated. This rate treatment is explained by the testimony of FPL Witness Rosemary Morley in Docket No. 050045-EI dated March 22, 2005. At that time, Ms. Morley held the title of Rate Development Manager in the Rates & Tariffs Department at FPL. In Docket No. 050045-EI, in her direct testimony at page 29, lines 1 – 9, Ms. Morley testified that:

> "Moreover, the standard demand charge approved by the Commission was generally below the classes' demand unit costs. Consequently, the energy charges approved for these schedules were designed to recover any demand charges not recovered through the demand charge. **The Commission's decision in approving this rate structure relied, in part, on the fact that the coincident peak contributions of these classes tend to be more highly correlated with their kWh sales than with their billing kW.** Thus, the recovery of a portion of demand costs through the energy charges was deemed appropriate **(emphasis added)**".

There are two problems here. First, FPL states as a fact that the coincident peak contributions of classes tend to be more correlated with energy sales that with demand readings. This is NOT a fact, and it flies in the face of reason that energy sales measured over a period of time would be more correlated with coincident class contributions to peak demand than coincident demand measurements. The only possible explanation for a better correlation with energy sales than with demand measurements would be the situation, as exists here, when FPL's demand measurements are made during periods that are non-coincident with the observed monthly system peaks.

Second, this same inappropriate rate structure (the reduced demand charges and increased energy charges) was proposed by FPL and approved by the Commission in Docket No. 080677-EI, but not

because of any perceived better correlation between energy sales and contributions to peak demand. As explained in the third paragraph on page 189 of Order No. PSC-10-0153-FOF-EI:

> "We acknowledge witness Pollock's position that demand charges should reflect demand costs and energy charges should reflect energy costs. However, consideration of rate stability and rate shock are also important considerations in rate design. Increases in the demand charge impact low load factor customers to a greater extent that high load factor customers because they are less able to offset the higher demand costs with lower energy costs and are thus less able to affect their total bill. FPL's demand rates have not changed significantly in over twenty years and increasing demand charges to unit costs in one step might be too drastic and could disproportionately affect low load factor customers. For these reasons we agree with the method used by FPL to set demand rates for the GSD classes."

In light of the foregoing, it is disingenuous for FPL to suggest in the FPL Report that any change in rates to the QSRs and other similarly situated customers would result in other customers providing a subsidy to the QSRs. The clear and simple truth is that QSRs and other medium sized business customers now provide a subsidy to low load factor customers. However, if FPL were to restructure its rates properly and narrow the On-Peak Period to encompass only those hours when monthly system peaks occur, low load factor customers would have a reasonable opportunity, which does not now exist, to modify their loads in a manner that would offset increases in demand charges.

Moreover, the Commission should take notice that when FPL filed its base rate increase request in Docket No. 080677-EI and sought nearly a 50% base rate increase on medium sized business customers, FPL did not evidence any concern over the rate making considerations of rate stability and rate shock to such customers. Apparently, such considerations are only valid to FPL when a revenue increase to a customer arises from removal of a subsidy from other customers, but not when FPL itself is seeking additional revenues.

The Inadequacy of FPL's Existing Rates for Medium Sized Business Customers

FPL offers four different rates to medium sized business (commercial and industrial) customers. These rates are (1) the General Demand Rate (GSD-1), designed as a "one-size fits all rate", (2) the General Demand TOU Rate (GSDT-1), (3) the High Load Factor TOU Rate (HLFT-1), and (4) the Seasonal Demand TOU rider (SDTR-1).

FPL contends that the mere offering of four different rates, however ineffective, is evidence of an adequate menu of rate offerings to the medium sized business customers. AFFIRM disagrees, and as the evidence shows, so do the vast preponderance of FPL's customers. FPL serves a medium sized business sector that is comprised of approximately 100,000 customers with widely varying loads. Many medium sized business customers do not operate on weekends or holidays, or have only limited weekend operations (most commercial office buildings, including banks, post offices, the offices of doctors, lawyers, accountants and other professionals, and most governmental operations). Many medium sized businesses do not operate at night. Other medium sized businesses operate extended hours, including nights, weekends and holidays. Yet despite the widely varying load patterns of such customers, more

than 96% of all medium sized business customers find that FPL's rate offerings provide no cost reduction opportunity when comparing to simply using FPL's ordinary "one size fits all" GSD-1 Rate.

Attachment 6 to the AFFIRM Report is a copy of Pages 304 and 304.1 from FPL's 2009 FERC Form No. 1. These pages show a breakdown for 2009, for each rate offered by FPL, of energy sold, revenue, average number of customers, kWh of sales per customer, and revenue per kWh. As these pages reflect, despite the claims of rate efficiency by FPL, the commercial and industrial customers served under both the GSDT-1 Rate and the SDTR incur a substantially higher average cost per kWh than those customers who are served under the plain vanilla GSD-1 Rate. These two rates, GSDT-1 and SDTR, both of which have higher average costs per kWh that the GSD-1 Rates, are the rates that FPL encourages the AFFIRM Members to utilize. (As would be expected, those commercial and industrial customers served under the HLFT-1 Rate do realize a cost reduction benefit when compared to the GSD-1 Rate, but this rate is structured in a manner that cannot be used by AFFIRM Members.)

A few QSRs and similarly situated customers may find some cost reduction benefit in using the GSDT-1 Rate versus the GSD-1 Rate, notwithstanding the improper design of GSDT-1 Rate as explained herein. FPL asserts that the GSDT-1 Rate is accommodating to low load factor customers when compared to the GSD-1 Rate, but this is not true. Low load factor customers will have higher average costs than higher load factor customers under both the GSD-1 Rate and the GSDT-1 Rate because the same customer charge and demand charge are spread over fewer units of energy purchased. The benefit of the GSDT-1 Rate when compared to the GSD-1 Rate occurs if, and only if, the subject customer consumes less than 30% of its energy during the On-Peak Period. But as explained in detailed in the AFFIRM Report, the On-Peak Period under the GSDT-1 is improperly defined because its On-Peak Period encompasses numerous hours when no monthly system peak exists.

AFFIRM acknowledges that FPL offers a load control option that provides a credit to the customer for allowing FPL to cycle the customer's air conditioning load, and further acknowledges that FPL claims that such action has produced a "guaranteed savings" to an unnamed QSR chain in an amount of less than $400 per store. It is true that FPL may provide an average credit in such amount to each QSR location, but AFFIRM argues that there is no guaranteed savings, especially if savings are determined net of related changes in costs. First, there is likely simply a shift in air conditioning loads into other time periods that could cause higher non-coincident peak readings than would otherwise occur, or which could result in equal or greater consumption of energy during the On-Peak Period. The AFFIRM Members also believe that there is an exposure to loss of revenues and other additional operating costs if FPL is allowed to cycle their air conditioning loads. Accordingly, the AFFIRM Members believe that a load control option would be disruptive to their businesses and are not willing to cede a load control option to FPL.

In response to the testimony of AFFIRM in Docket No. 080677-EI, and in discussions between FPL and AFFIRM, FPL consistently has stated that AFFIRM Members should consider the use of the Seasonal Demand TOU rider (SDTR-1) because such rate is structured as suggested by AFFIRM, i.e., the On-Peak Period in June, July, August and September is established as the three hour period from the HE 1600 to the HE 1800.

This rate may offer the opportunity for a selected number of QSRs and other similarly situated medium sized commercial customers to reduce their electric costs, but the design of the rate (the other eight

months are substantially unchanged from the GSDT-1 Rate) is not appropriate for such customers. In fact, when seeking to implement this Seasonal Demand TOU rate in the context of Docket No. 050045-EI, in her direct testimony at page 32, lines 18 – 21, FPL Witness Rosemary Morley testified:

> "Customers who typically experience lower usage during the summer months are likely to take advantage of the option Seasonal Demand TOU rider. Likely participants include customers involved in the agricultural and educational sectors".

The SDTR-1 was not designed for use by QSRs and similarly situated customers and does not fit the need of such customers. The QSRs and similarly situated customers are not square pegs that should be forced into round holes. These are customers who deserve to have the availability of a TOU rate that accurately and properly reflects the cost causation characteristics of their loads.

The Necessity of Multi-Period Pricing

The Energy Policy Act of 2005 ("EPAct 2005") is "An Act to ensure jobs for our future with secure, affordable and reliable energy." Among other actions, the EPAct 2005 amended the Federal Power Act and the Public Utilities Regulatory Policy Act and repealed the Public Utility Holding Company Act. TITLE XII of the EPAct 2005 is cited as the "Electricity Modernization Act of 2005". Sec. 1252 of the EPAct 2005, entitled "Smart Metering", provide in relevant part that "each electric utility shall offer each of its customer classes, and provide individual customers upon customer request, a time-based rate schedule under which the rate charged by the electric utility varies during different time periods and reflects the variance, if any, in the utility's cost of generating and purchasing electricity at the wholesale level. The time based rate schedule shall enable the electric customer to manage energy use and cost through advanced metering and communications technology".

Adoption by each state of the federal standard set forth in the previous paragraph was not mandated, and instead, each state was required only to consider the adoption of such standard. The Florida Commission considered such standard in a 2007 proceeding and failed to adopt such standard on the basis that the Florida electric utilities were already in substantial compliance with such standard. However, there can be no argument that the energy policy of the United States of America, as set forth in the EPAct 2005, embodies an intention for electric public utilities to become as cost effective and affordable as possible, in part by establishing time based rate schedules where different time periods reflect the serving utility's cost of generating and purchasing electricity at the wholesale level.

FPL is explicit in stating that it believes that customers do not react to price signals. FPL cites its implementation of a real-time pricing rate in or about 1996 and the closure of such rate in 2003 because of inadequate penetration of such rate. All over the United States, electric utilities have had great success in attracting customers and helping control demand-related costs through the implementation of time sensitive prices. (By way of example, over one-third of the entire load of Georgia Power Company, an affiliate of Gulf Power Company, is served under a real-time pricing scheme or another time-sensitive rate.) It is not clear why an extensive number of United States electric utilities other than FPL would have been successful in implementing real time pricing of electric energy when such efforts have been unsuccessful in the FPL service territory.

As a result of FPL's belief that customers do not react to price signals, Steve Roemig, the Vice President of Rates & Tariffs for FPL, was very clear in explaining to AFFIRM that FPL's rates are not designed to provide any sort of incentive for a customer to shift its load profile or energy usage. Of course, this FPL position is contrary to the federal energy policy of the United States, and can be seen as an underlying reason that the GSDT-1 Rate offered by FPL is designed in a manner that substantially mitigates any customer incentive to shave or shift load in response to a price signal.

AFFIRM acknowledges that base rates are designed primarily to recover demand-related costs, and that demand-related costs can be adequately recovered through two part base rates; provided, however, that such two part rates embody properly constructed demand components and energy components that provide pricing incentives for customers to reduce demand during system peak periods. AFFIRM contends that base rates are improved when a third rate component (a shoulder period) is properly identified and priced in a manner that provides a further rate incentive for customers to shift usage from a shoulder period to an off-peak period.

This Docket No. 100358-EI was established to investigate TOU base rates and not the structure of fuel cost recovery rates. However, there is an inevitable entanglement between FPL's base rates and fuel cost recovery rates because FPL uses the On-Peak Period and Off-Peak Period established under FPL's base rates for the implementation of fuel cost recovery factors. This process for the determination of On-Peak and Off-Peak fuel cost components ignores the fact that an hour by hour study of fuel costs shows that fuel costs can be stratified into at least three distinct tiers during the Summer Months and at least two distinct tiers during the Winter Months, and that the stratification of hours for fuel cost purposes does not match the On-Peak and Off-Peak Periods as now defined in FPL's GSDT-1 Rate for either the Summer Months or the Winter Months. Further, as contemplated by the EPAct 2005, the greatest variations in the wholesale cost of power arise from variations in fuel-related and other variable energy costs and not from demand-related costs.

Accordingly, if the Commission intends to use the rating periods established under FPL's base rates for purposes of establishing time sensitive fuel cost recovery rates, then FPL's base rate should be comprised of at least three separate time periods for the Summer Months and at least two separate time periods for the Winter Months, and the fuel recovery components for the Summer Months and the Winter Months should be separate and discrete from each other unless FPL can demonstrate a correlation between the fuel-related costs in a defined summer rating period with the fuel-related costs in a defined winter rating period.

Conclusion

As set forth in detail above, AFFIRM asserts that FPL does not offer an appropriately structured TOU rate to QSRs and other similarly situated medium sized business customers. The existing TOU rate, GSDT-1, is unfair and discriminatory because it does not reflect an appropriate correlation between FPL's monthly system peaks and the coincident contributions of such customers to FPL's monthly system peaks. FPL's existing rates are unfair, unreasonable and discriminatory in that such rates cause QSRs and other similarly situated customers to pay more than their fair share of FPL's demand-related costs and thereby cross-subsidize the costs borne by other of FPL's medium sized business customers.

The use by FPL of overly broad system peak hours within the GSDT-1 Rate is inconsistent with prudent utility practice by simply ignoring the facts that (1) during the Summer Months, FPL almost never experiences a monthly system peak outside of the hours ending 1600, 1700 and 1800, (2) during the Winter Months, FPL rarely experiences a monthly system peak during the hours ending 700, 1000, 2000, 2100, or 2200, (3) during the months of January and December, customer peaks during the PM hours do not correlate to FPL's system peaks that occur, or are expected by FPL to occur, during the AM hours, and (4) during the months of March, November and December, there is rarely (if ever) a monthly system peak during the AM hours or in the hours ending 2000, 2100, or 2200.

Further, the use by FPL of overly broad system peak hours substantially mitigates the usefulness of price signals that would provide a mutual benefit to both FPL and its customers by providing an incentive for customers to reduce electric costs by shaving or shifting loads during specific time periods, and therefore helping FPL to defer the construction or acquisition of new generating resources. This failure to offer effective pricing signals is directly contrary to the express national energy policy of the United States of America as specifically set forth in the Energy Policy Act of 2005.

The use of On-Peak and Off-Peak Periods as defined in GSDT-1 is inappropriate for establishing time sensitive fuel cost recovery components. If the fuel cost recovery periods are to be consistent with the base rating periods under a time sensitive base rate, then such base rate must include at least three rating periods during the Summer Months and at least two rating periods during the Winter Months, and the rating periods during the Summer Months and the Winter Months should not be subject to simple averaging unless there is substantial evidence of a meaningful correlation between the fuel costs occurring in the summer ratings periods versus the winter rating periods.

The Commission should cause FPL to establish a properly constructed time of use base rate, either as a stand-alone rate or as a modification to the existing GSDT-1 Rate, which has the following characteristics:

- The On-Peak Periods should be defined as follows: for the months of March through November, the On-Peak Period should be the three hours ending 1600, 1700 and 1800; for the months of January and February, the On-Peak Period should be the two hours ending 800 and 900; and for the month of December, the On-Peak Period should be the hour ending 1900. The Off-Peak Periods should be all hours not included in an On-Peak Period.

- The Demand Charge for each month should be determined based on the customer's metered peak demand occurring in an On-Peak Period.

- The Demand Charge for each month should be reflective of all demand-related costs, and should not be reduced by inclusion of demand-related costs in the base energy charges.

The proposed base rate as described above should not be used as the basis for the development and application of fuel cost recovery charges unless such base rate is further revised to consider the time periods that are most appropriate in order to cause the hour by hour incidence of fuel-related costs to be borne by the customers causing the fuel-related costs.

Attachment 1

AFFIRM Report Attachment 1

Florida Power & Light
System Load Data as Reported on Page 401(b) of FERC Form No. 1 Filings
1994 through 2009

FPL System Monthly Peak Hour Occurrence During Summer Months (APR-OCT)

Year	APR	MAY	JUN	JUL	AUG	SEP	OCT	Summer Peak Day	Summer Peak Hour
1994	1700	1800	1700	1700	1700	1700	1700	Jun 24	1700
1995	1800	1800	1700	1700	1600	1700	1700	Jun 09	1700
1996	1700	1600	1500	1700	1700	1700	1700	Jul 24	1700
1997	1800	1700	1700	1700	1700	1700	1700	Aug 14	1700
1998	1700	1700	1700	1700	1700	1700	1700	Jun 05	1700
1999	1700	1700	1600	1700	1700	1600	1800	Sep 30	1600
2000	1700	1700	1700	1700	1700	1700	1700	Aug 25	1700
2001	1800	1800	1600	1700	1700	1700	1700	Aug 16	1700
2002	1700	1800	1600	1700	1700	1700	1700	Aug 01	1700
2003	1800	1700	1700	1700	1700	1700	1600	Jul 09	1700
2004	1800	1700	1700	1700	1700	1700	1700	Jul 14	1700
2005	1600	1800	1600	1700	1700	1700	1700	Aug 17	1700
2006	1700	1700	1700	1700	1700	1700	1700	Aug 02	1700
2007	1700	1700	1700	1600	1600	1700	1700	Aug 10	1600
2008	1700	1700	1700	1700	1700	1700	1700	Aug 07	1700
2009	1600	1600	1700	1600	1700	1700	1700	Jun 22	1700

Notes:
1. June 1997 peak hour occurred on a Saturday.

Attachment 2

Florida Power & Light
Analysis of SUMMER Monthly Peak Day System Load Data for 2006, 2007, and 2008
Note - 2009 Summer Data has been omitted due to FPL reporting errors and inconsistencies between FERC Form 1, p. 401(b) and FERC Form 714 data

M	D	Y	day	Hr1	Hr2	Hr3	Hr4	Hr5	Hr6	Hr7	Hr8	Hr9	Hr10	Hr11	Hr12	Hr13	Hr14	Hr15	Hr16	Hr17	Hr18
4	20	6	4	10827	9784	9171	8821	8722	9203	10558	11375	12244	13357	14578	15613	16490	17457	18118			
5	8	6	1	11150	10087	9488	9121	9132	9739	11018	11690	12643	13882	15131	16093	16953	17766	18344			
6	15	6	4	13046	12073	11359	10853	10625	10890	11828	12647	13978	15509	16550	18272	19317	20086	20615			
7	26	6	3	13825	12824	12155	11624	11535	11903	12694	13471	14685	16155	17646	18828	19765	20384	20991			
8	2	6	3	14302	13322	12563	12128	11896	12123	12846	13402	14669	16337	17866	19049	20018	20765	21346			
9	1	6	5	12655	11840	11150	10840	10806	11383	12556	13115	14112	15660	17125	18246	19031	19648	19697			
10	19	6	4	11943	11031	10403	10071	9951	10455	11792	12489	12971	14292	15483	16597	17557	18354	18895			
																	19124				
4	27	7	5	10859	9959	9463	9161	9081	9558	10801	11580	12313	13416	14486	15327	16069	16673	17071			
5	4	7	5	11192	10248	9693	9305	9206	9618	10842	11623	12676	13982	15127	16289	17216	17980	18487			
6	22	7	5	12728	11650	11021	10611	10443	10768	11603	12447	13830	15351	16743	17718	18620	19442	20021			
7	18	7	3	14046	13144	12443	12006	11857	12108	12761	13446	14805	16445	18075	19364	20370	21019	21421			
8	10	7	5	14559	13496	12813	12246	12049	12251	12935	13604	15046	16701	18323	19653	20620	21363	21750			
9	13	7	4	12537	11628	11037	10657	10593	11031	11956	12497	13448	15072	16776	18114	19185	20046	20649			
10	18	7	4	11652	10946	10410	10122	10099	10646	11938	12694	13178	14667	16041	17328	18264	19028	19480			
																	19275				
4	28	8	1	9970	9101	8658	8445	8477	9003	10321	11057	11750	12856	13938	14770	15411	15988	16437			
5	21	8	3	12231	11309	10801	10484	10443	10949	12017	12864	13874	15136	16412	17458	18298	18987	19544			
6	5	8	4	13216	12319	11689	11300	11161	11599	12389	13327	14575	15902	17182	18212	18978	19612	20069			
7	21	8	1	13318	12378	11822	11558	11398	11497	12142	12937	14254	15796	17225	18467	19443	20148	20621			
8	7	8	4	13533	12497	11828	11344	11218	11475	12220	12885	14281	15871	17328	18613	19556	20229	20658			
9	3	8	3	12963	12117	11595	11247	11233	11770	12939	13401	13929	15249	16575	17633	18446	19115	19658			
10	10	8	5	10886	10139	9662	9360	9353	9895	11125	11841	12606	14010	15234	16321	17134	17810	18235			
																	18780				

Florida Power & L
Analysis of SUMM
Note - 2009 Summ

M	D	Y	day	Hr19	Hr20	Hr21	Hr22	Hr23	Hr24		
4	20	6	4	18156	17255	17178	16238	14625	12827	Apr Pk =	18975
5	8	6	1	18682	17829	17608	16622	14951	13215	May Pk =	19321
6	15	6	4	20472	19680	19123	18717	16917	15297	Jun Pk =	21123
7	26	6	3	20518	19536	19053	18317	16882	15329	Jul Pk =	21493
8	2	6	3	20973	20054	19657	18817	17265	15706	Aug Pk =	**21819**
9	1	6	5	20777	16483	16222	15330	14303	13158	Sep Pk =	21585
10	19	6	4	18468	18490	17701	16389	15067	13474	Oct Pk =	19440
					18758						
4	27	7	5	16896	16022	15839	15061	13953	12726	Apr Pk =	17626
5	4	7	5	17872	16943	16738	15871	14634	13227	May Pk =	19021
6	22	7	5	19868	18892	18143	17492	16057	14638	Jun Pk =	20584
7	18	7	3	20784	19740	19384	18532	17031	15456	Jul Pk =	21764
8	10	7	5	20615	19680	19449	18650	17376	16044	Aug Pk =	**21999**
9	13	7	4	19945	19241	18823	17594	15938	14307	Sep Pk =	21142
10	18	7	4	18664	18726	18005	16765	15290	13909	Oct Pk =	19880
					18584						
4	28	8	1	16429	16006	15986	15042	13630	11977	Apr Pk =	16997
5	21	8	3	19663	18781	18506	17425	15800	14025	May Pk =	20315
6	5	8	4	19681	18871	18425	17778	16354	14894	Jun Pk =	20589
7	21	8	1	20110	19120	18750	17979	16448	14828	Jul Pk =	20970
8	7	8	4	20378	19455	19133	18296	16791	15164	Aug Pk =	**21084**
9	3	8	3	19484	18736	18630	17493	15918	14481	Sep Pk =	20417
10	10	8	5	17255	17126	16438	15502	14301	13012	Oct Pk =	18755
					18427						

Attachment 3

AFFIRM Report Attachment 3

Example Customer Load Shapes - Summer Weekdays Noon to 9:00 p.m.

Customer A)

Peak kW = 100 kWh = 800 kW at Time of System Peak = 80

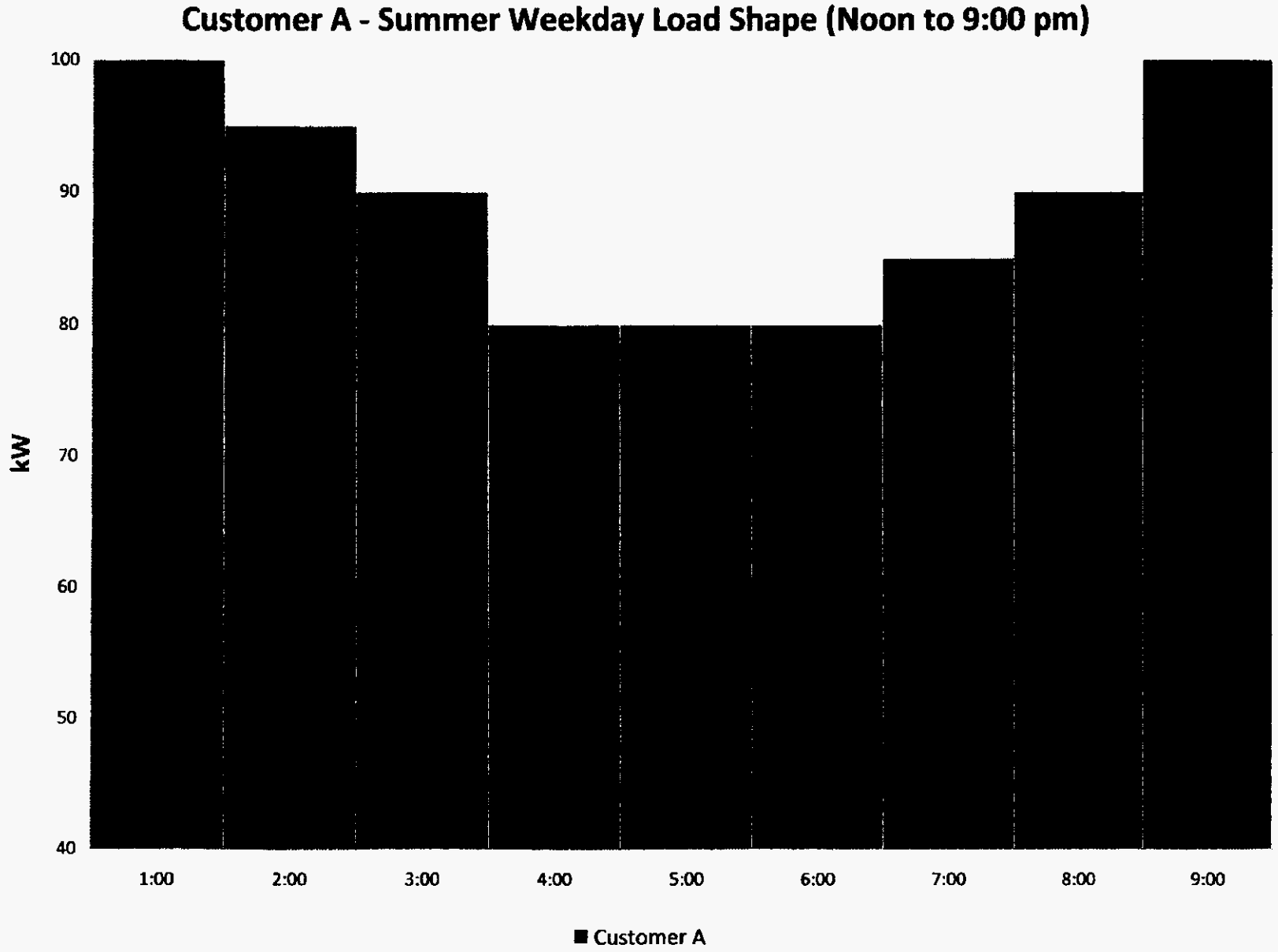
Customer B)

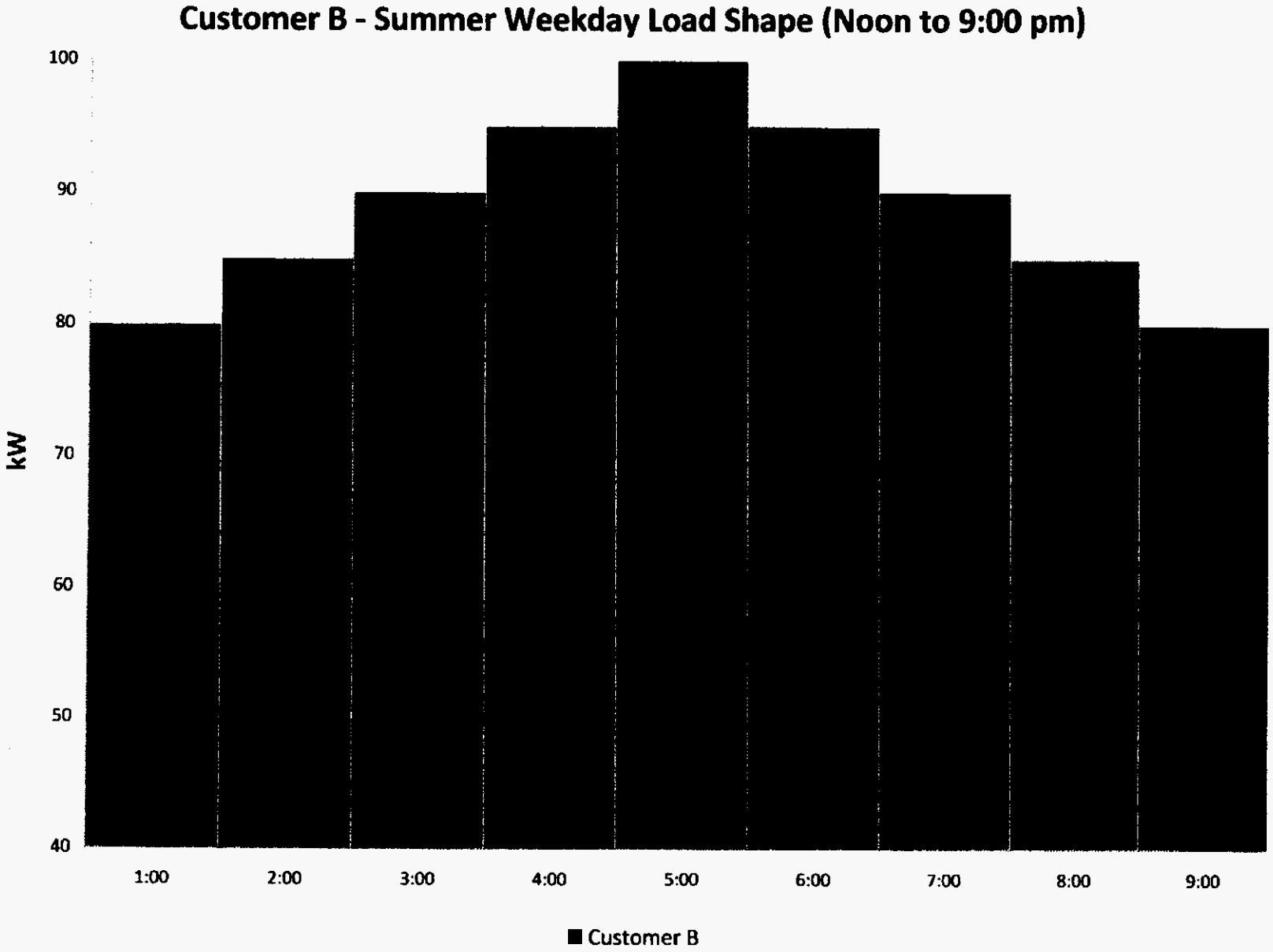
Peak kW = 100 kWh = 800 kW at Time of System Peak = 100

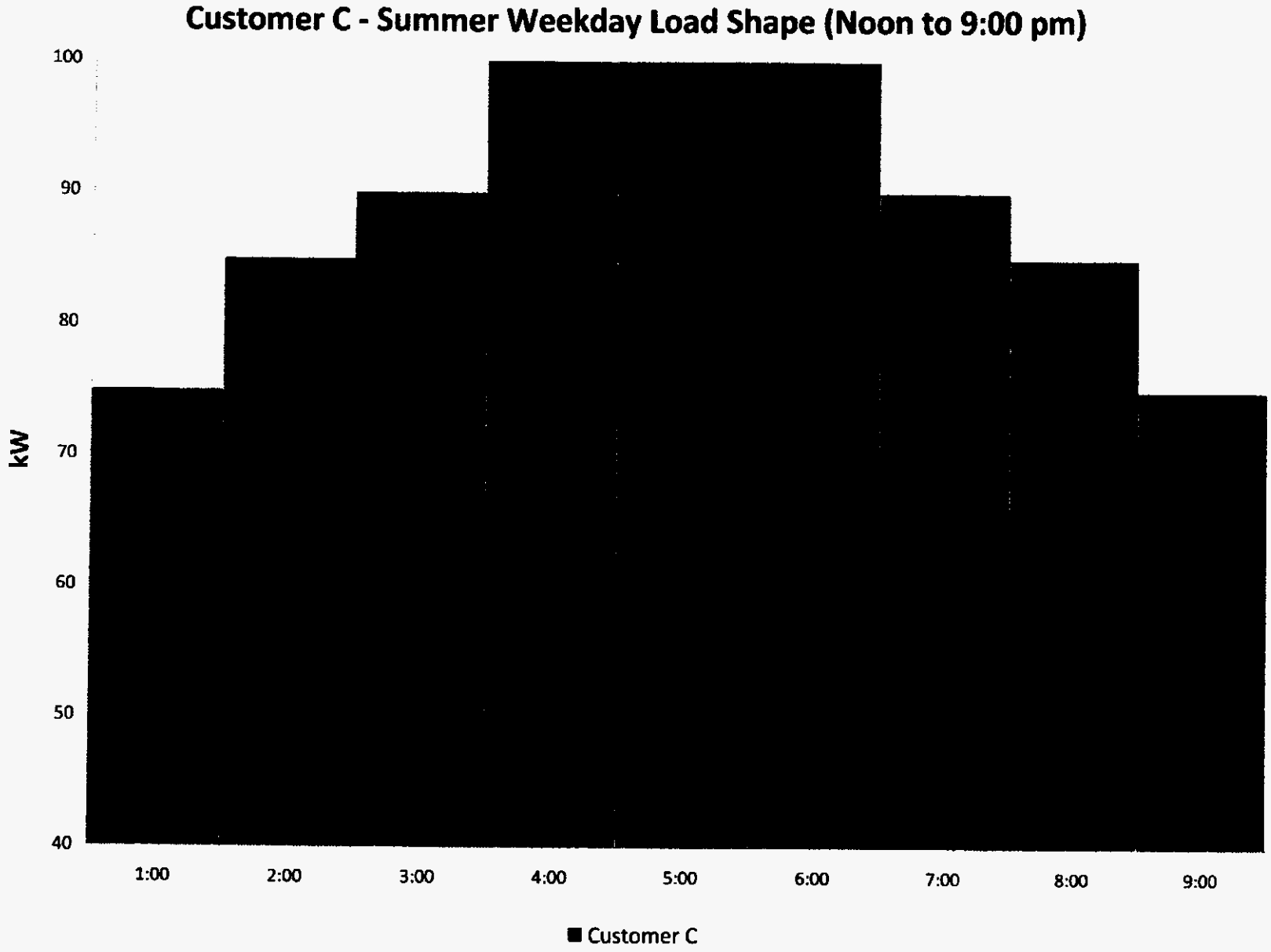
Customer C)

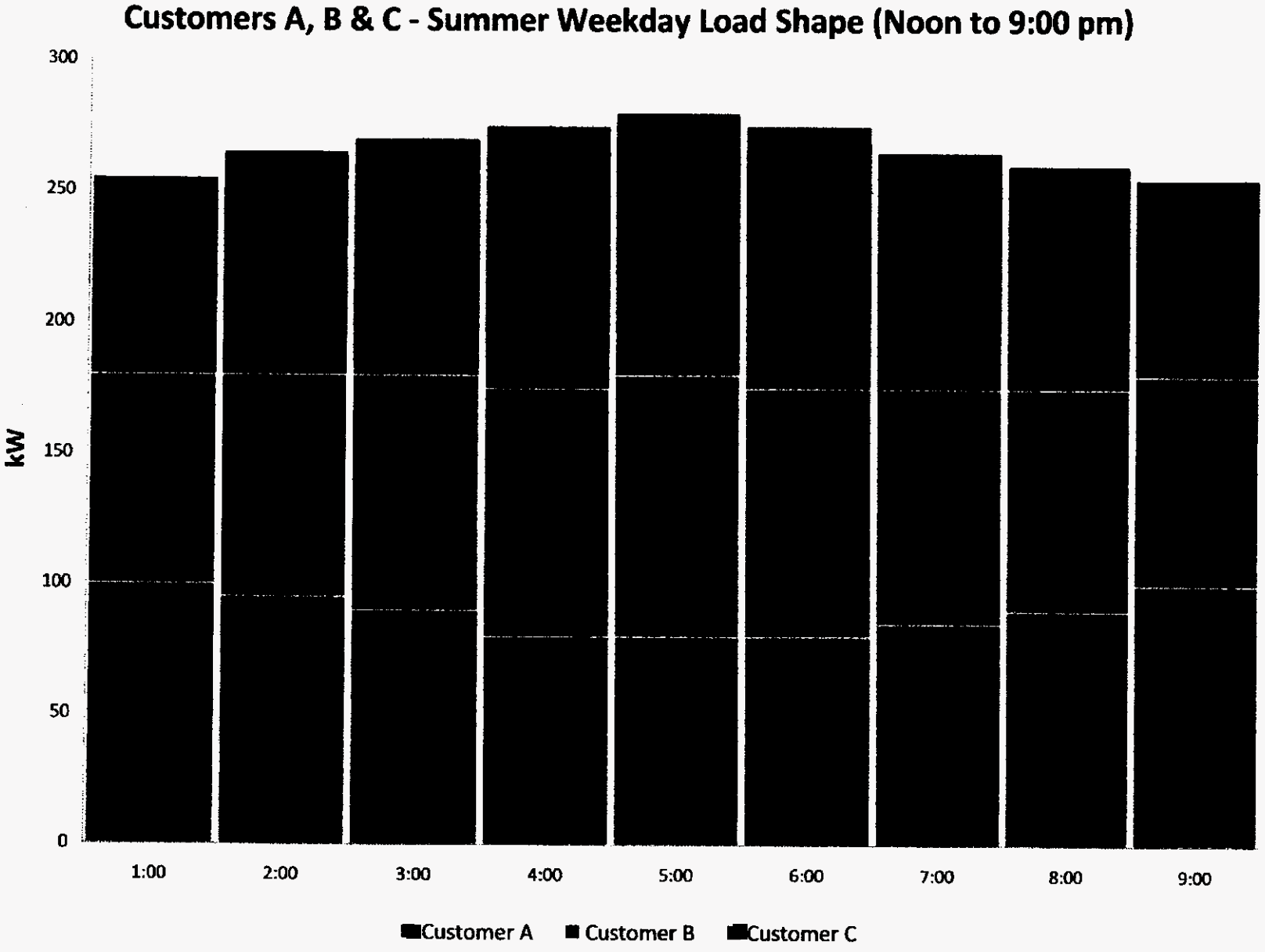
Peak kW = 100 kWh = 800 kW at Time of System Peak = 100

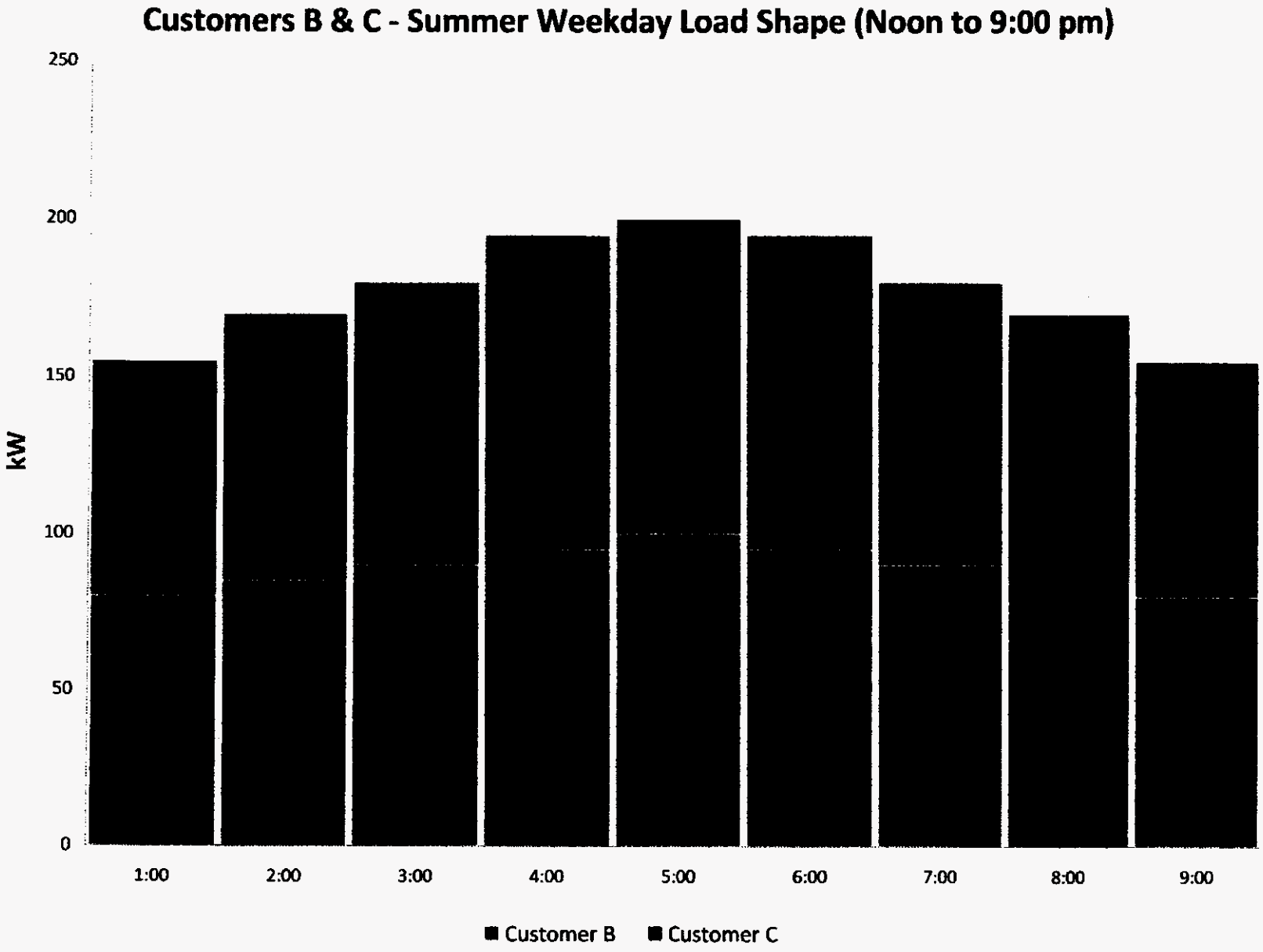
	Summer Weekday Hour Ending (p.m.)								
	1:00	**2:00**	**3:00**	**4:00**	**5:00**	**6:00**	**7:00**	**8:00**	**9:00**
Customer A	100	95	90	80	80	80	85	90	100
Customer B	80	85	90	95	100	95	90	85	80
Customer C	75	85	90	100	100	100	90	85	75


Customer A - Summer Weekday Load Shape (Noon to 9:00 pm)
kW
100
90
80
70
60
50
40
1:00
2:00
3:00
4:00
5:00
6:00
7:00
8:00
9:00
Customer A


Customer B - Summer Weekday Load Shape (Noon to 9:00 pm)
100
90
80
70
60
50
40
kW
1:00
2:00
3:00
4:00
5:00
6:00
7:00
8:00
9:00
Customer B


Customer C - Summer Weekday Load Shape (Noon to 9:00 pm)
100
90
80
70
60
50
40
kW
1:00
2:00
3:00
4:00
5:00
6:00
7:00
8:00
9:00
Customer C


Customers A, B & C - Summer Weekday Load Shape (Noon to 9:00 pm)
300
250
200
150
100
50
0
kW
1:00
2:00
3:00
4:00
5:00
6:00
7:00
8:00
9:00
Customer A
Customer B
Customer C


Customers B & C - Summer Weekday Load Shape (Noon to 9:00 pm)
250
200
150
100
50
0
kW
1:00
2:00
3:00
4:00
5:00
6:00
7:00
8:00
9:00
Customer B
Customer C

Attachment 4

AFFIRM Report Attachment 4

Florida Power & Light

System Load Data as Reported on Page 401(b) of FERC Form No. 1 Filings

1994 through 2009

FPL System Monthly Peak Hour Occurrence During Winter Months

						Winter Peak	
Year	JAN	FEB	MAR	NOV	DEC	Day	Hour
1994	800	800	1700	1900	1900	Mar 28	1700
1995	800	800	2000	1500	900	Feb 09	800
1996	800	800	1900	1900	1900	Feb 05	800
1997	1000	800	1900	1900	1900	Jan 10	1000
1998	1900	800	800	1900	1900	Nov 19	1900
1999	800	800	800	1900	1900	Jan 06	800
2000	800	800	2000	1900	800	Jan 27	800
2001	900	2000	2000	1900	1900	Jan 05	800
2002	800	1900	1600	1600	1900	Jan 09	800
2003	800	1700	1600	1900	900	Jan 24	800
2004	1900	800	1700	1600	1900	Nov 03	1600
2005	800	900	1500	1600	1900	Jan 24	800
2006	1900	800	1700	1900	1900	Feb 14	800
2007	1500	800	1600	1700	1900	Feb 19	800
2008	900	1900	1700	1400	1900	Jan 03	900
2009	800	800	1800	1700	1900	Feb 05	800

Notes:

1. December 2003 peak hour occurred on a Sunday.