

**Dorothy Menasco**

110009-EI

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**Subject:** Docket No. 110009-EI; Nuclear Power Plant Cost Recovery Clause  
**Attachments:** FIPUG response to FPL motion to file comments 5.6.11.pdf

In accordance with the electronic filing procedures of the Florida Public Service Commission, the following filing is made:

a. The name, address, telephone number and email for the person responsible for the filing is:

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b. This filing is made in Docket No. 110009-EI.

c. The document is filed on behalf of The Florida Industrial Power Users Group.

d. The total pages in the document are 3 pages.

e. The attached document is The Florida Industrial Power Users Group's Response to FPL's Motion for Leave to Submit Comments on Rajiv Kundalkar's Motion to Quash OPC's Deposition Subpoena.

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DOCUMENT NUMBER-DATE

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5/6/2011

FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Nuclear Power Plant  
Cost Recovery Clause

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Docket No. 110009-EI  
Filed: May 6, 2011

**THE FLORIDA INDUSTRIAL POWER USERS GROUP'S  
RESPONSE TO FPL'S MOTION FOR LEAVE  
TO SUBMIT COMMENTS ON RAJIV KUNDALKAR'S  
MOTION TO QUASH OPC'S DEPOSITION SUBPOENA**

Pursuant to Rule 28-106.204, Florida Administrative Code, the Florida Industrial Power Users Group (FIPUG) hereby responds in opposition to Florida Power & Light Company's (FPL) Motion for Leave to Submit Comments on Motion to Quash Subpoena. Such motion is an untimely and unauthorized pleading and should be denied.

On March 29, 2011, the Office of Public Counsel (OPC) served a deposition subpoena on Mr. Rajiv Kundalkar, FPL's former Vice President of Nuclear Uprates. On April 7, 2011, FIPUG filed a Cross Notice of Deposition.<sup>1</sup> On April 12, 2011, Mr. Kundalkar filed a Motion to Quash the subpoena.

FPL was served with a copy of the Motion to Quash just as were FIPUG and all other parties to this docket. Pursuant to rule 28-106.204(1), Florida Administrative Code, responses to the Motion to Quash were due on April 19<sup>th</sup>. FIPUG responded to the motion on April 18, 2011. OPC responded on April 15, 2011. FPL did not respond by April 19<sup>th</sup>, but on May 3, 2011. That is, some 14 days after the response was due, FPL filed its Motion for Leave to Submit Comments on Mr. Kundalkar's Motion to Quash.

FPL's pleading is unauthorized and is not sanctioned in the rules governing practice before administrative agencies. If FPL wanted to "comment" on the Motion to Quash, it was

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<sup>1</sup> It is long accepted Commission practice for other intervenors in a docket to file a cross notice of deposition once a party has noticed the deposition.

required to do so in the time set out to respond to motions. To permit FPL's "comments" now would subvert the appropriate procedural rules and open the door for parties in other Commission proceedings to ignore mandated deadlines and submit comments whenever it is advantageous for them to do so.<sup>2</sup>

Further, rather than reiterating OPC's well-reasoned response to FPL's motion, FIPUG incorporates and adopts such response herein.

**WHEREFORE**, FPL's motion should be denied.

s/ Vicki Gordon Kaufman

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Attorneys for Florida Industrial Power Users Group

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<sup>2</sup> For example, in this case, FPL wants to submit comments after it has seen the responses other parties.

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and foregoing FIPUG's Response to FPL's Motion for Leave to Submit Comments on Rajiv Kundalkar's Motion to Quash OPC's Deposition Subpoena has been furnished by electronic mail and U.S. Mail on this 6<sup>th</sup> day of May, 2011, to the following:

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