

Eric Fryson

From: White, Jordan [Jordan.White@fpl.com]
Sent: Tuesday, July 31, 2012 9:17 AM
To: Filings@psc.state.fl.us
Subject: Electronic Filing / Dkt 120015-EI / FPL's Response in Opposition to South Florida Hospital and Healthcare Association's Motion to Compel
Attachments: Response to SFHHA's Motion to Compel with Exhibits.pdf; Response to SFHHA's Motion to Compel (7-31-12).docx

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket No. 120015 – EI
In re: Petition for rate increase by Florida Power & Light Company

c. The Document is being filed on behalf of Florida Power & Light Company.

d. There are a total of 18 pages

e. The document attached for electronic filing is Florida Power & Light Company's Response in Opposition to South Florida Hospital and Healthcare Association's Motion To Compel.

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DOCUMENT NUMBER-DATE

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7/31/2012

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

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

Docket No. 120015-EI
July 31, 2012

**FLORIDA POWER & LIGHT COMPANY'S
RESPONSE IN OPPOSITION TO SOUTH FLORIDA
HOSPITAL AND HEALTHCARE ASSOCIATION'S MOTION TO COMPEL**

Pursuant to Rule 28-106.204(1), Florida Administrative Code, Florida Power & Light Company ("FPL" or "Company"), hereby files this Response in Opposition to the South Florida Hospital and Healthcare Association's ("SFHHA") Motion to Compel FPL to Respond to Certain Requests to Produce Documents [Nos. 8 and 87].

I. REQUEST NO. 8

A. Background (Request No. 8)

1. On March 30, 2012, SFHHA served its First Set of Interrogatories (Nos. 1-176) and First Request for Production of Documents (Nos. 1-124) on FPL ("SFHHA's First Set"). Request No. 8 is quoted below:

General: With regard to the January 25, 2011 Earnings Conference Call materials, page 46, please provide all documents that discuss or quantify risks identified in the second and third indented bullet points under the paragraph that begins ("NextEra Energy conducts its competitive energy business . . .") on page 46.

2. On April 16, 2012, FPL filed its objections to SFHHA's First Set ("Objections") which, includes the following general objection at pages 3-4:

FPL objects to each and every discovery request that calls for the production of documents and/or disclosure of information from NextEra Energy, Inc. and any subsidiaries and/or affiliates of NextEra Energy, Inc. that do not deal with transactions or cost allocations between FPL and either NextEra Energy, Inc. or any subsidiaries and/or affiliates. Such documents and/or information do not affect FPL's rates or cost of service to FPL's customers. Therefore, those documents and/or information are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Furthermore, FPL is the party appearing before the Florida Public Service Commission in this docket. To require any non-regulated entities to participate in irrelevant discovery is by its very nature unduly

burdensome and overbroad. Subject to, and without waiving, any other objections, FPL will respond to the extent the request pertains to FPL and FPL's rates or cost of service charged to FPL's customers. To the extent any responsive documents contain irrelevant affiliate information as well as information related to FPL and FPL's rates or cost of service charged to its customers, FPL may redact the irrelevant affiliate information from the responsive documents.

3. FPL filed its Responses to SFHHA's First Set on April 24. For Request No. 8, FPL's response referred back to the detailed objection cited above regarding requests for affiliate information that does not affect FPL's rates or cost of service.

4. SFHHA filed its Motion to Compel on July 24, 2012 ("Motion")

B. Response (Request No. 8)

5. SFHHA's Motion is misplaced with regard to Request No. 8, for the following reasons:

a. NextEra Energy Resource's ("NEER")¹ business risks are fully reviewed, assessed and incorporated in the reports and ratings of the respective rating agencies. It is those reports and ratings, not the data underlying them, which are relied upon by investors. SFHHA has had full access to these rating agency reports in discovery since April 24, 2012.² There is no issue in this case (and appropriately so) that questions or attempts to second guess the actual ratings from the rating agencies. Therefore, there is no need or basis for SFHHA to seek data or information "behind the ratings" of the rating agencies themselves.³

¹ FPL is a subsidiary of NEE, which has more than 500 subsidiaries and affiliates that are wholly unrelated to FPL. These affiliates include NextEra Energy Capital Holdings ("NEECH") which owns the capital stock of and provides the funding for NEE's non-utility companies. NEER is a subsidiary of NEECH and an affiliate of FPL. NEER serves as a holding company of subsidiaries involved in clean energy and is one of the largest competitive energy suppliers in North America, operating in 22 states and Canada. The attached Exhibit A shows the relevant corporate structure and chain of ownership between FPL and NEE.

² See FPL's Response to SFHHA's First Set, Request No. 10, served April 24, 2014.

³ It is worth noting that the information requested by SFHHA in its Motion was not provided in either of FPL's last two rate cases, Docket Nos. 050045-EI and 080677-EI. SFHHA participated in both of those cases.

b. Two of the major rating agencies – Moody’s and Fitch – do not look at the consolidated credit profile of NEE in determining FPL’s credit ratings. Rather, these agencies consider the stand alone debt, capital structure and cash flow of FPL in determining FPL’s credit rating.

c. While the third major rating agency, S&P, does consider NEE’s consolidated credit profile, NEER’s contribution to that profile is not substantial. S&P’s analysis of NEE’s credit intentionally excludes the vast majority of NEER’s non-recourse project related debt. S&P deconsolidates and excludes this debt from the analysis because the contractual structure of NEER’s financing shields NEE from exposure to NEER’s project risk and therefore has no relevance for purposes of determining NEE’s, and ultimately FPL’s risk profile.

d. In any event, there is a great deal of public information on NEER that is readily accessible for SFHHA. For example, on the NEE website (www.nexteraenergy.com; see investor relations) the following information is posted:

- A listing of all debt for FPL
- A listing of all the debt of NEER’s parent, NextEra Energy Capital Holdings
- A listing of all the debt of NEER
- An adjusted debt schedule for NEE
- Generation portfolio for both FPL and NEER
- NEER Portfolio financial information – Asset Breakdown
- Wind Performance Report
- Monthly Weather Index (relevant to NEER’s renewable portfolio)

e. In developing its proposed ROE, FPL and its witnesses do not rely upon NEE's capital structure. Rather, FPL and its witnesses have relied on FPL's own capital structure, as reflected in its testimony and supporting documents. It did not rely on the capital structure, debt financing or costs of any of its affiliates. Stated another way, FPL's credit rating is not imputed from NEER or any other affiliate and therefore the financial risks of FPL's affiliates are not relevant to the Commission's determination of a reasonable ROE for FPL in this proceeding.

Attached hereto as Exhibit B is the Affidavit of Nicholas Vlisides, attesting to the forgoing facts.

6. Notably, the discovery that is the subject of SFHHA's Motion does not seek information about the cost of any services FPL may provide to, or receive from, its parent and hundreds of affiliates (including NEER), but instead seeks irrelevant information related to NEER's business risks as a competitive energy supplier.

7. FPL stands ready to answer, and has answered, hundreds of questions regarding the services provided to FPL by its affiliates and *vice versa*. However, the Company objects to the broad and overreaching nature of any discovery request that seeks information about FPL's affiliates beyond the substantial range of information that is publicly available. Such information has no bearing on FPL's operations, revenue requirement or rate request and, thus, is not relevant or reasonably calculated to lead to the discovery of admissible evidence in this proceeding.

8. In this proceeding, FPL is requesting that this Commission determine customer rates based on the Company's cost to provide electric service. This proceeding is not an examination of the risk profile of NEE's subsidiaries and SFHHA has not sufficiently explained how such risk has any bearing on ROE that the Commission should approve for FPL in this rate case.

9. In short, Request No. 8 seeks information from sources that are by their nature irrelevant. Under SFHHA's reasoning, the financial information for each and every one of NEE's hundreds of subsidiaries would be relevant to this rate case. For the reasons discussed above, however, that reasoning is simply not supported by the facts. Request No. 8 is simply an improper fishing expedition on the part of SFHHA.

II. REQUEST NO. 87

A. Background (Request No. 87)

10. SFHHA's First Set includes Request No. 87, quoted below:

Regarding Morley at 7:6-8: Please produce all documents that discuss generation planning by FPL, and/or set forth FPL's plans concerning the addition, retirement or modification of generating plants, that were prepared by on behalf of FPL during the period January 1, 2008 to the present, including, but not limited to, each of FPL's ten-year power plant site plans.

11. FPL's Objections include the following general objection at page 3:

FPL objects to each request to the extent that it seeks information that is duplicative or not relevant to the subject matter of this docket and is not reasonably calculated to lead to the discovery of admissible evidence.

12. FPL's Objections also included the following specific objection to Request No. 87

at page 6:

Request No. 87: FPL objects to this request as unduly burdensome. The request seeks "all documents that discuss generation planning by FPL, and/or set forth FPL's plans concerning the addition, retirement or modification of generating plants, that were prepared by on behalf of FPL during the period January 1, 2008 to the present, including, but not limited to, each of FPL's ten-year power plant site plans." The production of "all documents" that "discuss" generation planning would likely result in hundreds of thousands, if not millions, of pages. For example, FPL has a business unit dedicated exclusively to resource planning. The scope of SFHHA's request as framed would require the production of virtually all pieces of paper generated by each person in that business unit over the last three and a half years. Other business units are also involved in the generation planning process.

Notwithstanding the above objection, FPL's ten-year site plans during the period January 1, 2008 are available and can be retrieved from the Florida Public Service Commission website: <http://www.psc.state.fl.us>.

13. As noted in the Motion, FPL participated in conference calls with SFHHA regarding Request No. 87 and ultimately provided the following supplemental response:

Consistent with FPL's general objections, the Company objects to providing documents that are not relevant to the subject matter of this docket. Notwithstanding the foregoing, FPL is providing publicly available documents related to its generation planning during the period January 1, 2008 to the present.

14. With its supplemental response, FPL provided a presentation from its 2011 site plan workshop and several sets of testimony and exhibits from previous need determination proceedings for generation resources for which FPL is now seeking recovery in this proceeding.

B. Response (Request No. 87)

15. SFHHA's Motion states that Request No. 87 seeks "documents discussing generation planning by FPL. *** However, SFHHA is also seeking internal planning documents reflecting the thought process that led to what ultimately appears in the ten-year power plant site plans provided by FPL." Motion at 5. (Emphasis added).

16. SFHHA argues that it needs such documents "in order to test the details and consistency of FPL's internal forecasting, planning and long-term goals. The internal discussions may provide relevant information regarding allocation of costs among customer classes because the methodology used to assign such costs should take into consideration class responsibility for causing FPL to add additional generating facilities." *Id.* (Emphasis added).

17. SFHHA further argues that "internal information regarding FPL's views regarding the need for additional generation may be relevant for determining the accuracy of FPL's projection of revenues, and as a result, the determination of appropriate billing determinants." *Id.* (Emphasis added).

18. In both cases, SFHHA's positions as to the potential relevance are extraordinarily speculative, at best, and reflect a lack of understanding regarding Florida's Need Determination process in general, and specifically, the relationship between FPL's resource planning process and its customer cost allocation and rate design processes. SFHHA mistakenly places the cost allocation and rate design "cart" before the resource planning "horse" by implying that FPL plans for generation based upon the needs of a specific customer class. SFHHA also presents no credible rationale for discovery beyond the publicly available information in Commission determination of need proceedings as to load forecasts.

19. In reality, FPL conducts resource planning based on total system load forecasts for energy and peak. Contrary to SFHHA's misinformed assumption, FPL plans for resources to meet total system load, not the load of individual customer classes. The process compares total system load to available resources to determine whether reserve margin and loss-of-load-probability ("LOLP") requirements are met. In other words, any internal planning documents "reflecting the thought process that led to what ultimately appears in the ten-year power plant site plans" would be devoid of any reference to or discussion of customer class loads. Attached hereto as Exhibit C is the Affidavit of Rene Silva, attesting to the forgoing facts.

20. Additionally, when determining the most economic resource options to meet total system reserve margin and LOLP requirements, FPL looks at the impact of the various options on the projected system average electric rates (or, equivalently when DSM levels are assumed to be constant, the analyses are based on projections of cumulative present value of revenue requirements for the FPL system as a whole). Nowhere in the process of identifying the most economic resource option does FPL attempt to differentiate the impact of the various options on

specific customer classes. Attached hereto as Exhibit C is the Affidavit of Rene Silva, attesting to the forgoing facts.

21. Simply put, there is no step in FPL's resource planning process that examines particular customer class contributions to the overall system need for resources, or the impact of resource options on particular customer classes. Therefore, SFHHA's request for "planning documents reflecting the thought process that led to what ultimately appears in the ten-year power plant site plans provided by FPL" would provide no insight whatsoever into the allocation of generation costs among customer classes or revenue projections, as SFHHA erroneously asserts.

22. Finally, determinations of need are granted by the Commission on the basis of a number of factors, including projected system load. Those projections are a matter of public record in such proceedings. There is nothing further for the Company to provide than was produced in connection with such proceedings and which would have formed, in part, the basis upon which a project was approved by the Commission. It is not clear how superseded load forecasts would be relevant in this proceeding; however, the forecasts upon which power plants are approved are available to the SFHHA through the Commission's website.

WHEREFORE, for the foregoing reasons, FPL respectfully requests that SFHHA's Motion to Compel be denied.

Respectfully submitted this 31st day of July 2012.

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John T. Butler, Assistant General Counsel-
Regulatory
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Maria J. Moncada, Principal Attorney
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By: *s/Jordan A. White*
Jordan A. White
Authorized House Counsel No. 97304

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response in Opposition to South Florida Hospital and Healthcare Association's Motion to Compel has been furnished electronically this 31st day of July 2012, to the following:

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By: s/Jordan A. White
Jordan A. White
Authorized House Counsel No. 97304

EXHIBIT A

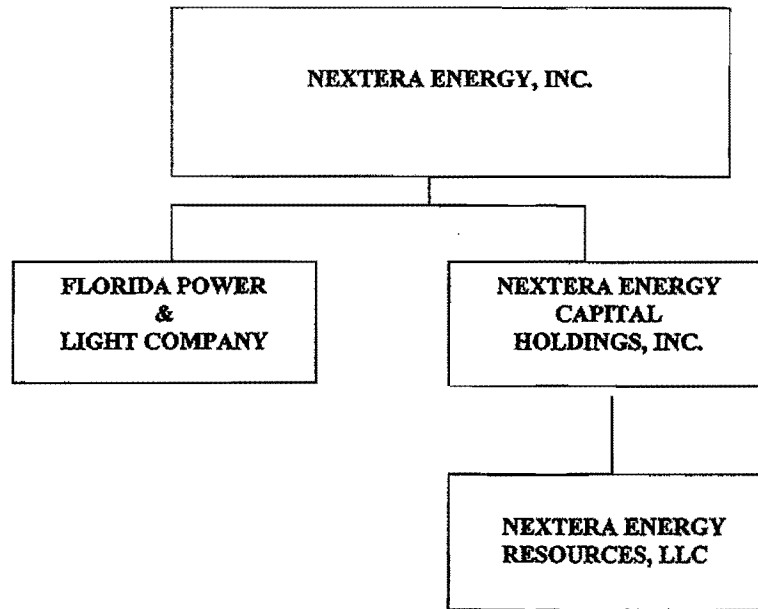


EXHIBIT B

AFFIDAVIT

STATE OF FLORIDA)
)
PALM BEACH COUNTY) **AFFIDAVIT OF NICHOLAS VLISIDES**

BEFORE ME, the undersigned authority, personally appeared Nicholas Vlisides who, being first duly sworn, deposes and says:

1. My name is Nicholas Vlisides. I am currently employed by Florida Power & Light Company (“FPL”) as Assistant Treasurer. My business address is 700 Universe Blvd., Juno Beach, Florida 33408.

2. I am over the age of twenty-one years and have personal knowledge of the matters stated in this affidavit.

3. The statements herein are true and correct and I am authorized to make them to the Florida Public Service Commission in connection with Docket No. 120015-EI, *In re: Petition for rate increase by Florida Power & Light Company*.


4. NextEra Energy Resource’s (“NEER”) business risks are fully reviewed, assessed and incorporated in the reports and ratings of the respective credit rating agencies. It is those reports and ratings, not the data underlying them, which are relied on by investors.

5. Two of the major rating agencies – Moody’s and Fitch – do not look at the consolidated credit profile of NextEra Energy, Inc. (“NEE”) in determining FPL’s credit ratings. Rather, these agencies consider the stand alone debt, capital structure and cash flow of FPL in determining FPL’s credit rating

6. While the third major rating agency, Standard & Poor’s (“S&P”) does consider NEE’s consolidated credit profile, NEER’s contribution to that profile is not substantial. S&P’s analysis of NEE’s credit intentionally excludes the vast majority of NEER’s non-recourse project related debt. S&P deconsolidates and excludes this debt from the analysis because the contractual structure of NEER’s financing shields NEE from exposure to NEER’s project risk.

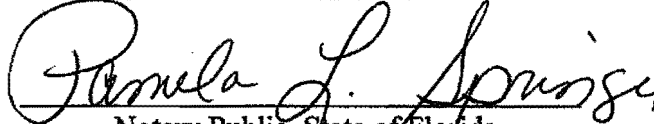
7. In developing its proposed ROE, FPL and its witnesses do not rely upon NEE’s capital structure. Rather, FPL and its witnesses have relied on FPL’s own capital structure, as reflected in its testimony and supporting documents. It did not rely on the capital structure, debt financing or costs of any of its affiliates.

8. Affiant says nothing further.



Nicholas Vlisides

SWORN TO AND SUBSCRIBED before me this 30th day of July 2012, by
Nicholas Vlisides, who is personally known to me and who did take an oath.



Notary Public, State of Florida

My Commission Expires:



Pamela L. Springer.....
COMMISSION # EE085473
EXPIRES: APR. 18, 2015
WWW.AARONNOTARY.com

EXHIBIT C

AFFIDAVIT

STATE OF FLORIDA)
)
PALM BEACH COUNTY)

AFFIDAVIT OF RENE SILVA

BEFORE ME, the undersigned authority, personally appeared Rene Silva who, being first duly sworn, deposes and says:

1. My name is Rene Silva. I am currently employed by Florida Power & Light Company ("FPL") as Senior Director, Resource Assessment and Planning. My business address is 9250 West Flagler Street, Miami, Florida 33174.

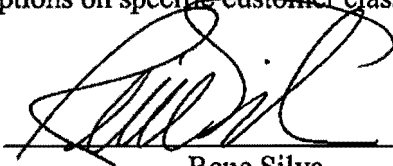
2. I am over the age of twenty-one years and have personal knowledge of the matters stated in this affidavit.

3. The statements herein are true and correct and I am authorized to make them to the Florida Public Service Commission in connection with Docket No. 120015-EI, *In re: Petition for rate increase by Florida Power & Light Company.*

4. FPL conducts resource planning based on total system load forecasts for energy and peak and plans for resources to meet total system load, not the load of individual customer classes. The process compares total system load to available resources to determine whether reserve margin and loss-of-load-probability ("LOLP") requirements are met.

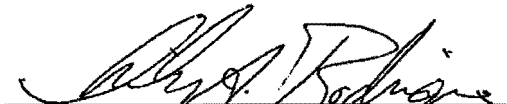
5. When determining the most economic resource options to meet total system reserve margin and LOLP requirements, FPL looks at the impact of the various options on the projected system average electric rates (or, equivalently when DSM levels are assumed to be constant, on projected cumulative present value of revenue requirements for the FPL system as a whole). Nowhere in the process of identifying the most economic resource option does FPL differentiate the impact of the various options on specific customer classes

6. Affiant says nothing further.



Rene Silva

SWORN TO AND SUBSCRIBED before me this 30th day of July 2012, by Rene Silva, who is personally known to me and who did take an oath.



Notary Public, State of Florida

My Commission Expires:

