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**ORIGINAL
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July 27, 1989

Mr. Steve Tribble
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, FL 32301

RE: Docket No. 890148-EI

Dear Mr. Tribble:

Enclosed for filing are the original and 15 copies of Florida Power & Light Company's Prehearing Statement in the above docket.

Very truly yours,

Charles A. Guyton

Charles A. Guyton

CAG:do
Enclosures

cc: Counsel for all parties of record

- ACK
- AFA _____
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DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of the Florida)
Industrial Power Users Group) Docket No. 890148-EI
to Discontinue Florida Power)
& Light Company's Oil Backout) Filed: July 27, 1989
Cost Recovery Factor)

PREHEARING STATEMENT OF FLORIDA POWER & LIGHT COMPANY

Pursuant to an agreement with counsel for Staff and
FIPUG, Florida Power & Light Company ("FPL") files its
prehearing statement in this proceeding.

(a) All known witnesses that may be called and the
subject matter of their testimony:

FPL's Witness

S. S. Waters
(Direct)

Mr. Waters' Direct Testimony describes
FPL's Oil Backout Project and the
associated coal by wire purchases and
the cost recovery of the Project
through the Oil Backout Cost Recovery
Factor ("Factor"). It shows that
pursuant to the Oil Backout Rule the
Project was qualified and the
Commission authorized cost recovery of
the Project through a Factor. It also
reestablishes that the primary purpose
of the Project now, as it always has
been, is the economic displacement of
oil fired generation. Mr. Waters also
explains the generation planning
process, demonstrates that the Martin
Coal Units were deferred by the
Project, and shows that FPL has

correctly used the Martin capacity deferral benefits in calculating actual net savings to be recovered through the Factor and taken as accelerated depreciation. Finally, he concludes that the Project should continue to be recovered through the Oil Backout Cost Recovery Factor until FPL's next rate case, consistent with the Oil Backout Rule.

S. S. Waters
(Rebuttal)

Mr. Waters' Rebuttal Testimony addresses certain points raised in the Direct Testimony of Mr. Jeffry Pollock. It refutes Mr. Pollock's contention that the Project is not economically displacing oil. In doing so, Mr. Waters establishes that Mr. Pollock reaches his conclusion by manufacturing a test similar to a test previously rejected by the Commission and at odds with the Primary Purpose Test actually employed by the Commission. Mr. Waters' rebuttal testimony also refutes the inaccurate and misleading statements by Mr. Pollock that FPL is recovering costs of units not in service and, therefore, is double recovering capacity costs. Mr. Waters establishes that the only costs being recovered through additional depreciation under the Factor are 500 kV Project costs. Mr. Waters also refutes the arguments by Mr. Pollock that the benefits of deferring the Martin Coal Units should not be used in calculating Project actual net savings. Mr. Waters shows that Mr. Pollock's "changed circumstances" arguments are bogus and do not warrant any change in Oil Backout recovery. Finally, Mr. Waters testifies that it is extremely costly and unfair for FPL to have to defend numerous oil backout issues previously resolved by the Commission, when FIPUG and Mr. Pollock acknowledge multiple benefits from FPL's oil backout Project and associated coal by wire purchases.

(b) All known exhibits, their contents, whether they may be identified on a composite basis and witness sponsoring each.

Exhibit No. _____

This unnumbered exhibit is attached to the prefiled direct testimony of S. S. Waters filed on July 13, 1989. Mr. Waters sponsors this composite exhibit consisting of 4 documents.

Document No. 1 - map entitled "FPL's 500 kV Oil Backout Project"

Document No. 2 - "FPL Oil Backout Project Scheduled Versus Actual In-Service Dates"

Document No. 3 - This is a two page document of exhibits presented by FPL in the Project's qualification proceeding Docket No. 820155-EU. The first page is Exhibit No. 15(j), showing the Commission's prescribed Primary Purpose Test. The second page is a supporting exhibit from Mr. Howard's testimony in the qualification proceeding.

Document No. 4 - This is a two page document updating the analysis in Document 3 for actual experience and using more recent forecasts. Page one is an update of Exhibit No. 15(j), showing that the Project continues to pass the Primary Purpose Test. The second page is a supporting document.

Exhibit No. _____
Exhibit SSW 2

This exhibit is attached to the rebuttal testimony of S. S. Waters filed on July 27, 1989. Mr. Waters sponsors this composite exhibit consisting of 3 documents.

Document No. 1 - "Projected and Calculated Projected Reserve Margins At Time of Summer Peak With And Without Coal-By-Wire Capacity"

Document No. 2 - "Comparison of Coal By Wire Energy And Avoided Energy Cost"

Document No. 3 - "Comparison of Martin Unit No. 3 Life Cycle Costs To New Combined Cycle Units"

In addition to these exhibits filed along with prefiled testimony, FPL anticipates it will offer exhibits during cross examination of Mr. Pollock. However, those exhibits cannot be identified until after Mr. Pollock's deposition and closer to the hearing.

FPL also intends to ask the Commission to take official notice of several prior orders, Rule 25-17.016, other Commission rules, Commission forms and other Commission records. A complete list of these items cannot be compiled until FIPUG responds to outstanding discovery. Consequently, FPL will file a detailed motion outlining this request closer to the hearing.

(c) A statement of basic position:

FIPUG's Petition should be denied in its entirety. FIPUG's Petition, supporting affidavit and testimony are full of inaccurate and misleading allegations. They ignore or misstate prior Commission determinations, invoke irrelevant factors, raise issues previously settled by the Commission, argue circumstances have changed when changed circumstances cannot justify discontinuance of recovery or a refund, and wholly fail to provide a substantive basis for the relief they request. The relief requested cannot be granted as a matter of law. FIPUG's "case" is a direct attack on the Oil Backout Rule, a belated and untimely attempt to seek reconsideration in numerous dockets, and an expensive and inappropriate challenge to the Commission's management of the Oil Backout Rule.

FIPUG's Count I, that the Project has not achieved its primary purpose, the economic displacement of oil fired generation, is wholly premised on a test manufactured by Mr. Pollock which is at odds with the Commission's prescribed test. The Commission has prescribed the test to determine whether the primary purpose of a Project is economic oil displacement. FPL's Project passed the test in 1982 when it

qualified, and even with lower than projected oil prices, passes the test now. FPL's Project still economically displaces oil fired generation.

FIPUG's Count II, that recovery of Project costs through an energy based charge is unfair and unduly discriminatory, should not be considered. First, an energy charge for oil backout recovery is prescribed by the Oil Backout Rule. Second, the Commission has heard and rejected this same FIPUG argument on seven different occasions; FPL should not have to respond to it again.

FIPUG's Count III, that the Martin Units are fictional and have not been deferred so they should not be used to calculate Actual Net Savings, is unfounded. The Martin Coal Units were deferred by the Project. Without the Project they would have been in service by now and FPL's customers would be paying a return on them. This avoided revenue requirement is clearly a Project benefit properly included, along with other savings and project costs, in the calculation of Actual Net Savings for the Project. However, FPL's recovery of 2/3 of Actual Net Savings as additional depreciation of the 500 kV Project in no way represents FPL earning a return on units not built; it is the approved method of accelerating the recovery of the 500 kV Project.

FIPUG's Count IV, that FPL evades regulatory scrutiny through the Oil Backout Cost Recovery Factor, is a gross misstatement of fact. FPL's Oil Backout Project has regularly been reviewed by the Commission every six months since approval in 1982. There have been other reviews as well. FPL separately accounts for the Project as required by Commission rule. Consistent with the Oil Backout Rule, the Commission's treatment of Oil Backout Project revenue requirements in FPL's last rate case and the Commission's Rule 25-6.024(1)(b) regarding Rate of Return Reports, FPL has excluded the Project's rate base, revenues and expenses from its Rate of Return Reports. Finally, because FPL recovers actual tax expense for the Project through the Factor at the current income tax rate; there are no Project tax savings; therefore, no additional tax savings refund is warranted.

As a matter of law, FIPUG's relief cannot be granted. Periodic revisitation of qualification under the rule is not permissible. Cessation of oil backout recovery is inconsistent with Section (4)(d) of Rule 25-17.016 as well as a clearly articulated Commission intent that lower than projected oil prices would not be the basis for disqualifying a Project. A redetermination of a Project's eligibility for recovery seven years after the initial qualification determination is barred

by the doctrine of Administrative Finality. It is also a proscribed exercise of hindsight. FIPUG's eighth attack on the energy based oil backout charge is also barred by the doctrine of Administrative Finality, and it is inconsistent with Section (4)(e) of Rule 25-17.016. FIPUG has waived its right to contest the use of the Martin units to calculate capacity deferral benefits to be used in computing Actual Net Savings. This issue was raised by FPL testimony in no less than three Oil Backout proceedings to which FIPUG was a party without FIPUG contesting it. Their belated protest is untimely, and under Rule 25-22(5)(b) they have waived the issue due to their lack of diligence. It is also an untimely request for reconsideration precluded by Rule 25-22.060. Moreover, the refund requested would constitute unlawful, retroactive ratemaking. Finally, the Oil Backout Project has separate accounting by rule; because the Factor only recovers actual tax expense on the Project at current tax rates, there are no oil backout tax savings to be refunded.

(d) A statement of each question of fact the party considers at issue and which of FPL's witnesses will address the issue:

Issue 1. What test did the Commission prescribe in Order No. 11217 to determine, pursuant to Rule 25-17.16(3)(a)1 (the Oil Backout Rule), if the primary purpose of the Project was the economic displacement of oil fired generation?

FPL Position: The Commission prescribed the "Primary Purpose Test" as the means of applying Section (3)(a)(1) of the Oil Backout Rule and determining whether the primary purpose of the Project was the economic displacement of oil fired generation. The test was articulated in Order No. 11217 as follows: "In our mind, the issue is best resolved by allocating the fuel costs of the project against the fuel savings and the capacity costs of the project against the capacity savings. We think it proper to allocate costs and benefits in this case because the Company could have purchased the coal by wire on a non-firm basis, thereby avoiding the capacity costs due Southern but also foregoing the capacity deferral benefits. If the net fuel savings exceed the cost of the project, the Company has met its burden of proof on this issue and demonstrated that the primary purpose of the project is oil displacement. The Company has

done this in Exhibit 15(j)." (Emphasis added.)
(Waters)

Issue 2. Does the Project still pass the Primary Purpose Test today, updating for actual oil prices?

FPL Position: Yes, and this is uncontested. Mr. Waters' Document No. 4 shows that the Project still passes the Primary Purpose Test after accounting for much lower actual oil prices than originally projected. Thus, the primary purpose of the Project is still the economic displacement of oil. Even Mr. Pollock acknowledges in his direct testimony that the Project still passes the Primary Purpose Test. (Waters)

Issue 3. Under the Oil Backout Rule is a post qualification change in oil prices grounds for "disqualifying" a project or ceasing recovery of a project through the Oil Backout Cost Recovery Factor?

FPL Position: No. It is clear from statements by Staff, other parties and Commissioners that once a project qualified under the Rule, the Company is to be allowed to continue to recover costs through the Factor regardless of a change in future oil prices. This intention is also reflected in the Oil Backout Rule. (Waters)

Issue 4. Are there changed circumstances that warrant discontinuing recovery of the Project and associated power purchases through the Oil Backout Cost Recovery Factor?

FPL Position: No. FIPUG's alleged changed circumstances are either irrelevant or inconsistent with the Commission's original qualification determination. While actual oil prices have been lower than projected, the Project still economically displaces oil and passes the Primary Purpose Test. In addition, it has always been recognized that beginning in 1987 the Project would have capacity deferral benefits and the Unit Power Sales ("UPS") purchases would be used to meet some load growth. This is not a changed circumstance, this is simply a realization of FPL's original projections. The important fact, that the net fuel savings of the Project exceed Project revenue requirements over the initial ten

years, remains unchanged. There are no changed circumstances that warrant discontinuing recovery of the Project and associated power purchases through the Factor. (Waters)

Issue 5. Were the Martin Coal Units 3 and 4 deferred as a result of the Project and the original UPS purchases?

FPL Position: Yes. The removal of the Martin units from FPL's generation expansion plans from late 1985 onward is irrelevant to this issue. The Martin Coal Units indisputably were deferred by the Project and the UPS purchases. Without the Project and the UPS purchases, the Martin Coal Units would have been built. From 1982 through 1988 they were the most economical choice to meet capacity needs if the Project had not been built and the UPS purchases had not been made. The deferral of the Martin Units by the Project and subsequent lower oil and gas prices have allowed FPL to plan to employ advanced technologies to meet load growth in the mid 1990s. This is an additional benefit from the Project originally anticipated but not quantified in Expected Net Savings. Nonetheless, these additional Project benefits are real. (Waters)

Issue 6. Are the capacity deferral benefits of the Martin Coal Units appropriately included in the calculation of Actual Net Savings of which two thirds of which are recovered as additional depreciation on the 500 kV line?

FPL Position: Yes. The Martin Coal Units were clearly deferred by the Project. Without the Project and UPS purchases, they would have been built and in service by 1987 and 1988. Because they were deferred, FPL's customers have not had to pay the units' revenue requirements, only UPS capacity payments. In calculating Actual Net Savings, 2/3 of which are recovered through the Factor as additional depreciation on the 500 kV line, it is proper to recognize all Project savings (net fuel savings and capacity deferral savings) and all Project costs (UPS energy and capacity costs as well as foregone Martin fuel savings). Any resulting net savings are recovered as additional depreciation on the 500 kV line. FPL is not

recovering through the Factor any return on units it has not built. (Waters)

Issue 7. Are there any oil backout Project tax savings due to the change in the federal corporate income tax rate?

FPL Position: No. Consistent with the Oil Backout Rule, FPL has only collected "actual tax expense" through the Factor. When the corporate income tax rate was lowered, FPL reflected this in its oil backout filings. There are no oil backout Project tax savings.

Issue 8. Has FPL kept the Commission apprised of FPL's oil backout Project?

FPL Position: Yes. Since oil backout cost recovery of the Project was originally approved, the Commission has reviewed the Project's recovery every six months at an evidentiary hearing. In addition, the Commission Staff has audited FPL's oil backout filings every six months since April 1985. In the August 1984 oil backout hearing, extensive late filed exhibits were filed supplementing FPL's regular reporting. Also in 1984, a roll in of oil backout cost recovery into base rates was considered and denied by the Commission in FPL's rate case. In 1986 and 1987 summary reports of the Project were submitted to the Commission. In addition, when FPL began reflecting Actual Net Savings for the Project and began recovering additional depreciation in 1987, this was clearly reflected in FPL's filings. (Waters)

(e) A statement of each question of law FPL considers at issue:

Issue 9. Whether the doctrines of res judicata and administrative finality preclude FIPUG's challenge to continued recovery of the Project and associated purchased power costs through the Factor?

FPL Position: Yes.

Issue 10. Whether FIPUG's requested relief of ceasing recovery of the Project and associated purchased power costs through the Factor is inconsistent

with Rule 25-17.016 and therefore not permitted by Section 120.68(12)(b), Florida Statutes?

FPL Position: Yes.

Issue 11. Whether FIPUG's requested relief of ceasing recovery of the Project and associated purchased power costs through the Factor is premised on an impermissible test employing hindsight rather than judging circumstances as they existed at the time recovery was authorized?

FPL Position: Yes.

Issue 12. May the Commission revisit project qualification under the Oil Backout Rule and cease recovery of an oil backout project?

FPL Position: No.

Issue 13. Whether FIPUG's argument that the recovery of oil backout project costs through an energy based charge is unfair and unduly discriminatory is barred by the doctrines of res judicata and administrative finality?

FPL Position: Yes.

Issue 14. Whether FIPUG's requested relief to discontinue recovery of oil backout project costs in an energy based oil backout charge is inconsistent with Rule 25-17.016 and therefore not permitted by Section 120.68(12)(b), Florida Statutes?

FPL Position: Yes.

Issue 15. Whether FIPUG has waived its ability to challenge or is estopped from challenging the use of the Martin Coal units in calculating deferred capacity savings to be used in the calculation of Actual Net Savings since they have in three prior proceedings, in which they were a party, failed to raise the issue, not objected to stipulated Factors and failed to request reconsideration?

FPL Position: Yes.

Issue 16. Whether the requested refund of oil backout revenues would constitute illegal retroactive ratemaking?

FPL Position: Yes.

Issue 17. Whether FIPUG's argument that FPL cost estimates for the Martin Coal units should be heard?

FPL Position: No. This argument appears for the first time in Mr. Pollock's testimony. It was not raised in FIPUG's Petition, so it is not within the scope of the hearing. In addition, FIPUG has previously waived this issue due to its lack of diligence in raising this issue in at least three proceedings where FIPUG was a party and chose not to raise the issue. As a defensive measure, FPL has responded to this new allegation in its rebuttal testimony, but its doing so should not be construed as a waiver of its position that this issue is improper.

- (f) FPL has not raised any policy issues.
- (g) FPL is not aware of any stipulated issues.

Respectfully submitted,

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Attorneys for Florida Power
& Light Company

BY: 

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of the Florida)
Industrial Power Users Group)
to Discontinue Florida Power) Docket No. 890148-EI
& Light Company's Oil Backout)
Cost Recovery Factor)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27st day of July, 1989, a true and correct copy of Florida Power & Light Company's Prehearing Statement in Docket No. 890148-EI was served by U. S. Mail or hand delivery on the following persons:

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