BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of the Florida Industrial Power Users Group to Discontinue Florida Power & Light Company's Oil Backout Cost Recovery Factor.	)	DOCKET NO. 890148-EI
	)	ORDER NO. 21755
	)	ISSUED: 8/21/89

Pursuant to Notice, a Prehearing Conference was held on August 3, 1989, in Tallahassee, before Commissioner John T. Herndon, Prehearing Officer.

APPEARANCES:

CHARLES GUYTON, Esquire, and MATTHEW CHILDS, Esquire, Steel, Hector and Davis, 310 W. College Avenue, Tallahassee, Florida 32301-1406
On behalf of Florida Power & Light.

JOSEPH A. McGLOTHLIN, Esquire, Lawson, McWhirter, Grandoff & Reeves, 522 Park Avenue, Suite 200, Tallahassee, Florida 32301
On behalf of the Florida Industrial Power Users Group.

JOHN ROGER HOWE, Esquire, and Avis Payne, Legislative Analyst, Office of the Public Counsel, c/o Florida House of Representatives, The Capitol, Tallahassee, Florida 32301
On behalf of the Citizens of the State of Florida.

MARSHA E. RULE, Esquire, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida, 32399-0863
On behalf of the Commission Staff.

PRENTICE P. PRUITT, Esquire, Office of General Counsel, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida, 32399-0861
Counsel to the Commissioners.

PREHEARING ORDER

Background

In connection with the February, 1989 hearing in Docket No. 890001-EI, the Florida Industrial Power Users Group (FIPUG) raised issues relating to discontinuance of Florida Power & Light Company's (FPL's) oil backout cost recovery factor. FIPUG also filed a separate petition in this docket on January 27, 1989, and sought consolidation of the two dockets by a Motion to Consolidate Dockets or Hold Certain Issues in Docket No. 890001-EI in abeyance.

The parties agreed to defer FIPUG's issues in Docket No. 890001-EI until the August, 1989 hearing in order to allow for discovery. Thereafter, the Commission ordered consolidation of Dockets Nos. 890148-EI and 890001-EI for hearing purposes only, with Docket No. 890148-EI to be heard by the full Commission on the last day of the scheduled hearings in Docket No. 890001-EI. Docket No. 890148-EI was later rescheduled to the first day of the hearing, August 22, 1989, so that all Commissioners could be present.

On February 15, 1989, FPL moved to dismiss FIPUG's petition. FPL's Motion was denied in Order No. 21361 on the grounds that FIPUG had stated a cause of action upon which it was possible to grant relief.

Use of Prefiled Testimony

All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and exhibits, unless there is a sustainable objection. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his testimony at the time he or she takes the stand.

Use of Depositions and Interrogatories

If any party desires to use any portion of a deposition or an interrogatory, at the time the party seeks to introduce that deposition or a portion thereof, the request will be subject to proper objections and the appropriate evidentiary rules will govern. The parties will be free to utilize any exhibits

requested at the time of the depositions subject to the same conditions.

Order of Witnesses

The witness schedule is set forth below in order of appearance by the witness's name, subject matter, and the issues which will be covered by his or her testimony.

	Witness	Subject Matter	Issues
1.	Jeffrey Pollock (FIPUG) (Direct and Rebuttal)	Support of FIPUG's Petition for Discontinuance of FPL's OBCRF	1-16
2.	S.S. Waters (FPL) (Direct and Rebuttal)	(Direct) - Capacity Benefits of FPL's Oil Backout Project. (Rebuttal) - Rebuttal of Pollock testimony.	1-16

EXHIBIT LIST

EXHIBIT NUMBERS 601 - 699 have been assigned to FIPUG

Exhibit Number	Witness	Description
601	Pollock	JP-1, Schedule 1: Cumulative cost savings of project original projection vs. actual
602	Pollock	JP-2, Schedule 2: Comparison: FPL's actual load growth and kwh consumption with 1982 forecast

Exhibit Number	Witness	Description
603	Pollock	JP-1, Schedule 3: Comparison: coal-by-wire energy purchases, original forecast vs. actual/ current forecast
604	Pollock	JP-1, Schedule 4: Comparison: oil prices, original forecast vs. actual/current forecast
605	Pollock	JP-1, Schedule 5: Comparison: cost of oil-fired generation with cost of coal-by-wire energy purchases
606	Pollock	JP-1, Schedule 6: Actual summer peak reserve margins
607	Pollock	JP-1, Schedule 7: Projected reserve margins with and without coal-by-wire capacity
608	Pollock	JP-1, Schedule 8: Comparison of returns on equity
609	Pollock	JP-1, Schedule 9: Analysis of recently authorized returns on equity

Exhibit Number	Witness	Description
610	Pollock	JP-1, Schedule 10: Comparison: production/ transmission and energy allocation factors, GSLD and CS rate clauses
611	Pollock	JP-1, Schedule 11: Recovery of capacity deferred savings through the OBCRF
612	Pollock	JP-1, Schedule 12: Estimates of direct cost of 700 MW coal station
613	Pollock	JP-1, Schedule 13: Revenue requirement effect of the income tax saving rule

EXHIBIT NUMBERS 201-299 HAVE BEEN ASSIGNED TO FPL
Exhibits numbered 201-207 were identified in Dockets 890001-EI and 890002-EG

Exhibit Number	Witness	Description
208	Waters	(Composite) Document 1: (map) FPL's 500 kV Oil Backout Project Document 2: FPL Oil Backout Project Scheduled Versus Actual In-Service Dates

208	Waters	Document 3: (2 page document of exhibits from Docket No. 820155-EU) 1st page: Ex. # 15(j). 2nd page: supporting exhibit, Howard testimony Document 4: (2 page document updating analysis in Document 3) 1st page: update of Ex. 15(j). 2nd page: supporting document
209	Waters	(Composite) Document 1: Projected and Calculated Projected Reserve Margins At Time of Summer Peak With and Without Coal-By-Wire Capacity Document 2: Comparison of Coal-By-Wire Energy and Avoided Energy Cost Document 3: Comparison of Martin Unit No. 3 Life Cycle Costs To New Combined Cycle Units

EXHIBIT NUMBERS 1201-1299 HAVE BEEN ASSIGNED TO OPC
At this time, no exhibits have been identified.

EXHIBIT NUMBERS 1301-1399 HAVE BEEN ASSIGNED TO STAFF
At this time, no exhibits have been identified.

PARTIES' STATEMENT OF BASIC POSITION

Florida Industrial Power User's Group's Statement of Basic Position:

Seven years of experience have demonstrated that the oil backout project does not economically displace oil. At the present OBCRF rate, in 1989 FPL will collect in excess of $500,000,000 from its customers, while the net energy savings are only $214,515,000.

The project does provide significant capacity and reliability functions. Recovering the full cost of a 30-year capacity/reliability project through a seven year energy surcharge causes present customers to subsidize future customers, provides unreasonable and unrestricted excess cash flows to FPL and penalizes high load factor customers. To perpetuate the charge after radically changed circumstances have occurred, which render the charge inappropriate, would be unjust and unreasonable.

Past collections of "net savings" for an accelerated write-off were based on improper claims of capacity deferral benefits and should be refunded. The claims were based upon 1982 assumptions that have been outdated by changes in load growth and demand and supply options. The oil backout charge should be terminated. "Accelerated depreciation" should be reversed, and the revenues returned to customers. The remaining cost of the transmission lines and other project costs should be recovered through FPL's base rates.

Florida Power & Light Company's 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 1, 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 numerous 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 New 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 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.

Staff's Statement of Basic Position:

Because FPL's transmission line oil backout project was approved by the Commission in Order No. 11210, it should not now be retroactively disapproved. Therefore, FIPUG's request for refund of all oil backout cost recovery charges collected to date should be denied. Further, Staff does not agree with FIPUG's allegation that capacity and deferral benefits are illusory.

Office of Public Counsel's Statement of Basic Position:

The justification accepted by the Florida Public Service Commission when it first approved FPL's 500 KV transmission

lines as an oil backout project pursuant to Rule 25-17.016, Florida Administrative Code, is no longer valid. Circumstances have changed such that the facts surrounding the transmission project are now outside the scope of the rule. The initial determination of qualification under the rule was not, and could not be, binding for all future periods without regard to changed circumstances any more than a base rate proceeding conducted pursuant to relevant rules and statutes could be.

STATEMENT OF ISSUES AND POSITIONS

ISSUES OF LAW

1. ISSUE: Are the 500 KV transmission lines presently being used primarily to displace oil-fired generation? (FIPUG)

   FIPUG: No. Without the capacity imported over the transmission line, FPL could not adequately meet its present load requirements. It does not have sufficient oil-fired generating capacity to meet present system demand. Electricity purchased from Southern Company is the same as a new generating unit and is no longer justified under the prohibitions of Rule 25-17.016(2)(b), F.A.C.

   FPL: Yes. This factual issue is irrelevant to this proceeding. The Commission has previously determined that the primary purpose of FPL's 500 kV Transmission Project over the first ten years of the Project is the economic displacement of oil. The Commission has previously rejected FIPUG's request to reconsider that finding, and the Supreme Court of Florida has affirmed the Commission's decision to qualify the Project. Consequently, the Project's qualification for recovery under the Oil Backout Cost Recovery Factor ("Factor") is a settled issue, and the current primary use of the Project is irrelevant to continued recovery through the Factor.

   Irrelevance aside, under the Commission's prescribed test of determining whether economic displacement of oil-fired generation is the primary purpose of the Project, the "Primary Purpose Test", the primary use of the Project presently is and continues to be oil-fired generation displacement. Under that test net fuel savings continue to exceed Project revenue requirements

during the first ten years of the Project, even updating for lower than projected oil prices.

As FPL has always acknowledged, in addition to this primary purpose of economic oil displacement, there are other significant benefits from the Project including capacity deferral benefits and enhanced system reliability. These benefits were additional and unrelated to Project qualification. For instance, it was recognized in 1982 that after 1987 the Project would not only economically displace oil, but also be used to meet load requirements. The current estimates of additional benefits does not change the determination that the primary purpose of the Project is economic oil displacement now any more than it did in the original qualification proceeding when these benefits were merely projected. (Waters)

STAFF: Yes.

OPC: Public Counsel adopts and supports FIPUG's position on this issue.

2. ISSUE: Should FPL be required to refund past collected backout revenues associated with accelerated depreciation? (FIPUG)

FIPUG: Yes. Supposedly, the Southern contract capacity allowed FPL to defer its own capacity; but collecting both capacity charges and costs of the deferred unit is tantamount to collecting for the same capacity twice. FPL is also collecting for capacity which has not been built and has been removed from the planning horizon because of more economical alternatives; thus, the hypothetical Martin units are not "used and useful." Finally, FPL testified in 1982 that deferral was justified to enable FPL to realize lower capital costs, construction costs, and more economical technologies. Those changes occurred, affecting all parameters of "deferral benefits," including in-service date, construction costs, and supply options; but FPL improperly clung to the outdated 1982 assumptions for the purpose of quantifying "deferral benefits." In Order No. 11217, the Commission reserved the ability to review the cost parameters. The commission should reject

FPL's static approach and recognize the changes in circumstances that require a refund of revenues tied to the Martin assumptions.

FPL: No. FIPUG has intentionally misrepresented the nature of the revenues FPL is recovering through the Oil Backout Cost Recovery Factor and taking as accelerated depreciation. The only cost FPL is recovering through accelerated depreciation is FPL's investment in the 500 kV Project. FPL has not and is not "collecting ... costs of the deferred unit" nor is it "collecting for capacity which has not been built" and is "not 'used and useful'".

The Project has produced actual net savings since 1987, so consistent with the Oil Backout Rule and pursuant to Commission approval, FPL has been collecting revenues through the Factor and taking as accelerated depreciation an amount equal to two-thirds of the Project's actual net savings. In calculating actual net savings, FPL has recognized, as one benefit of several, the Project's capacity deferral benefits associated with the Project deferring the construction of Martin Coal Unit Nos. 3 and 4. Without the Project these units would have been in-service in June, 1987 and December, 1988, respectively. Consequently, it is entirely appropriate to recognize the savings associated with not having to build these units in calculating the Project's actual net savings.

FPL's calculation of the capacity deferral benefits for the Martin units is reasonable. FPL updated its original Martin unit cost projections with lower actual capital costs and lower actual escalation rates. It used the original in-service dates because FPL's 1982 forecasted load for 1987 and 1988 was accurate, and without the coal by wire purchases this capacity would have been needed as projected.

FIPUG's attempt to question FPL's capacity deferral benefits is untimely and wholly speculative. This Commission, in Order 11537, held open the issue of the proper cost parameters. However, the issue was held open until "such time as the deferred units would have come on line, absent the oil backout project, i.e., 1987". FPL addressed the issue in its testimony then as instructed,

and the Commission approved FPL's cost parameters. FIUG chose to waive the issue and should not be allowed to resurrect it.

FPL's recovery of accelerated depreciation on the Project is consistent with the Oil Backout Rule and prior Commission orders. It reflects that the Project has produced substantial actual net savings, all of which will flow to customers once the Project is fully depreciated in August, 1989. No refund is warranted. (Waters)

STAFF: No.

OPC: Public Counsel adopts and supports FIPUG's position on this issue.

3. ISSUE: Should FPL be required to terminate the oil backout cost recovery factor? (FIPUG)

FIPUG: Yes. The claimed deferral benefits have been improperly included, and the changes in fuel costs have resulted in greatly diminished fuel savings, so that the project is not achieving net fuel benefits. It does provide capacity and reliability benefits; therefore, the continued collection through an energy charge is unwarranted and discriminatory.

FPL: No. In adopting the Oil Backout Rule and approving FPL's Project for qualification, the Commission had no intention of discontinuing recovery through the Factor if actual experience did not track projections. Thus, even if the Project had not achieved net fuel savings or economic oil displacement, the Commission intended to continue to allow recovery through the Factor because the Commission, in qualifying the Project, had decided the Project was prudent and should be pursued.

However, even with lower than projected oil prices, this Project has economically displaced oil and provided net fuel savings greater than Project revenue requirements. In addition, the capacity and reliability benefits of the Project are not new or anticipated. FIPUG and Public Counsel argued at the qualification proceeding that these benefits made oil backout recovery of the

Project unwarranted or discriminatory, and the Commission rejected their arguments. There is nothing new in this case that warrants revisiting those issues. Therefore, there is no basis to terminate the oil backout cost recovery factor. (Waters)

STAFF: Termination of the OBCRF should be done in conjunction with the utility's next rate case, pursuant to Rule 25-17.016(4)(d).

OPC: Public Counsel adopts and supports FIPUG's position on this issue.

4. ISSUE: When will investment in transmission lines be fully recovered if FPL is allowed to use two-thirds of the "annual net savings" as accelerated depreciation? (FIPUG)

FIPUG: October, 1989.

FPL: August, 1989. (Waters)

STAFF: Agree with FPL.

OPC: Public Counsel adopts and supports FIPUG's position on this issue.

5. ISSUE: Has the time come to require FPL to collect the capacity charges for the Southern System UPS charges through base rate mechanisms? (FIPUG)

FIPUG: Yes. FPL is using generating capacity on the Southern System to meet its basic load requirements. The cost of this capacity far exceeds the net energy savings. It is improper to recover it through the fuel clause because the capacity costs exceed the fuel savings.

FPL: No. FIPUG has failed to establish why the current treatment of UPS capacity charges is improper. FPL is using the Project and UPS purchases exactly in the fashion originally envisioned. The Commission opted in the original oil backout cost recovery proceeding to recover those charges through the Factor, and FIPUG has provided no basis for the Commission to reconsider that decision.

In addition, continued recovery of UPS capacity charges through the Factor assures an accurate cost recovery subject to true-up. (Waters)

STAFF: The inclusion of capacity charges in FPL's base rate should be done at the time of the utility's next rate case, pursuant to Rule 25-17.016(4)(d).

OPC: Public Counsel adopts and supports FIPUG's position on this issue.

6. ISSUE: Is FPL justified in charging a 15.6% return on the equity portion of its capital invested in the 500 KW transmission lines? (FIPUG)

FIPUG: No. Rule 17.016(4)(e), F.A.C., requires the utility to use its actual cost of capital for the recovery period. Use of 15.6% is unjustified.

FPL: Yes. The Commission has the long standing practice of authorizing FPL to earn on its oil backout investment at the rate of return on equity authorized by the Commission in FPL's most recent rate case. This practice was initiated in FPL's first oil backout cost recovery proceeding and continues today. It avoids the Commission having to determine FPL's cost of equity in the limited scope of a Fuel proceeding. This long standing application of the Oil Backout Rule warrants FPL earning 15.6% on the equity portion of its capita invested in the 500 kV Project since the midpoint of the equity rate of return range authorized in FPL's last rate case was 15.6%.

STAFF: Rule 25-17.016(4)(e) requires the utility to use its actual cost of capital for the recovery period. In Staff's opinion, use of a 15.6% return on equity overstates FPL's cost of equity capital and is therefore inappropriate at this time. In the absence of testimony, Staff believes that the reduced equity return of 13.6%, used for this utility in the tax savings docket, is appropriate and more closely approximates the utility's actual cost of capital.

OPC: Public Counsel adopts and supports FIPUG's position on this issue.

7. ISSUE: 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)

FIPUG: Due to dramatic changes in the circumstances which were projected at the time of FPL's application, the test which the Commission applied in 1982 has no relevancy to today's conditions. The changed conditions include the significant reduction in actual oil prices from those projected in 1982; a dramatic narrowing in the differential between the cost of oil and coal; FPL's extention of firm purchases of Southern capacity beyond the 1992 time frame; current projections of load growth by FPL that indicate that the Southern purchases will be needed to serve new load growth; indications that FPL will need additional capacity of its own beyond the extended Southern purchases (which means that, since all capacity is needed to serve load growth, there can be no oil displacement on FPL's system); and changes in factors influencing the in-service date and cost of the units which would have been built absent the Southern purchase. Under these changed conditions, the Commission--in order to assure that rates are reasonable--must reject FPL's static, backward-looking approach and recognize the primary capacity/reliability function the project presently provides and will continue to provide. (Pollock)

FPL: 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)

STAFF: The "Primary Purpose Test" as outlined in Order No. 11217.

OPC: Public Counsel adopts and supports FIPUG's position on this issue.

8. ISSUE: Does the Project still pass the Primary Purpose Test Today, updating for actual oil prices? (FPL)

FIPUG: For the reasons stated in response to Issue 7, the original exercise is irrelevant. Even if it were applicable, however, the project would not now pass. FPL has understated the transmission line's revenue requirements (by using the project value net of accelerated depreciation) and has overstated savings (by continuing the 1982 assumption that Martin 3 would have been needed in 1987).

FPL: 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)

STAFF: Yes.

OPC: Public Counsel adopts and supports FIPUG's position on this issue.

9. ISSUE: 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)

FIPUG: The Commission has an overriding statutory obligation to assure that rates remain reasonable, and a demonstrated ability to revisit actions when warranted by

changes in circumstances which affect the reasonableness of rates or the propriety of perpetuating past decisions. The backout rule is not an exception to these requirements; instead, it must be interpreted and applied in light of them. Further, the difference in oil prices is but one of the changes in circumstances which warrant termination of the oil backout charge. Others include changes in load growth and in the duration and function of the Southern purchases.

FPL: 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)

STAFF: No.

OPC: Public Counsel adopts and supports FIPUG's position on this issue.

10. ISSUE: Are there changed circumstances that warrant discontinuing recovery of the Project and associated power purchases through the Oil Backout Cost Recovery? (FPL)

FIPUG: Yes. The oil backout mechanism was an extraordinary response to extraordinary conditions--the high and rising cost of oil relative to coal. FPL invites the Commission to take the "ostrich approach" to regulation; that is, focus on the expectations of 1982, and hide from the events, developments and realities of seven years. The circumstances envisioned in 1982 simply have not been realized. To suggest that radically different factors bearing on relative fuel prices, the in-service date of deferred capacity, and load growth do not constitute a scenario fundamentally different from the one envisioned when the surcharge was approved is not credible. (Pollock)

FPL: No. FIPUG's alleged change circumstances are either irrelevant or inconsistent with the Commission's original qualification determination. While actual oil prices have been lower than projected, the Project will 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)

STAFF: No.

OPC: Public Counsel adopts and supports FIPUG's position on this issue.

11. ISSUE: Were the Martin Coal Units 3 and 4 deferred as a result of the Project and the original UPS purchases? (FPL)

FIPUG: The issue, as framed, mentions both the project and the original UPS purchases. The project was committed and would have been built regardless of whether it qualified under the oil backout rule. It is true that Martin 3 and 4 were planned at the time the contract was entered; however, changes in circumstances occurred which would have deferred the need for Martin 3 (the first unit) until at least 1991 even if the original purchase had not been made. The in-service date was affected to the extent that FPL could have pursued lower costs and could have assessed emerging technologies (as its witness expressly hoped in 1982). For these reasons, the 1982 assumptions as to timing and cost cannot be applied.

FPL: 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)

STAFF: Yes.

OPC: Public Counsel adopts and supports FIPUG's position on this issue.

12. ISSUE: Are the capacity deferral benefits of the Martin Coal Units appropirately included in the calculation of Actual Net Savings of which two thirds are recovered as additional depreciation on the 500 kV line? (FPL)

FIPUG: No. As Jeffrey Pollock has established, the capacity would not have been needed prior to 1991. With that timing shift, FPL would have had the opportunity to realize lower cost parameters or better technologies--which, said FPL witness Scalf in 1982, were the very objectives which justified deferral in the first place. The use of the 1987 and 1988 in-service date for Martin Units 3 and 4 is the most injurious example of FPL's static, 1982-based approach to the implementation of the Commission's original decision. (Pollock)

FPL: 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).

STAFF: Yes.

OPC: Public Counsel adopts and supports FIPUG's position on this issue.

13. ISSUE: Are there any oil backout Project tax savings due to the change in the federal corporate income tax rate? (FPL)

FIPUG: As framed, this issue misstates the issue raised by FIPUG's petition. The injury occurs--not in the tax rate applied by FPL in developing project revenue requirements--but by the use of 15.6% as the return on equity. FPL has refused to apply its tax savings "offer" of 13.6% ROE to the oil backout project, thereby lowering customers' tax savings refunds and giving misleading, understated indications of its overall earned rate of return. FPL has acknowledged that, if it had incorporated the oil backout investment, revenues, and expenses in the derivation of the 1987 tax savings refund, the refund would have been higher by $5.1 million. (Pollock)

FPL: 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.

STAFF: There are no tax savings associated with the oil backout project. However, Rule 25-17.016(4)(e) requires the utility to use its actual cost of capital for the recovery period. In Staff's opinion, use of a 15.6% return on equity overstates FPL's cost of equity capital and is therefore inappropriate at this time. In the absence of testimony, Staff believes that the reduced equity return of 13.6%, used for this utility in the tax savings docket, is appropriate and more closely approximates the utility's actual cost of capital.

OPC: Public Counsel adopts and supports FIPUG's position on this issue.

14. ISSUE: Has FPL kept the Commission apprised of FPL's oil backout Project? (FPL)

FIPUG: As framed, this issue is irrelevant to the matters raised by FIPUG's petition. FIPUG maintains that the issue is not the omission of reports, but the appropriate response to the reports submitted. Continuation of the oil backout factor and the allowance of accelerated depreciation under the evident circumstances is unjust and unreasonable.

FPL: Yes. Since oil backout 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 filing 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)

STAFF: Yes.

OPC: Public Counsel adopts and supports FIPUG's position on this issue.

15. ISSUE: Did FPL consider OBO revenue in calculating income tax refunds to its customers in 1987 and 1988? (FIPUG)

FIPUG: No.

FPL: As the Commission was made aware in the 1987 tax savings refund proceeding, FPL did not consider oil backout revenues in calculating its 1987 and 1988 tax savings refunds to customers. This is consistent with Commission policy and Commission rules. More importantly, because FPL only recovers actual income tax expense reflecting current income tax rates through the Oil

Backout Cost Recovery Factor, there are no oil backout tax savings to refund due to the change in the federal corporate income tax rate.

STAFF: No.

OPC: Public Counsel adopts and supports FIPUG's position on this issue.

16. ISSUE: Should FPL be required to refund these tax savings to customers? (FIPUG)

FIPUG: FPL has utilized the oil backout mechanism as a device to diminish the tax savings refund received by customers. By failing to apply the "offered" 13.6% ROE to this component of its operations, FPL has also understated its actual realized rate of return. FPL's rationale for withholding the application of the lower ROE is that the project is not a part of the company's rate base. FIPUG disagrees that this is a legitimate basis for excluding the oil backout investment and revenues from the tax savings calculation and regards the practice as nothing more than a "partial offer." In granting FIPUG's petition to require base rate recovery of the costs of the project, the Commission would remove any basis for exclusion. In its order, the Commission should direct FPL to include the oil backout investment, revenues and expenses in any pending and future tax savings refund determinations.

FPL: What tax savings? Since FPL has only recovered through the Oil Backout Cost Recovery Factor actual tax expense reflecting current income tax rates, there are no oil backout tax savings to refund.

STAFF: There are no tax savings from oil backout to refund. However, if 13.6% is determined to be the appropriate ROE, as Staff has proposed herein, additional funds will be due to ratepayers.

OPC: Public Counsel adopts and supports FIPUG's position on this issue.

ISSUES OF LAW

17. ISSUE: Once the Florida Public Service Commission has approved a project as an oil backout project is it required to continue to collect all costs associated with the project through an oil backout surcharge if circumstances change and the originally projected savings do not materialize? (FIPUG)

FIPUG: No. The Commission reserved the opportunity to review FPL's oil backout project every six months and Rule 25-14.016(4)(d), F.A.C., contemplates that "normally the remaining unrecovered cost of the qualified oil backout project shall be rolled into the utilities base rates without altering the depreciation period at the utility's next rate base filing and cost recovered for the qualified oil backout project through the Oil Backout Cost Recovery Factor shall terminate ..." At the time FPL's oil backout project was approved and the rule was adopted, all utilities were having frequent base rate increases. It would appear that the rule did not contemplate long term application of the Oil Backout Cost Recovery Factor. This is especially unwarranted now that facts have materially changed.

FPL: Yes. This approach is consistent with the Oil Backout Rule, 25-17.016, F.A.C. The Commission's original intent, articulated throughout FPL's qualification proceeding, the oil backout rule amendment proceeding, and FPL's initial oil backout cost recovery proceeding, was that once a project was qualified, it would continue to be recovered through the Oil Backout Cost Recovery Factor unless and until the remaining unrecovered cost of the Project was rolled into the utility's base rates in a utility's base rate filing. This is specifically stated in Subsection (4)(d) of the Oil Backout Rule. In addition, under that same subsection, even if the recovery of project costs is rolled into base rates, two-thirds of the Project's actual net savings are to continue to be recovered as revenues through the Factor and taken as additional depreciation until the Project is fully depreciated.

In establishing this policy and codifying it in the Oil Backout Rule, the Commission was aware that the

projections on which the qualification decision was made might deviate from actual experience. Nonetheless, even with this knowledge that the circumstances might change and savings might not materialize, the Commission adopted the Oil Backout Rule and approved projects. it would be inconsistent with the Oil Backout Rule and prior Commission pronouncements to discontinue recovery through the Factor of Project costs due to changed circumstances.

It would be particularly unfair to FPL for the Commission to make such a policy change now since FPL requested the roll over of Project cost recovery into base rates in its 1984 rate case, and the Commission denied the request, opting for continuing recovery through the Factor.

STAFF: Yes. Rule 25-17.016(4)(d) provides that once an oil backout project is approved, the utility's costs "shall continue to be recovered through the Oil-Backout Cost Recovery Factor until such time as they are included in the base rates of the utility." Thus, although the rule allows for a change in the type of recovery during the course of the used and useful life of the project (from oil backout cost recovery to rate base recovery), the rule does not provide for discontinuance of the project.

OPC: Public Counsel adopts and supports FIPUG's position on this issue.

18. ISSUE: As a matter of law, can the Florida Public Service commission place an accelerated depreciation surcharge on present customers to require them to pay the full cost of transmission facilities which are being used to provide reliability and capacity in three or four years when the facilities will be in use and useful service for more than 25 years? (FIPUG)

FIPUG: Section 366.07, F.S., provides that whenever the Commission finds rates to be unreasonably discriminatory or preferential, it shall revise the rates. In light of diminished fuel savings which are inadequate to justify the present extraordinary energy charge, it is discriminatory to ask present customers to pay the full

cost of a plant that will have a useful life for the next generation of ratepayers.

The income tax normalization procedure utilized by the Commission requires present customers to pay income taxes in excess of the utility's present tax liability to ensure that today's customers do not get the benefit of accelerated depreciation to the detriment of future customers. A logical corollary to this procedure would be to prohibit a utility from charging today's customers the full cost of facilities which will be used for 25 years.

FPL: This issue is a direct attack on the Oil Backout Rule. FIPUG has waived its right to raise this issue by failing to challenge the Rule or appeal the Commission's adoption of the Rule. This issue should not be addressed in this proceeding. There is nothing unfair, unreasonably discriminatory or unduly preferential regarding the Oil Backout Rule or its application to FPL. The customers paying revenues which have been taken as accelerated depreciation on the Project have enjoyed significant savings as a result of the Project. The Oil Backout Rule simply authorizes the sharing of those savings until the Project is fully depreciated. In fact, even with allowing FPL to recovery revenues and take accelerated depreciation equal to two-thirds of the Project's actual savings, current and past customers have benefited from construction of the Project and are better off than they would have been if the Project had not been built. Now that the Project is fully depreciated, customers will benefit even more.

STAFF: Yes, pursuant to Rule 25-17.016.

OPC: Public Counsel adopts and supports FIPUG's position on this issue.

19. ISSUE: Is there any legal basis for charging customers costs associated with utility generating plants that have not been built, are not under construction and are not presently projected to be built? (FIPUG)

FIPUG: Charging present customers costs associated with phantom plants is expressly precluded by the provisions of Section 366.06, F.S.

FPL: This so-called issue is totally irrelevant. The factual premise included in this issue is erroneous and cannot be established. There is no recovery of costs of unbuilt generating plants through the Oil Backout Cost Recovery Factor. FPL does recover and take as accelerated depreciation costs associated with its 500 kV Project. The Project is undeniably used and useful and properly subject to recovery under Section 366.06, Florida Statutes.

STAFF: Agree with FPL. In addition, the "avoided unit" rationale is the same as that used in setting avoided capacity payments for cogenerators.

OPC: Public Counsel adopts and supports FIPUG's position on this issue.

20. ISSUE: Does collection of capacity charges in excess of fuel savings through a fuel cost recovery charge comply with the law? (FIPUG)

FIPUG: No.

FPL: Yes. Recovery of purchased power capacity charges through a fuel cost recovery charge is permissible and within the Commission's regulatory discretion regardless of the level of fuel savings. It is certainly consistent with long standing Commission practice.

STAFF: Yes.

OPC: Public Counsel adopts and supports FIPUG's position on this issue.

21. ISSUE: Does Rule 25-17.016(6), F.A.C., require the discontinuance of the OBCRF when the transmission line costs are fully recovered? (FIPUG)

FIPUG: Yes. Apparently this will be October, 1989, unless the Commission grants FIPUG's petition that accelerated depreciation charges be refunded.

FPL: Yes. However, the costs of FPL's Project will not be fully recovered when the Project is fully depreciated in August, 1989. There will continue to be Project costs

such as operating and maintenance expenses, property taxes and a return requirement on nondepreciable land and prepaid Project income taxes.

STAFF: No. The transmission line itself is only one component of the entire project. In any event, oil backout cost recovery of project costs should not be discontinued until such time as they are included in rate base.

OPC: Public Counsel adopts and supports FIPUG's position on this issue.

22. ISSUE: 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)

FIPUG: No. Where changes in circumstances render the continuation of the Commission's earlier ratemaking decision unreasonable and unwarranted, the Commission has the ability and the obligation to modify its earlier action. In its original order the PSC reserved jurisdiction to adjust the oil backout rate based on current evidence.

FPL: Yes.

STAFF: Yes, insofar as FIPUG attempts to discontinue such recovery without substitution of rate base recovery.

OPC: Public Counsel adopts and supports FIPUG's position on this issue.

23. ISSUE: 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)

FIPUG: No. FIPUG's action is not inconsistent with he rule. Even if the rule did not contemplate periodic review of the oil backout rate, Rule 25-17.016 must be

construed and interpreted in light of the Legislature's requirement that rates be reasonable, and that the Commission prospectively fix reasonable rates when existing rates are demonstrated to be unreasonable. Because the Commission has no authority to adopt a rule which would contravene this mandate, there is no inconsistency and Section 120.68(12)(b), Florida Statutes, is inapplicable.

FPL: Yes.

STAFF: Yes.

OPC: Public Counsel adopts and supports FIPUG's position on this issue.

24. ISSUE: 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)

FIPUG: No. With respect to recovery of the revenue requirements of the line, FIPUG requests only that the oil backout surcharge be eliminated prospectively and the requirements recovered through base rate mechanisms prospectively, as is appropriate when modifying a decision to reflect changes in circumstances. With respect to the claim of "deferral benefits" which led to an improper collection of revenues for accelerated depreciation, the commission specifically deferred and reserved the issue of the appropriate quantification of deferral benefits when it decided to allow them in the formula. With respect to both, the Commission has advanced--and the Supreme Court of Florida has upheld--the proposition that continuing jurisdiction to review and adjust collections is a legal quid pro quo for the utility's ability to employ ongoing cost recovery clauses.

FPL: Yes.

STAFF: Yes.

OPC: Public Counsel adopts and supports FIPUG's position on this issue.

25. ISSUE: May the Commission revisit project qualification under the Oil Backout Rule and cease recovery of an oil backout project? (FPL)

FIPUG: FIPUG does not contest the original qualification of the oil backout project in this proceeding. Because changes in circumstances render the oil backout component of the rate structure presently unreasonable and unjust to customers, it should be terminated in a manner that will not be prejudicial to the utility.

FPL: No.

STAFF: No. Absent fraud or a similar occurrence which would void the initial proceeding, and absent the substitution of rate base recovery, oil backout cost recovery must continue.

OPC: Public Counsel adopts and supports FIPUG's position on this issue.

26. ISSUE: 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)

FIPUG: No.

FPL: Yes.

STAFF: Yes.

OPC: Public Counsel adopts and supports FIPUG's position on this issue.

27. ISSUE: 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)

FIPUG: No.

FPL: Yes.

STAFF: Yes, absent inclusion of the project in rate base.

OPC: Public Counsel adopts and supports FIPUG's position on this issue.

28. ISSUE: 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)

FIPUG: No. A corollary to the Commission's established authority to review past collections of revenues under ongoing adjustment clauses is the right and ability of an affected party to invoke that authority through an appropriate showing.

FPL: Yes.

STAFF: Yes. FIPUG waived any objection for those periods. However, this issue is irrelevant. Had FIPUG objected in any of the three prior proceedings in which deferred capacity savings were calculated using the deferred Martin Coal units, the Rule would have required the same result: once approved, recovery of the project continues.

OPC: Public Counsel adopts and supports FIPUG's position on this issue.

29. ISSUE: Whether the requested refund of oil backout revenues would constitute illegal retroactive ratemaking? (FPL)

FIPUG: No. The Supreme Court of Florida has upheld the authority of the Commission to adjust or disallow past revenues collected through the mechanism of an ongoing adjustment clause. Further, the refund sought by FIPUG would not deny recovery of any of the revenue requirements

associated with the project. If accelerated depreciation is reversed and those monies are refunded, the undepreciated value of the investment will be built back up accordingly, and recovered over a proper period of time.

FPL: Yes.

STAFF: Yes.

OPC: Public Counsel adopts and supports FIPUG's position on this issue.

30. ISSUE: Whether FIPUG's argument that FPL cost estimates for the Martin Coal units are overstated should be heard? (FPL)

FIPUG: The issue of the Martin coal unit cost estimates is appropriately raised in this docket because:

1. FPL assumes, without support that these units would have been built and in operation in 1987 and 1988, respectively.

2. Had the units been deferred subsequent to 1982 because of declining peak load forecasts, the cost of constructing these units might have been substantially affected due to refinements in the cost estimates and changes in the construction.

3. FPL has not shown that construction of these units for 1987 and 1988 in-service date would have been necessary and that these units would have been the least cost alternatives had FPL had entered into the UPS agreements in 1988.

4. FIPUG's petition alleged that the use of the Martin plants as the basis for unit deferral was inappropriate and the claimed deferral benefits

illusory. Mr. Pollock's observations concerning timing of the need for capacity and appropriateness of cost parameters constitute further aspects of this fundamental contention.

FPL: No. This argument appears for the first itme 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.

STAFF: No.

OPC: Public Counsel adopts and supports FIPUG's position on this issue.

STIPULATED ISSUES

There are no known stipulations.

MOTIONS

There are no known motions.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that these preceedings shall be governed by this order unless modified by the Commission.

By ORDER of Commissioner John T. Herndon, as Prehearing Officer, this 21st day of AUGUST, 1989.

John T. Herndon

JOHN T. HERNDON, Commissioner
and Prehearing Officer

(S E A L)

MER

M E M O R A N D U M

August 21, 1989

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (RULE) MER

RE: DOCKET NO. 890148-EI - PETITION OF THE FLORIDA INDUSTRIAL POWER USERS GROUP TO DISCONTINUE FLORIDA POWER & LIGHT COMPANY'S OIL BACKOUT COST RECOVERY FACTOR.

21755

Attached is a Prehearing Order to be issued in the above docket.

MER/sj/3993L

Attachment/Order