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October 13, 1989

HAND DELIVERED

Mr. Steve Tribble, Director
Division of Records and Reporting
Florida Public Service Commission
Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32399

Re: Docket No. 890148-EI, Petition of the Florida Industrial Power Users Group to Discontinue Florida Power and Light Company's Oil Backout Cost Recovery Factor.

Dear Mr. Tribble:

Pursuant to Staff Counsel's request, enclosed for filing and distribution are the original and 15 copies of FIPUG's Post-hearing Statement of Issues and Positions in the above case.

Also enclosed is an extra copy of the Posthearing Statement of Issues and Positions. Please stamp it with the date of filing and return it to me.

ACK ↘
AFA
APP
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Yours truly,

Vicki Gordon Kaufman

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VGK/jfg

Enclosures

DOCUMENT NUMBER-DATE
10192 OCT 13 1989
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of the Florida Industrial Power Users Group to Discontinue Florida Power and Light Company's Oil Backout Cost Recovery Factor.	DOCKET NO. 890148-EI Filed: October 13, 1989

THE FLORIDA INDUSTRIAL POWER USERS GROUP'S POSTHEARING STATEMENT OF ISSUES AND POSITIONS

The Florida Industrial Power Users Group ("FIPUG"), files the following Posthearing Statement of Issues and Positions.

Introduction

In its Posthearing Statement, FIPUG will address only those issues remaining for determination after the Florida Public Service Commission's ("Commission") grant of Florida Power and Light's ("FPL") renewed motion to dismiss at hearing. Tr. 226.[1/] At hearing, the Commission ruled that the following issues identified in the Prehearing Order, Order No. 21755, remained for determination: Issues 2, 5, 6, 12, 13, 16, 18, 19, 21, 26-30. Tr. 226. It is unclear whether Issue 11 remains (compare Tr. 220 with Tr. 226); however, since it relates to the calculation of accelerated depreciation, FIPUG has included it.

1/ FIPUG has set out its exception to this ruling in its Posthearing Brief. FIPUG's positions on the issues not considered at hearing are denoted its Prehearing Statement.

Summary of FIPUG's Position

It is FIPUG's position that FPL should be required to refund past collected revenues associated wtih accelerated depreciation, which amounts to approximately $285 million. The current application of the Oil Backout Cost Recover Factor ("OBCRF") permits FPL to collect two and perhaps three times for the same capacity. FPL's application of the OBCRF requires customers to pay for the Southern contract capacity charges, the alleged "savings" which arise because the Martin units were not built, and the carrying costs for displaced oil burning units. FPL has failed to prove that the Martin units were needed in 1987 and 1988, while FIPUG has shown that these units could be deferred until at least 1992 because of lower load forecasts during the 1983 to 1986 time frame. The Martin unit "deferral benefits" have greatly changed since 1982, but FPL continues to use 1982 parameters to quantify and inflate the alleged benefits. The revenues related to the Martin units should be refunded.

Further, the capacity charges which FPL pays to the Southern Company are for the purpose of obtaining capacity to meet FPL's basic load requirements. Because these capacity payments greatly exceed net energy savings, they should not be recovered through the OBCRF.

Finally, FPL should not be permitted to charge a 15.6% return on equity on the equity portion of its capital investment in the Transmission Line Project ("Project"). The oil backout rule requires FPL to use its actual cost of capital which FPL admits is far below 15.6%.

Statement of Issues and Positions

Issues of Fact

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

FIPUG Position: Yes. FPL should be required to refund past collected backout revenues associated with accelerated depreciation for three reasons. First, FPL's savings calculations fail to recognize that customer conservation and other factors have enabled FPL to find less expensive ways to meet customers' needs at a later time than the "deferred" Martin units. Through September 1989, FPL has collected $285 million in accelerated depreciation. Tr. 61; Exhibit 611. However, FPL has performed no analysis to determine what would have occurred had the Project not been built (in order to calculate Project "benefits"). FPL simply continues to apply the assumptions it used in 1982 with no analysis of the validity of such assumptions.

In order to ascertain if the Martin units are the deferred units and would have been constructed in 1982, circumstances subsequent to 1982 must be reviewed. Tr. 259. FPL failed to supply any such analysis at hearing. However, FPL's Ten-Year Power Plant Site Plan: 1989-1998 demonstrates that FPL has no plans to construct 700 MW pulverized coal-fired units (similar to the Martin units) during the forecast period. Tr. 88-89. Therefore, it is inappropriate to treat the Martin units as "deferred" for the purposes of calculating accelerated depreciation. The units which are actually being "deferred" (if

any) are the units which should be used to calculate accelerated depreciation.

Even if the Commission accepts FPL's premise that the Martin units were deferred, FPL has not supported its "savings" claim. In calculating savings, FPL utilizes the original 1982 costs of constructing the units (based on a 1979 contract), adjusted only for inflation rates. Tr. 92, 419; Exhibit 216, Attachment II, line 4. FPL has locked the 1982 direct costs of the "deferred" units into its savings calculation in contravention of Order No. 11210, Docket No. 820001-EU, where the Commission rejected FPL's proposal to lock in the costs. This Commission explicitly recognized the ever-changing nature of the generation planning process and the very likely possibility that the assumptions made by FPL in 1982 might change in the future.

If FPL had not constructed the Project, prudent utility planning would have required it to analyze changes in conditions over time and incorporate them into the generation planning process. However, FPL did no analysis of the other options which were available to it and provided absolutely no analysis at hearing to support its position that the Martin units were the most cost-effective alternative.

In contrast to FPL's lack of analysis, the evidence presented by FIPUG illustrates that changes in circumstances occurred which should have caused FPL to question its continued use of the Martin units to calculate deferred benefits. As early as 1984, FPL recognized a significant decrease in load growth which allowed FPL to defer Martin Unit 3. Docket 830377-EU,

hearing transcript, pp. 533-35.[2/] Decreases in load forecasts indicate that the proposed construction schedule for the Martin units could have been pushed further into the future, resulting in less costly units. Tr. 115-16.

Changes in the construction environment also occurred which would have resulted in a lower direct cost per KW and a lower per KW total cost for the units. However, rather than update its cost estimates, FPL continues to use its 1982 estimates for the Martin units, no doubt because 1982 costs result in significantly higher capacity deferral benefits. Tr. 93-94.

FPL's use of 1982 estimates does not support the collection of $285 million. An updated analysis of the timing need for additional capacity had the Project not been built is an absolute prerequisite to the collection of such savings. FPL did not perform such an analysis. Jeffry Pollock--who offered the only evidence on the subject--demonstrated that changes occurred which would have enabled FPL to defer the unit until 1992 even if the Project had not been built. Based on the timing issue alone, the money collected through accelerated depreciation must be refunded.

Second, the backout revenues associated with accelerated depreciation should be refunded because they represent a return on fictional assets which are not used and useful in violation of Section 366.06(1), Florida Statutes. Only utility property which

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2/ FIPUG requested official notice of excerpts from this docket. The request was granted. Tr. 18.

is used and useful in the public service may be used for rate-making purposes. No money was invested by FPL in the "deferred" plants; they were never in used and useful service. Therefore, recovery based on these plants is prohibited.

Similarly, FPL should not be permitted to earn a return on plants in rate base whose use has been displaced due to the Project. Earning a return on these plants enables FPL to recover three times for the same capacity--Southern Company capacity charges, previously active FPL plants, and two-thirds of the cost of the "deferred" plants.

Third, FPL's savings calculations are overstated. Fuel savings are overstated because computer simulations include high cost sources of energy due to the use of FPL's oil plants to meet customer demands. FPL's shrinking reserve margin is evidence that FPL oil plants are not being removed from service but are being used to meet load growth. Tr. 76; Exhibits 606, 607. The capacity financing costs and the direct construction costs of the deferred phantom plants are also overstated when compared with other FPL cost estimates for similar plants. Tr. 93.

See also, Argument, Section I, of FIPUG's Brief which is incorporated herein by reference.

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

FIPUG Position: Yes. The evidence demonstrated that FPL is using Southern System generating capacity to meet its basic load

requirements. While there may have been some logic to collecting this charge through the fuel clause when the total price for electricity was less than FPL would spend for fuel and operating and maintenance expense only for its own units, this charge should no longer be collected through the fuel clause because the capacity charges now exceed the estimated fuel savings by $153 million. Exhibit 208, Document 4.

This Commission has previously ruled that the fuel clause may not be utilized to recover capital costs. Docket No. 74680-CI, Order No. 7644. This order was affirmed by the Florida Supreme Court. Similar logic should be followed in this case. If the capacity charges cannot be absorbed by FPL, it has the option to file a rate case.

Additionally, and most importantly, the oil backout rule itself prohibits the recovery of capacity costs through the OBCRF. Rule 25-17.016(4)(a) specifically delineates the charges to be collected through the OBCRF. Capacity charges are not included in that list.

See also, Argument, Section II, of FIPUG's Brief which is incorporated herein by reference.

Issue 6: Is FPL justified in charging a 15.6% return on the equity porton of its capital invested in the 500 KV transmission lines? (FIPUG)

FIPUG Position: No. Rule 25-17.016(4)(e) requires FPL to use its "actual cost of capital" for the Project. FPL currently earns a return on equity ("ROE") of 15.6% on the Project. Tr. 285. This is far in excess of the 13.6% ROE which FPL utilizes

for its non-oil backout rate base. Tr. 79. As the Commission recognized at its Agenda Conference on September 19, 1989, 13.6% more closely reflects FPL's actual cost of capital. The plain language of the rule requires FPL to use its actual cost of capital.

See further detailed discussion of this issue in Argument, Section IV, of FIPUG's Brief which is incorporated herein by reference.

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

FIPUG Position: No. While the Martin units were planned at one time, they are no longer part of FPL's generation plans and thus are not being deferred. As also discussed in Issue 2, circumstances have changed so that the in-service date of the units and their cost parameters would have been vastly different from the assumptions used by FPL in 1982 even if the line had not been built.

See also Argument, Section V, of FIPUG's Brief which is incorporated herein by reference.

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

FIPUG Position: No. FPL's savings calculations do not recognize the less expensive options available to FPL to meet

customer needs, the prohibition of recovery on an investment not used and useful, and the overstatement of claimed savings. See discussion of Issue 2.

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

FIPUG Position: The refund due to ratepayers is not a result of the tax rate applied by FPL but is due to FPL's refusal to apply the 13.6% ROE to its earnings on the Project.

In Order No. 20659, the Commission approved FPL's use of a 13.6% ROE for application of the tax savings rule in 1987. This same amount was approved as the appropriate ROE for 1988. Order No. 18340. However, FPL has consistently refused to apply the 13.6% ROE to its investment in the oil backout project. Instead, FPL utilizes a 15.6% ROE which is the ROE authorized in its 1984 rate case. Docket No. 830465-EI. FPL has no basis for utilizing a 15.6% ROE on the Project. Excluding the rate base and net income associated with the Project resulted in an understatement of FPL's tax savings refund by $6.7 million in 1987. Tr. 60.

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

FIPUG Position: Yes. Additionally, the Commission should direct FPL to include the oil backout investment, revenues and expenses in all pending future tax savings refund determinations.

Issues of Law

Issue 18: 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 Position: No. Section 366.07, Florida Statutes, requires a rate adjustment when rates are found to be unjust, unreasonable or unjustly discriminatory. Requiring current customers to pay the full costs of a project which will benefit future customers is clearly discriminatory. Current customers should not pay the full cost of a project that will be used for 25 years.

In analogous situations, the Commission has utilized a policy of intergenerational equity to prohibit current customers from receiving a rate reduction at the expense of future customers; i.e., the nuclear decommissioning surcharge.

The concept of intergenerational equity should be used for the Project as well. Current customers should not be required to pay in two years for a project that will be used over many more years and will benefit future customers.

See also, Argument, Section I. D., of FIPUG's Brief which is incorporated herein by reference.

Issue 19: 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 Position: No. Section 366.06(1), Florida Statutes, requires that rates be based on:

> the actual legitimate costs of the property of each utility company, actually used and useful in the public service. . . .

Emphasis supplied. A utility is entitled to a return on its property which is used or useful in the public service. Keystone Water Co., Inc. v. Bevis, 278 So.2d 606, 609 (Fla. 1973).

Units which are not currently built and which FPL has no intention of ever constructing certainly do not meet the criterion of used and useful. Therefore customers may not be charged for any costs associated wtih such nonexistent units.

Issue 21: 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 Position: Yes. Rule 25-17.016(6), Florida Administrative Code, states:

> Once the costs of a qualified oil-backout project have been recovered, the applicability of the Oil-backout Cost Recovery Factor shall terminate.

According to FPL, the Project will be fully depreciated in August, 1989. At that time, according to the plain language of the rule, FPL will have recovered all the costs of the Project and the OBCRF must terminate. There is no support in the rule

for continuing to recover operating and maintenance expenses and other expenses through the OBCRF as FPL suggests.

See also, Argument, Section III, of FIPUG's Brief which is incorporated herein by reference.

Issue 26: 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 Position: No. Chapter 366, Florida Statutes, contains numerous sections which demonstrate that it is not only the Commission's right, but its duty, to monitor the rates charged by electric utilities to ensure that they are not discriminatory and to modify those rates if they become discriminatory. See, i.e., sections 366.04(1), 366.05(1), 366.041(1) and 366.07, Florida Statutes. The Commission's responsibility to supervise rates is ongoing.

The evidence demonstrated that the major portion of the costs which flow through the OBCRF are UPS capacity charges and that such costs are demand-related because FPL purchases UPS capacity in order to maintain system reliability. Tr. 83-86. The evidence further demonstrated that 18.3% of oil backout costs are recovered from the GSLD/CS rate classes and that this is 28% higher than those classes' cost responsibility would be if such costs were treated in the same way as other demand-related costs. Exhibit 610. It is unduly discriminatory to charge the

GSLD/CS classes rates which are 28% higher than their corresponding cost responsibility. Tr. 82.

See also, Argument, Section VI, of FIPUG's Brief which is incorporated herein by reference.

Issue 27: 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 Position: No. Section 120.68(12(b) requires the appellate court to remand a case to the agency if the agency's exercise of discretion is inconsistent with an agency rule. However, FIPUG's request that recovery of oil backout project costs not be made through an energy-based charge is not inconsistent with any Commission rule.

Rule 25-17.016 does not specify how oil backout project costs shall be recovered. It does not specify that they be recovered through an energy-based charge.

Further, recovery of the OBCRF through an energy-based charge is discriminatory and violative of numerous provisions of Chapter 366. See Issue 26. Thus, an interpretation of rule 25-17.016 to require collection of the charge in this manner would void the rule on the basis that it is an invalid exercise of legislative authority. Section 120.56(1).

Issue 28: **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 Position: This issue relates to FIPUG's ability to contest the use of the Martin Coal units in calculating deferred capacity savings. FIPUG is not estopped from raising this issue for the same reasons it is not barred from contesting the collection of the OBCRF through an energy-based charge. See discussion of Issue 26. Any action which a utility takes which subjects customers to discriminatory rates is subject to review by this Commission, on the Commission's own motion, or upon showing by an affected party.

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

FIPUG Position: No. The refund of improperly collected accelerated depreciation does not constitute retroactive ratemaking. The issue of refunding funds improperly collected through an ongoing adjustment clause was directly addressed by the Florida Supreme Court in Gulf Power Co. v. Florida Public Service Commission, 487 So.2d 1036 (Fla. 1986).

In Gulf Power, the Court addressed the propriety of refunds for monies improperly collected through the fuel adjustment

charge. The Court laid to rest the argument that such a refund would constitute retroactive ratemaking. The Court held:

> Nor do we find that the [refund] order constitutes prohibited retroactive ratemaking fuel adjustment. The fuel adjustment proceeding is a continuous proceeding. . . .

Id. 1037. Thus, the Commission has the authority to adjust or disallow revenues previously collected through an adjustment clause.

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

FIPUG Position: Yes. The issue of the Martin Coal Unit cost estimates are an integral part of the appropriateness of FPL's collection of revenues related to accelerated depreciation. See Issues 2, 11 and 12. Thus, it is an issue within the scope of the issues raised in FIPUG's Petition and recognized by all parties as an issue pertinent to this proceeding.

The only basis for the collection by FPL of any accelerated depreciation at all is the inclusion of these "deferred" units in its calculation of net savings. Tr. 60-61. FPL's assumptions in regard to the timing and cost of the Martin Units are related to how the amount of accelerated depreciation was calculated. For example, FPL has relied on the original cost estimates of constructing the units (adjusted only for the difference in escalation rates). This has significantly inflated the deferred

capacity benefits, Tr. 92, and thus inflated the amount of depreciation. Similarly, FPL's estimate of when these units would have been built also impacts the depreciation calculation.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Florida Industrial Power Users Group's Statement of Issues and Positions has been furnished by U.S. Mail or by hand delivery* to the following parties of record, this 13th day of October, 1989.

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