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RECORDS AND
REPORTING

January 20, 1999

Ms. Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0870

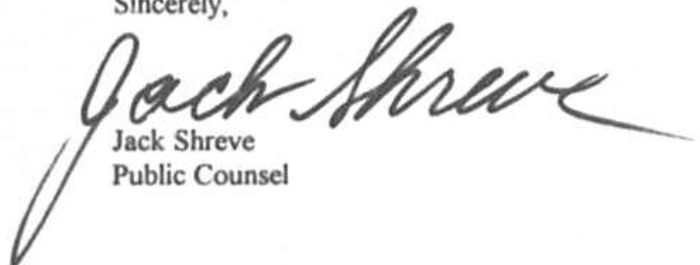
RE: Petition by the Citizens of the State of Florida to Have the Florida Public Service Commission Conduct a Full Revenue Requirements Rate Case and Establish Reasonable Base Rates and Charges for Florida Power & Light Company; Docket No. 990067-EI.

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of a Petition by the Citizens of the State of Florida to Have the Florida Public Service Commission Conduct a Full Revenue Requirements Rate Case and Establish Reasonable Base Rates and Charges for Florida Power & Light Company for filing in your office.

Also enclosed is a 3.5 inch diskette containing the Petition in WordPerfect for Windows 6.1. Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

Sincerely,


Jack Shreve
Public Counsel

/dsb
Enclosures

DOCUMENT NUMBER-DATE

00711 JAN 20 99

TPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for a full revenue
requirements rate case for
Florida Power & Light Company.

Docket No.: _____
Filed: January 20, 1999

**PETITION BY THE CITIZENS OF THE STATE OF FLORIDA
TO HAVE THE FLORIDA PUBLIC SERVICE COMMISSION
CONDUCT A FULL REVENUE REQUIREMENTS RATE
CASE AND ESTABLISH REASONABLE BASE RATES AND
CHARGES FOR FLORIDA POWER & LIGHT COMPANY**

The Citizens of the State of Florida, through the Office of Public Counsel, pursuant to Section 350.0611, Florida Statutes (1997), petition the Florida Public Service Commission to: (1) order Florida Power & Light Company (FPL) to hold all revenues contributing to earnings above a 13% return on equity, calculated without regard to the current accelerated base rate cost-recovery plan approved in Order No. PSC-98-0027-FOF-EI, subject to refund with interest pending the outcome of hearings; (2) order FPL to file a full set of minimum filing requirements (MFRs) based upon a historic 1998 test year; (3) adopt a procedural schedule to allow for the expeditious processing of a full revenue requirements rate case; (4) conduct hearings pursuant to Section 120.569 and 120.57(1), Florida Statutes (Supp. 1998), including customer hearings in FPL's service area, to take evidence on matters affecting the reasonableness of FPL's base rates and charges, including but not limited to, the allowed return on equity, rate base, capital structure, quality of service, and costs currently being recovered through environmental cost recovery factors (which pursuant to Section 366.8255(5), Florida Statutes (1997), may be included in base rates); and (5) issue a final order directing the return of rates held subject to refund, adopting a lower return on equity, and setting lower retail base rates and charges; and as grounds therefor, state:

DOCUMENT NUMBER-DATE

00711 JAN 20 99

FPSC-RECORDS/REPORTING

1. Notices, pleadings, correspondence and orders in this docket should be sent to:

Jack Shreve
Public Counsel
John Roger Howe
Deputy Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, FL 32399-1400

2. The Public Counsel is authorized, pursuant to Section 350.0611, Florida Statutes (1997), to provide legal representation for the people of the state in proceedings before the Commission. Subsection 350.0611(1) authorizes the Public Counsel "[t]o recommend to the Commission, by petition, the commencement of any proceeding or action or to appear, in the name of the state or its citizens, in any proceeding or action before the Commission and to urge therein any position he or she deems to be in the public interest." Public Counsel is filing this petition on behalf of the retail customers of FPL who are substantially and adversely affected by Commission-approved rates and charges which provide FPL with excessive profits in terms of the company's allowed return on equity (ROE) range and in terms of prevailing financial market conditions.

3. Jurisdiction to consider this petition and to establish fair and reasonable retail rates and charges for electric utilities is vested in the Commission pursuant to Chapter 366, Florida Statutes (1997). FPL, a Florida corporation with headquarters at 9250 West Flagler Street, Miami, Florida 33174, is a "public utility" and an "electric utility" as those terms are defined in Subsections 366.02(1) and (2), Florida Statutes (1997). Rates and charges currently being collected by FPL were authorized by the Commission in various orders issued pursuant to its statutory authority.

4. The rate-setting process has long been recognized as dynamic, imposing upon the Commission an obligation to investigate and establish new rates and charges whenever changed circumstances allow previously established rates and charges to provide a utility company with excessive profits. Section 366.06, Florida Statutes (1997), requires the Commission in such circumstances to balance the interests of an electric utility and its customers by setting new base rates and charges for retail service so that customers' rates do not yield excessive compensation for the services rendered.¹

5. Current conditions in the capital markets as well as ROE's being awarded in other jurisdictions demonstrate that FPL's current ROE range is excessive. FPL's last full revenue requirements rate case was decided fourteen and one-half years ago by Order No. 13537, issued July 24, 1984, in Docket No. 830465-EI.² FPL's currently allowed ROE range of 11% to 13%, with a 12% midpoint, was established by Order No. PSC-93-1024-FOF-EI, issued July 13, 1993, in Docket No. 930612-EI. At that time, 30-year U.S. Treasury Bonds were yielding 6.62%. On January 20, 1999, the Wall Street Journal reported the 30-year Treasury Bond yield to be 5.136%, or 148.4 basis

¹In Bluefield Waterworks & Improvement Co. v. Public Service Comm'n of West Virginia, 262 U.S. 679, 693 (1923), the United States Supreme Court observed that "[a] rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally." In United Telephone Company v. Mann, 403 So. 2d 962, 968 (Fla. 1981), the Florida Supreme Court said the Commission can adjust a utility's rates even though it is earning within its previously established rate of return range. In United Telephone Co. v. Mayo, 345 So. 2d 648, 653 (Fla. 1977), the Court observed that a utility's rate of return "cannot be set so low as to confiscate the property of the utility, nor can it be made so high as to provide greater than a reasonable rate of return, thereby prejudicing the consumer."

²Reconsideration was granted by Orders Nos. 13948 and 13948-A, issued December 24, 1984, and January 9, 1985, respectively. The 1985 step increase was confirmed in Order No. 14005, issued January 16, 1985.

points lower. Consideration of a fair risk premium for FPL in today's financial environment as well as other relevant matters affecting the reasonableness of FPL's ROE should lead the Commission to set a new midpoint well below 12%.

6. Traditionally, electric utility rates have been set at levels adequate to provide revenues sufficient to cover prudently incurred expenses and provide a fair return to investors. Prudent expenses were generally defined as those necessarily incurred, both in time and amount, to provide safe, adequate and efficient service to customers. The recent accelerated base rate cost-recovery plans approved by the Commission in Dockets Nos. 950379-EI and 970410-EI, however, have altered the traditional relationship between FPL's rates and its reported profits. These plans have allowed FPL to continue reporting earnings within its authorized equity return range even though, in the absence of these plans, current rates would generate profits well above the maximum of FPL's current ROE range. FPL's current rates are all the more excessive when the earnings they generate are compared against those which would be considered reasonable in today's financial market.

7. The foregoing observations are not meant as a criticism of the plans themselves. Long-term benefits for both FPL and its customers may have been achieved by lowering the investment base upon which future rates will be set. The time has now come, however, for the customers to share in the benefits they have purchased.

8. In its order approving the current accelerated base rate cost-recovery plan, the Commission stated that its action would not preclude a base rate proceeding before the current plan expired.³ Such a provision would be meaningless if the plan were to remain in effect throughout its

³The eighth ordering paragraph of Order No. PSC-98-0027-FOF-EI, issued January 5, 1998, in Docket No. 970410-EI, reads: "ORDERED that the Plan neither precludes an earnings
(continued...)"

two-year term even if a rate case was filed. If that had been the Commission's intention, it would have proscribed rate cases (or at least rate changes) until the plan expired at the end of 1999. The appropriate action at this time to protect FPL's customers, in light of the allegations in this petition, is to recognize that the current plan has been superseded by the docket initiated by this petition and follow procedures generally applicable when a company is overearning and a proceeding has been initiated to consider lowering both the ROE range and base rates. The Commission should, therefore, order FPL to stop its accruals under the plan and order FPL to hold all revenues contributing to earnings above the currently allowed maximum ROE of 13%, calculated without regard to additional expenses which would have been recorded under the current plan, subject to potential refund with interest at the end of this proceeding pursuant to Section 366.071, Florida Statutes (1997).

9. The Commission is requested to require FPL to file a full set of MFRs based upon a historic 1998 test year. That year has just ended, permitting FPL to provide relevant data in a timely manner. Moreover, a 1998 test year, with appropriate adjustments for known and measurable changes, would be representative of future operations.

10. The Commission is also requested to adopt a procedural schedule to guide further activity in this docket, allowing for customer hearings in FPL's service area, and including hearings to be held pursuant to Sections 120.569 and 120.57(1), Florida Statutes (Supp. 1998). Disputed

(...continued)

review nor a review of the Plan during the context of a proceeding to reset base rates." This provision was incorporated in the order to make it clear that the plan was not intended to in any way limit ratemaking alternatives otherwise available to the Public Counsel. It was this provision which apparently allowed the Commission staff to file its recommendation in Docket No. 981390-EI to investigate FPL's return on equity and equity ratio. That docket resulted in FPL submitting a proposal to revise its current plan and extend it through 2000. Four protests of the Commission's proposed agency action order accepting the company's proposal, Order No. PSC-98-1748-FOF-EI, were filed on January 12, 1999. FPL moved to dismiss on January 15, 1999.

issues of material fact are unknown at this time but can be expected to arise from virtually all aspects of rate case analysis, such as revenues and expenses on the income statement; rate base components, including fixed assets and working capital; capital structure components, balances, ratios, and cost rates; and rate structure.

WHEREFORE, the Citizens of the State of Florida, through the Office of Public Counsel, petition the Florida Public Service Commission to initiate and conduct a full revenue requirements base rate proceeding in the manner and for the purposes outlined in the body of this petition to establish fair, just and reasonable base rates and charges for Florida Power & Light Company.

Respectfully submitted,



Jack Shreve
Public Counsel
Florida Bar No. 073622

John Roger Howe
Deputy Public Counsel
Florida Bar No. 0253911

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, Florida 32399-1400

(850) 488-9330

Attorneys for the Citizens
of the State of Florida

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above PETITION BY THE CITIZENS OF THE STATE OF FLORIDA TO HAVE THE FLORIDA PUBLIC SERVICE COMMISSION CONDUCT A FULL REVENUE REQUIREMENTS RATE CASE AND ESTABLISH REASONABLE BASE RATES AND CHARGES FOR FLORIDA POWER & LIGHT COMPANY has been furnished by hand-delivery to the following parties this 20th day of January, 1999:

Robert V. Elias, Esquire
Legal Division
Florida Public Service Division
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Tallahassee, FL 32399-0850

Matthew M. Childs, Esquire
Steel Hector & Davis, LLP
215 South Monroe Street
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Tallahassee, FL 32301-1804

Mr. William G. Walker, III
Vice President, Regulatory Affairs
215 South Monroe Street
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Tallahassee, FL 32301-1859



Jack Shreve
Public Counsel