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June 4, 1999

VIA HAND DELIVERY

Blanca S. Bayo, Director
Division of Records and Reporting
Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida 32399-0870

RECEIVED-FPSC
99 JUN -4 PM 3:23
RECORDS AND
REPORTING

Re: Docket No. 990692-EI

Dear Ms. Bayo:

Enclosed for filing and distribution are the original and seven copies of the Florida Industrial Power Users Group's Response to Florida Power & Light Company's Request for Confidential Classification in the above docket.

Please acknowledge receipt of the above on the extra copy enclosed herein and return it to me. Thank you for your assistance.

Sincerely,

Vicki Gordon Kaufman
Vicki Gordon Kaufman

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FPSC-BUREAU OF RECORDS

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Done 6/10/99

MCWHIRTER, REEVES, MCGLOTHLIN, DAVIDSON, DECKER, KAUFMAN, ARNOLD & STEEN, P.A.

DOCUMENT NUMBER - DATE
06000 JUN -4 99
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for Confidential)
Classification of FERC Form 1: Annual)
Report of Major Electric Utilities for)
the year ended 1998, as supplemented)
by Analysis of Diversification)
Activities report, submitted pursuant)
to Rules 25-6.135 and 25-6.1351,)
Florida Administrative Code, by Florida)
Power & Light Company.)
_____)

Docket No. 990692-EI

Filed: June 4, 1999

**THE FLORIDA INDUSTRIAL POWER USERS GROUP'S
RESPONSE TO FLORIDA POWER & LIGHT COMPANY'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION**

The Florida Industrial Power Users Group (FIPUG), pursuant to rule 25-22.006(3)(b),¹ Florida Administrative Code, files its response to Florida Power & Light Company's (FPL) Request for Confidential Classification. Such request should be denied outright and in its entirety. As grounds therefor, FIPUG states:

Introduction

1. FIPUG is a group of large industrial consumers, some of whom are FPL customers. The price of electricity represents one of the largest variable costs incurred by FIPUG's members. Therefore, FIPUG closely monitors data related to FPL's cost to produce electricity as well as the prices FPL pays for wholesale power and fuel in order to ensure that FPL gets the lowest possible price. The only way that FIPUG can monitor FPL's costs and

¹ Rule 25-22.006(3)(b) gives a party 14 days *after service* to respond to a confidentiality request. FIPUG was not served with FPL's request but rather obtained one from the Clerk's office after learning of FPL's filing through a review of new dockets opened. On June 3, FIPUG filed a petition to intervene and an objection. FIPUG now files this detailed response within 14 days of the time it received and reviewed FPL's request.

DOCUMENT NUMBER-DATE

06909 JUN-4 89

FPSC-RECORDS/REPORTING

prices is through the information filed at the Commission, including FPL's filing of the FERC Form 1.

2. On May 28, 1999, FPL filed a request with the Commission seeking to conceal from the public a wide array of diverse information about its operations. FPL seeks to shield the following information from the public:

- a. Electric plant in service;²
- b. Electric plant held for future use;³
- c. Accumulated depreciation;⁴
- d. Allowances;⁵
- e. Sales of electricity by rate schedule;⁶
- f. Sales for resale;⁷
- g. O & M;⁸
- h. Purchased power;⁹

² FERC Form 1, pp. 204-207.

³ FERC Form 1, p. 214.

⁴ FERC Form 1, p. 219.

⁵ FERC Form 1, pp. 228-229.

⁶ FERC Form 1, p. 304.

⁷ FERC Form 1, pp. 310-311.

⁸ FERC Form 1, pp. 320-323.

⁹ FERC Form 1, pp. 326-327.

- i. Transmission revenues;¹⁰
- j. Transmission of electricity by others;¹¹
- k. Depreciation and amortization;¹²
- l. Research and development;¹³
- m. Salaries and wages;¹⁴
- n. Electric energy accounts;¹⁵
- o. Steam electric generating plant statistics;¹⁶
- p. Transmission statistics;¹⁷
- q. Transmission lines added;¹⁸
- r. Substations;¹⁹
- s. Environmental protection facilities;²⁰

¹⁰ FERC Form 1, pp. 328-330.

¹¹ FERC Form 1, p. 332.

¹² FERC Form 1, pp. 336-337.

¹³ FERC Form 1, pp. 352-353.

¹⁴ FERC Form 1, p. 354.

¹⁵ FERC Form 1, p. 401.

¹⁶ FERC Form 1, pp. 402-403.

¹⁷ FERC Form 1, pp. 422-423.

¹⁸ FERC Form 1, pp. 424-425.

¹⁹ FERC Form 1, pp. 426-427.

²⁰ FERC Form 1, p. 430.

t. Environmental protection expenses.²¹

3. In addition, FPL wants to keep secret the following Commission schedules in their entirety:

a. New or amended contracts with affiliates;²²

b. Individual affiliate transactions over \$500,000;²³

c. Summary of affiliate transfers and allocations;²⁴

d. Assets or rights purchased from or sold to affiliates;²⁵

e. Employee transfers.²⁶

Burden of Proof

4. As this Commission has recognized many times, Florida law presumes that all documents submitted to governmental agencies are public records. The presumption is that government shall operate in the sunshine. It is FPL's burden to demonstrate that the documents are entitled to confidential classification.²⁷ FPL has woefully failed to meet this burden.

²¹ FERC Form 1, p. 431.

²² PSC/AFA 16, schedule 2.

²³ PSC/AFA 16, schedule 3.

²⁴ PSC/AFA 16, schedule 4.

²⁵ PSC/AFA 16, schedule 4.

²⁶ PSC/AFA 16, schedule 5.

²⁷ Order No. PSC-96-0737-CFO-EI, Docket No. 960001-EI (June 4, 1996).

FPL's Request Must Be Denied

5. FPL's request to keep the above information secret must be rejected for several reasons. First, the majority of the information FPL seeks to conceal relates to costs and expenses which are borne by the retail ratepayers, such as plant in service, depreciation and O & M. Nonetheless, FPL wants to bar the ratepayers who fund these items from access to this important information.²⁸ Retail ratepayers are entitled to this information in order to ensure that retail utility plant and fuel are appropriately costed and priced.

6. Further, the cost of plant investment composing the retail rate base is clearly in the public domain. Concealing this information from public disclosure will convert the regulatory process into a "Star Chamber" proceeding.

7. Second, all the information FPL seeks to shield is historical information which is many months old. It is difficult to divine of what use such dated information could be to would be competitors.

8. Third, the "justification" which FPL has included with its request is wholly inadequate. FPL's justification consists of broad generalizations, with no specifics, as to the "competitively sensitive" nature of the information. This is the case for both the affidavits and Attachment 1; these materials contain nothing more than unsupported conclusions.

9. Fourth, as to FPL's claim of competition in the wholesale market, it has previously made a similar (though much narrower) request based on alleged competitiveness in the wholesale

²⁸ FIPUG would also point out that much of this information is information which would be required in a rate case. Is FPL suggesting that MFR information would be confidential? Hopefully, the Commission will not consider going down such a path.

market in an attempt to shield from public view certain information on its A schedules. The Commission rejected FPL's request in numerous orders.²⁹

10. In its orders, the Commission noted that FPL had "not stated any specific set of circumstances that justifies classification of A Schedule information as confidential."³⁰ The same is true of FPL's current request. There are nothing but vague conclusory statements in FPL's pleading and attachments.

11. Further, much of FPL's argument is premised on its view that its competitors do not have to disclose similar information. The Commission addressed a similar argument in its earlier orders:

[W]holesale power brokers are required by FERC to file quarterly reports of their interchange transactions. These reports indicate the quantity and price of the transactions for each customer. FPL could use this information much the same as its competitors use the A Schedules to gain a "competitive-edge."³¹

Thus, information is available to FPL in the public domain. And even if it were not, there is a significant difference between a regulated monopoly which is guaranteed a rate of return, like FPL, and non-monopoly competitors.

²⁹ Order No. PSC-96-0737-CFO-EI; Order No. PSC-96-0736-CFO-EI; Order No. PSC-96-0738-CFO-EI; Order No. PSC-96-0739-CFO-EI; Order No. PSC-96-074--CFO-EI; Order No. PSC-96-0734-CFO-EI; Order No. 96-0735-CFO-EI.

³⁰ Order No. PSC-96-0737-CFO-EI at 2.

³¹ *Id.* at 6.

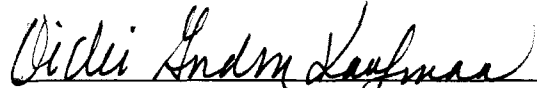
12. FPL's request to shield all information related to affiliate transactions is also highly suspect and should not be permitted. In past proceedings, this Commission recognized the need to closely scrutinize transactions between affiliates because such related companies have a great incentive to deal at less than arms length. FPL should not be permitted to shield these transactions from the light of day.

Conclusion

13. FIPUG specifically opposes FPL's request for confidential treatment on the following grounds:

- a. FPL's request is in contravention of the Florida Public Records Law, Chapter 119, Florida Statutes;
- b. FPL has failed to carry its burden to demonstrate that the information is entitled to confidential classification;
- c. Customers are entitled to basic information concerning the operating cost of FPL's generating plants to determine the prudence of FPL's operations;
- d. FPL has failed to demonstrate how the information will give competitors a competitive advantage;
- e. This case will set a precedent for Florida's other investor-owned utilities;
- f. Information regarding affiliate transactions must be available to avoid "sweetheart" deals made between related companies at the expense of ratepayers.

WHEREFORE, FPL's request for confidential classification should be denied.



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Attorneys for The Florida Industrial

Power Users Group


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of **FIPUG's** foregoing **Response to FPL's Request for Confidential Classification** has been furnished by Hand Delivery (*) or by United States Mail to the following this **4th** day of **June, 1999**:

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