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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. 990693-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

RECEIVED & FILED  
*[Signature]*  
FPSC-BUREAU OF RECORDS

VGK/bb  
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*Done 6/10/99*

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

DOCUMENT NUMBER - DATE  
01690  
99 JUN -4 99  
FPSC-RECORDS/REPORTING

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Request for Confidential )  
Classification of Annual Status )  
Report for Year Ended 1998, Submitted )  
Pursuant to Rule 25-6.0436(9), )  
Florida Administrative Code, by )  
Florida Power & Light Company. )

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Docket No. 990693-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),<sup>1</sup> 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 prices is through the information filed at the Commission, including FPL's annual status report, which is required by Commission rule<sup>2</sup>, and the related schedules.

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<sup>1</sup> 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 Gulf's filing through a review of new dockets opened. On June 3, 1999, FIPUG filed a petition to intervene and an objection. FIPUG files now files this detailed response within 14 days of the time it received and reviewed FPL's request.

<sup>2</sup> Rule 25-6.135, Florida Administrative Code.

DOCUMENT NUMBER-DATE

06910 JUN-4 99

FPSC-RECORDS/REPORTING

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 public view:

- a. FPSC Schedule I--Plant in service;
- b. FPSC Schedule II--Accumulated depreciation and amortization.

On these schedules, FPL has redacted essentially all the information.

#### **Procedure**

3. Rule 25-22.006(4)(c), Florida Administrative Code, requires a party seeking confidential classification to provide to provide a line-by-line justification for such request. FPL has provided no such justification, but rather has attached an affidavit which simply notes that the information (presumably all 24 pages of it) is "commercially sensitive" and would impair FPL's "competitive interests." Such a conclusory and unsubstantiated statement, on its face, cannot fulfill the requirements of this Commission's rule. Thus, the request should be rejected on that basis alone.

#### **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.<sup>3</sup> As noted above, FPL has woefully failed to meet this burden.

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<sup>3</sup> 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, all the information FPL seeks to conceal relates to costs and expenses which are borne by the retail ratepayers. Nonetheless, FPL wants to bar the ratepayers who fund these items from access to this important information.<sup>4</sup> Retail ratepayers are entitled to this information in order to ensure that retail utility plant and fuel are appropriately costed and priced.

6. 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, despite the diverse and voluminous information for which secrecy is sought, FPL's "rationale" for its request is *identical* for each item and wholly inadequate to escape the rigors of Florida's Sunshine Law. FPL has wholly failed to justify its claim that the information is commercially sensitive.

9. FPL's argument is partly premised on its view that its competitors do not have to disclose similar information. The Commission addressed and rejected a similar argument from FPL in the context of FPL's A schedules:

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<sup>4</sup> 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.

[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."<sup>5</sup>

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.

### **Conclusion**

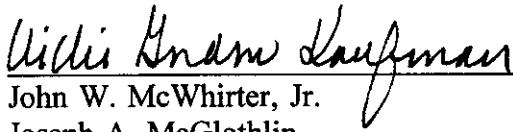
10. FIPUG specifically opposes FPL's request for confidential treatment on the following grounds:

- 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.

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<sup>5</sup> Order No. PSC-96-0737-CFO-EI at 6.

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



John W. McWhirter, Jr.

Joseph A. McGlothlin

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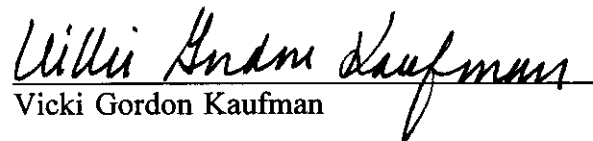
**CERTIFICATE OF SERVICE**

**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**:

Mary Anne Helton\*  
Florida Public Service Commission  
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Gerald L. Gunter Building, Room 301C  
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R. Wade Litchfield  
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700 Universe Boulevard  
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Vicki Gordon Kaufman