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September 22, 1999

VIA HAND DELIVERY

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

Re: Docket Number 981890-EU

Dear Ms. Bayo:

On behalf of Florida Industrial Power Users Group, enclosed for filing and distribution are the original and 15 copies of the following:

- ▶ Motion to Compel Florida Power and Light Company to Respond to Discovery

Please acknowledge receipt of the above on the extra copy of each and return the stamped copies to me in the envelope provided. Thank you for your assistance.

Yours truly,

Vicki Gordon Kaufman
Vicki Gordon Kaufman

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FPSC-BUREAU OF RECORDS

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Generic investigation into the aggregate electric utility reserve margins planned for Peninsular Florida

Docket No. 981890-EU

Filed: September 22, 1999

The Florida Industrial Power Users Group's Motion to Compel Florida Power and Light Company to Respond to Discovery

The Florida Industrial Power Users Group (FIPUG), pursuant to rule 28-106.206, Florida Administrative Code, files this motion to compel Florida Power and Light Company (FPL) to respond to the discovery requests propounded by FIPUG. As grounds therefor, FIPUG states:

1. On September 8, 1999, FIPUG served sixteen (16) interrogatories and six (6) requests for production on FPL. All the discovery propounded was directly relevant to the issues in this proceeding, and in fact, none of FPL's objections are based on relevance.

2. On September 20, 1999, FPL objected to all of FIPUG's discovery. FPL did not answer one question. Instead, FPL has made frivolous objections in an attempt to avoid fulfilling its discovery obligations. The Commission should immediately order FPL to respond to FIPUG's discovery requests.

FPL's Objection as to the Nature of the Proceeding

3. As to every single question, FPL objects on the grounds that "[t]his docket is not appropriate for discovery because it is a generic investigation." ¹ This Commission has addressed the nature of this proceeding numerous times and has taken a view contrary to that which FPL continues to espouse.

4. FPL is attempting to repeat once more the arguments that have already been rejected

¹ As to Interrogatory Nos. 4, 5, 6, 11,12, 13, 14, 15, 16 this is FPL's sole objection.

several times by this Commission. Earlier in this proceeding, several utilities challenged the nature of this docket and complained that an investigation should not be conducted as a formal proceeding.

Oral argument was held and the utilities' arguments were rejected:

. . . I find that the Rule [28-106.101(2), exempting investigations from formal evidentiary proceedings] does not supersede our statutory jurisdiction and responsibility to assure the provision of adequate electricity at a reasonable cost. Sections 366.05(1), 366.04(5), 366.05(7) and 366.05(8), *Florida Statutes*, invest the Commission with jurisdiction over the planning, development and maintenance of a coordinated electric power grid to assure an adequate and reliable source of energy for the state. In the exercise of its jurisdiction, the Commission has the power to, among other things, require repairs, improvements, additions, and extensions to the plant and equipment of any public utility when reasonably necessary to promote the public welfare and secure adequate service of facilities. In addition, Rule 25-22.036(3), *Florida Administrative Code*, provides for the Commission to initiate proceedings on its own motion in the execution of its statutory duties. The purpose of this proceeding is to afford the Commission a full record with sufficient information upon which to make a decision regarding the adequacy of the reserve margins planned for Peninsular Florida. The position advanced by the utilities and the Florida Reliability Coordinating Counsel would hinder the Public Service Commission's ability to make a well-reasoned decision. *As such, this docket shall proceed as a formal evidentiary hearing investigating the electric utility reserve margins.*

. . . The current procedure established for this docket affords these [120.57(1)(b)] rights to all persons whose substantial interests may be affected by the decisions to be made in this proceeding.²

5. Reconsideration of this order was sought before the full Commission and denied.³

The Commission reiterated the clear position set forth in its original Order:

The Order [Order No. PSC-99-1274-PCO-EU] unequivocally states that Rule 28-106.101(2), *Florida Administrative Code*, does not supercede the Commission's statutory jurisdiction to proceed with an investigation as a formal evidentiary proceeding. The Order also holds that Rule 25-22.036(3), *Florida Administrative Code*, controls the initiation of this proceeding. . . .

² Order No. PSC-99-1274-PCO-EU at 2, emphasis added.

³ Order No. PSC-99-1716-PCO-EU.

. . . [T]he companies have failed to demonstrate that the Order is based on any mistake of law or fact. The companies' analyses of the Commission's investigatory jurisdiction and their interpretation of the decision of the Administrative Commission is wrong. It cannot seriously be disputed that the Commission may proceed with this investigation as a formal evidentiary proceeding. Section 350.123, Florida Statutes, grants the Commission plenary procedural jurisdiction to effectuate its statutory obligations.⁴

6. The utilities argued that "discovery could not be permitted, there could be no parties or intervenors, witnesses could not be called to testify and no action or final order could be rendered following the proceeding. . . ."⁵ The Commission directly rejected this claim: " The companies' position is in direct conflict with the Commission's manifest authority under Chapters 350 and 366, *Florida Statutes*."⁶ The Commission has twice addressed the claim FPL makes in its discovery objections; such objections should be summarily denied.⁷

7. The Order Establishing Procedure⁸ governs the conduct of discovery of this case. FIPUG, as a party granted Intervenor status⁹, is entitled to propound discovery. Arguments which have been made and rejected by the Commission provide no basis for FPL's refusal to respond to FIPUG's discovery requests.

⁴Order No. PSC-99-1716-PCO-EU at 3-4.

⁵Order No. PSC-99-1716-PCO-EU at 4.

⁶*Id.*

⁷Despite the Commission's clear orders on the nature of this proceeding, the utilities refuse to relent. Motions to bifurcate the proceeding have been filed by TECo and FPC.

⁸Order No. PSC-99-0760-PCO-EU.

⁹Order No. PSC-99-0838-PCO-EU.

FPL's Other Objections

8. In addition to the "general" objection discussed above, FPL makes other frivolous objections. Many of the discovery requests propounded by FIPUG use the term "curtailment." FPL objects to these questions on the basis that it does not know what "curtailment" means. (Interrogatory Nos. 1, 7, Production Request Nos. 1, 2, 3, 4). Counsel for FIPUG called counsel for FPL on September 21 to inform him that "curtailment" as used in FIPUG's discovery refers to service interruptions of interruptible, curtailable and load management customers. Thus, FPL's objection on the basis that it does not understand the meaning of the word "curtailment" has been resolved.

9. As to Interrogatory No. 2, FPL objects to providing information on the number of megawatts on its load management programs and as to Interrogatory No. 3 objects to providing information on the number of megawatts on its interruptible programs, complaining that these requests are "burdensome." FIPUG has asked for this information only for the last five (5) years; there is nothing burdensome about this request.

10. FPL objects to responding to Interrogatory No. 6, which asks FPL to calculate the reserve margin assuming that all load management, curtailable and interruptible customers give notice of their intent to switch to firm service. FPL objects saying FIPUG has given no assumption as to when the customers would give notice. It would appear obvious from the question that such notice would be given in 2000. FPL then states that it would not perform "such a ridiculous calculation" and it is just as easy for FIPUG to perform it as for FPL to perform it. FPL's name calling aside, FIPUG does not possess the necessary information to perform such a calculation; that information

is in the possession of FPL.

11. FPL objects to Interrogatory No. 9 (how is Florida impacted by power shortages in other states?") because it is "vague." FPL says there is no identification of the other states or the conditions that led to the power shortages. FPL's objections are without merit; the question is clear and was intentionally not limited to a particular state.

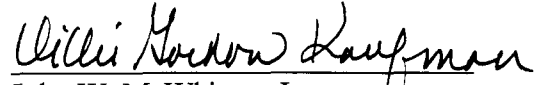
12. FPL objects to Interrogatory No. 10 (identify the times FPL requested large firm or interruptible customers to reduce load and the reason for the request). First, FPL seeks "clarification" as to whether "request" includes interruption under an interruptible rate or exercise of load control. FIPUG "clarifies" that its question does not include those instances. FPL then objects that the question is burdensome. Again, FPL provides no information about why the request is burdensome. Such information is relevant to this proceeding and is solely within FPL's possession.

13. FPL objects to Interrogatory No. 12 stating that it is unfamiliar with the NERC capacity margin calculation. However, this calculation is well-known throughout the industry.

14. Finally, FPL objects to Production Request Nos. 5 and 6 with the blanket objection that the requests are burdensome. Such requests are not burdensome; they seek information highly relevant to this docket which is solely in the possession of FPL

15. In sum, FPL's objections are nothing more than an attempt to further delay this proceeding and to withhold relevant information from a party attempting to prepare for hearing. The Commission should summarily deny these objections and warn FPL (as well as the other utility parties) that such delaying tactics will not be tolerated.

WHEREFORE, FIPUG requests that the Commission enter an order requiring FPL to promptly respond to FIPUG's discovery requests.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of The Florida Industrial Power Users Group's Motion to Compel Florida Power and Light Company to Respond to Discovery has been furnished by (*) hand delivery or U.S. Mail this 22nd day of September, 1999 to the following:

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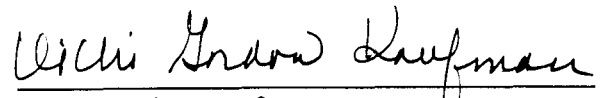
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