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February 9, 2001

Mr. Tim J.. Devlin
Director of Economic Regulation
Florida Public Service Commission
2400 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

RE:FPC/CPL Merger Docket 000824-EI

(000824-EI)

Dear Mr. Devlin:

The CASR in the above docket indicates that the staff will be making its recommendation in this docket to the Commission on March 15th. From a review of the questions staff posed in its discovery to FPC I can glean some of the issues that you are focusing on, but there has been no request for parties to state their interests in the docket. I am unable to ascertain from the discovery whether the staff plans to initiate any rate action. As you know in the 1997 CR-3 settlement agreement, FIPUG and the OPC agreed that they would neither initiate or support a rate reduction until July 2001 unless FPC initiates such a request.

There are issues the Commission should consider when it considers the affects of the merger. Some of these will undoubtedly affect rates. It is possible that a Commission Proposed Agency Action (PAA) issued in early April, as your CASR contemplates, combined with the current rate freeze and my client's commitment to refrain from seeking a rate reduction before July will result in an unnecessary replication of administrative action and a delay in achieving a result that is amicable to all affected parties.

I have dispatched this letter to FPC prior to sending it to you to insure that nothing herein could be considered to violate our 1997 commitment. FPC has raised no objection to the letter, but asked me to point out that the lack of objection should not be construed to mean that the utility agrees that the issues expressed below are appropriate. With the forgoing in mind you are respectfully requested to consider the following issues in your report to the Commission or perhaps to schedule a meeting with the parties in this case to develop the relevant issues to other interested parties before issuing your recommendation in the docket.

APP
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1. Should the Commission seek to retain jurisdiction over payments FPC makes to affiliated companies in the future by requesting FPC to waive the "Ohio Power Rule" set down in the case of *Ohio Power Company vs. FERC 954 F.2d 779 (D.C. Cir 1992)*. That case decided that the US Securities and Exchange Commission has exclusive responsibility in approving the prudence of these costs.

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

DOCUMENT NUMBER - DATE

02134 FEB 15 2001

FPSC RECORDS/REPORTING

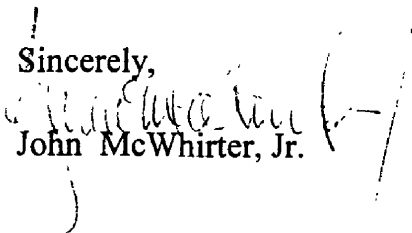
2. There are a number of issues tangential to the price CPL paid for FPC stock
 - A. §366.06 *Florida Statutes* says:
“The commission shall investigate and determine the actual legitimate costs of the property of each utility company, actually used and useful in the public service ... [it shall be] the money honestly and prudently invested by the public utility company in such property used and useful in serving the public, less accrued depreciation, and **shall not include any goodwill or going-concern value or franchise value in excess of payment made therefor.**”

Goodwill will not show up on the books of FPC. How will the Commission guard against a pass through of goodwill amortization by the holding company? The goodwill provision in the statute was designed to protect ratepayers from excessive rates by a monopoly and to protect stockholders from watered stock.

- B. At the time the merger was announced FI Progress common stock was selling at more than 2 times the book value of its assets. Do you measure goodwill by the margin CPL paid over the book value of assets about \$20 per share, or market value of the FPC stock, about \$42? If it is the former, is this fair to rate payers?
 - C. The Financial Accounting Standards Board is in the process of revising the standard requiring that goodwill be amortized. What affect, if any, should this action play in the consideration of this merger?
3. FPC has kept its return on equity (ROE) within the range of the limits set by the FPSC by using approximately \$40 million each year for the last three years to write down the Tiger Bay regulatory assets. Is this an appropriate use of revenue in light of the fact that the result will be to fully depreciate the assets well in advance of the useful lives? Some of the assets may be transferred to an affiliated company at depreciated cost under the provisions of the Governor’s Energy Commission proposal for “deregulation,”
4. Is the authorized ROE for FPC still appropriate nearly a decade after it was originally set?
5. Is the FPC capital structure used for regulatory review still appropriate?
6. FPC agreed to spin off 50MW of capacity to obtain merger approval at FERC, does this adversely affect the reliability of service to DSM and other non firm customers?
7. What revisions need to be made to the 2000 earnings surveillance reports to insure that transition costs and savings that occurred in the year do not artificially impact the utility’s net operating income?
8. Are severance packages paid to departing employees included in the surveillance report as operating expenses or excluded as non recurring transition costs?

9. Should the Commission's PAA in this docket consider sharing the benefits of the merger with FPC consumers as well as stockholders as other states have done?

Sincerely,


John McWhirter, Jr.

Cc. Intervenors of record.