

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Florida Power & Light Company's proposed merger with Entergy Corporation, the formation of a Florida transmission company ("Florida transco"), and their effect on FPL's retail rates.

DOCKET NO. 001148-EI

FILED: SEPTEMBER 19, 2001

STAFF'S MOTION TO STRIKE CERTAIN PORTIONS OF  
PREFILED DIRECT TESTIMONY OF KOREL M. DUBIN

Pursuant to Rule 28-106.204, Florida Administrative Code, the Staff of the Florida Public Service Commission ("Commission Staff"), by and through its undersigned counsel, moves the Prehearing Officer to strike certain portions of the prefiled direct testimony of Florida Power & Light Company's witness Korel M. Dubin in Phase 1 of this docket on the grounds set forth below.

1. On May 11, 2001, Florida Power Corporation ("FPC"), Florida Power & Light Company ("FPL"), and Tampa Electric Company ("TECO") filed a joint motion to establish a generic docket to determine, on an expedited basis, the prudence of the formation of and their participation in GridFlorida LLC ("GridFlorida"). By Order No. PSC-01-1372-PCO-EI, issued June 27, 2000, ("Order 1372") the joint motion was granted in part (with respect to expediting a decision concerning GridFlorida) and denied in part (with respect to establishing a generic

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docket). At page 6, the Order directed that FPC, FPL, and TECO, each file by June 28, 2001, a separate petition in the respective earnings/rate review docket currently open for each utility, "specifically requesting such affirmative relief with respect to its participation in GridFlorida as it believes appropriate." The Order refers to the proceedings to be held on each petition as "Phase 1" in these earnings/rate review dockets.

2. Order 1372 carefully delineates which subjects will be handled in Phase 1 and Phase 2 of this dockets. At pages 5 and 6, the Order states in pertinent part:

We foresee these matters proceeding in two phases in each docket. Phase 1 will deal with the RTO related issues, and proceed on an expedited basis. **We will not change retail rates or allocate any of the costs or benefits associated with GridFlorida in Phase 1.**

\* \* \* \* \*  
Phase 2 will address the general rate proceedings initiated by this Commission in these dockets by our previous vote to require the filing of MFRs to address overearnings issues. **Phase 2 also will include the specific ratemaking aspects, including but not limited to cost recovery, of the formation and participation in the GridFlorida RTO.**

(Emphasis added.)<sup>1</sup> Neither FPL nor any other party requested reconsideration of Order 1372.

3. On June 12, 2001, pursuant to Order 1372, FPL filed its Petition to Determine the Prudence of Formation of and Participation in GridFlorida, LLC ("FPL Petition). In its Petition, FPL listed the issues it believed should be addressed in Phase 1. The fourth issue listed by FPL reads: "What are the estimated costs to FPL's retail ratepayers for its participation in GridFlorida, and how should those costs be recovered?" (FPL Petition, p.8)
4. On July 9 and July 13, the Prehearing Officer conducted an Issue Identification Conference to hear from all parties concerning the appropriate issues to address in Phase 1 of this docket and Docket Nos. 000824-EI and 010577-EI. By Order No. PSC-01-1485-PCO-EI, issued July 16, 2001, as modified by Order No. PSC-01-1641-PCO-EI, issued August 10, 2001, (collectively "Orders Establishing Issues") the Prehearing Officer, consistent with Order 1372, established issues for this docket. None of those issues addresses recovery of costs

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<sup>1</sup>Because a rate proceeding for TECO has not been initiated, Docket No. 010577-EI only involves Phase 1 matters at this time.

related to GridFlorida. The FPL-proposed issue set forth above, in paragraph 3 of this motion, was not adopted. Neither FPL nor any other party requested reconsideration of either of the Orders Establishing Issues.

5. On August 15, 2001, FPL filed the direct testimony of Korel M. Dubin in Phase 1 of this docket. The majority of Ms. Dubin's testimony concerns a proposed cost recovery methodology for FPL's costs associated with GridFlorida, in particular the following portions: page 2, line 11, beginning with "and", through page 2, line 21; page 4, line 17, through page 14, line 23.
6. On September 10, 2001, FPL filed a Joint Prehearing Statement with FPC and TECO for Phase 1 of this docket. The Joint Prehearing Statement addressed only those issues set forth in the Orders Establishing Issues. The Joint Prehearing Statement did not seek to raise an issue concerning cost recovery.
7. On September 17, 2001, Commission Staff took the deposition of Ms. Dubin. The excerpt below, from pages 29-30 of the deposition transcript, indicates Ms. Dubin's explanation for

why a cost recovery methodology should be addressed in Phase 1 of this docket:

- Q. Have you reviewed the Commission's Orders establishing issues in this docket?
- A. Yes.
- Q. Okay. Can you identify any of those issues which address cost recovery methodologies?
- A. I believe, it's Issue 4.
- Q. And Issue 4 reads -- do you have that in front of you? Well, let me just ask this: Would you agree, subject to check, that Issue 4 states "What are the estimated costs to the utility's ratepayers of its participation in GridFlorida?"
- A. Yes, that's what it states.
- Q. Okay. How does that issue cover cost recovery methodologies?
- A. The question or the issue goes, directly to the costs that the utility's ratepayers will pay which, I believe, you have to have a method in order to do that.

Ms. Dubin's logic is circular in that the Commission need not establish a cost recovery methodology prior to determining what the estimated costs of GridFlorida are to FPL's ratepayers.

8. At the September 17, 2001, Prehearing Conference for the Phase 1 proceedings in this docket, FPL did not seek to raise an issue concerning cost recovery.
9. Allowing the admission of Ms. Dubin's prefiled direct testimony, as it relates to a proposed cost recovery

methodology, would be entirely inconsistent with Order 1372 and the Orders Establishing Issues in this docket. Order 1372, as quoted in paragraph 2 above, explicitly states that cost recovery is a matter to be addressed in Phase 2 of this docket. Further, none of the issues set forth in the Orders Establishing Issues addresses or can be interpreted to address recovery of costs related to GridFlorida.

10. In her August 15, 2001, prefiled direct testimony, Ms. Dubin states that her testimony addresses Issue 4 from the Orders Establishing Issues. Issue 4 reads: "What are the estimated costs to the utility's ratepayers of its participation in GridFlorida?" (Order No. PSC-01-1485-PCO-EI, p. 3). This issue does not ask what the appropriate cost recovery mechanism should be for the estimated costs; it simply asks what the estimated costs are. It is important to note that very similar language proposed by FPL, as set forth in paragraph 3 above, was stripped of the phrase ". . . and how should these costs be recovered?" in the Orders Establishing Issues. Thus, Ms. Dubin's testimony concerning FPL's proposed recovery mechanism for these costs is not responsive to Issue 4.

11. Allowing the admission of Ms. Dubin's prefiled direct testimony in this docket would violate principles of fundamental fairness and due process. Parties to any Commission docket must be able to rely upon the orders of this Commission in preparing for hearing. In particular, the parties to this docket are entitled to rely upon the rulings set forth in Order 1372 and the Orders Establishing Issues to guide their preparations for hearing. As previously stated, neither FPL nor any other party requested reconsideration of any of these three orders. Order 1372 and the Orders Establishing Issues establish the scope of this case and are the law of this case.
12. If Ms. Dubin's prefiled direct testimony is admitted into the hearing record of Phase 1 of this docket, FPL will be allowed to completely disregard Order 1372 and the Orders Establishing Issues to pursue an issue that no other party, who has reasonably relied on these orders, can be prepared to address. Such a result is contrary to principles of fundamental fairness and due process.
13. Allowing the admission of Ms. Dubin's prefiled direct testimony in this docket would be contrary to the public

interest. As the Commission stated in Order 1372, recovery of costs associated with GridFlorida should be considered as part of the broader rate proceeding in Phase 2 of this docket. In the rate proceeding in Phase 2 of this docket, the Commission will have for its review more concrete cost data associated with GridFlorida rather than the estimated costs being reviewed in Phase 1. With the information available in the rate proceeding in Phase 2, the Commission will also be able to consider more thoroughly the ratepayer impacts of recovery through a cost recovery clause versus base rates. Thus, addressing cost recovery in Phase 1 would force the Commission to choose a cost recovery mechanism based on information much more limited than that which will be available in Phase 2. To fully consider the ratepayer impact of GridFlorida costs and decide upon a particular cost recovery methodology, it is in the public interest for cost recovery to be addressed in Phase 2.

14. Staff counsel has attempted to contact counsel for all parties of record concerning this motion. FPL opposes the motion. The Office of Public Counsel, the Twomeys, and the South Florida Hospital and Healthcare Association support the

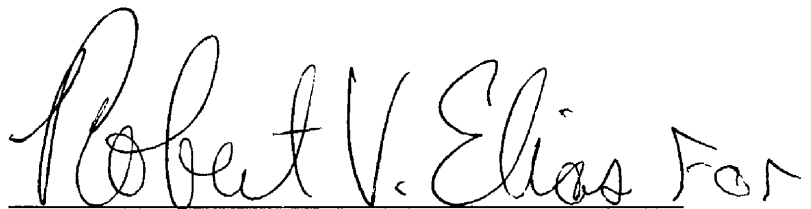


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motion. Dynegy, Duke Energy, Calpine, Mirant, PG&E, CPV Atlantic, Enron, and Seminole take no position on the motion. FMPA states no objection to the motion. At the time this motion was filed, staff counsel had not received responses from counsel for Reliant, Publix, or FIPUG.

For the reasons set forth above, those portions of the prefiled direct testimony of Korel M. Dubin addressing a proposed cost recovery mechanism in Phase 1 of this docket are outside the scope of Phase 1 of this docket and should be stricken or deferred for consideration in Phase 2 of this docket.

Respectfully submitted this 19<sup>th</sup> day of September, 2001.

A handwritten signature in cursive script that reads "Robert V. Elias For". The signature is written in black ink and is positioned above the typed name and title.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of STAFF'S MOTION TO STRIKE CERTAIN PORTIONS OF PREFILED DIRECT TESTIMONY OF KOREL M. DUBIN has been furnished to the following by U. S. Mail this 19<sup>th</sup> day of September 2001:

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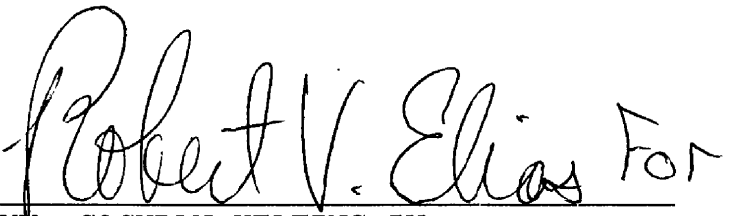
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