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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Florida Power Corporation's earnings, including effects of proposed acquisition of Florida Power Corporation by Carolina Power & Light

Docket No. 000824-EI Submitted for Filing: January 14, 2002

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FLORIDA POWER CORPORATION'S RESPONSE TO FIPUG's MOTION TO COMPEL

Florida Power Corporation ("Florida Power" or the "Company") opposes Florida Industrial Power Users Group's ("FIPUG") motion to compel relating to FIPUG's Third Set of Interrogatories numbers 35 and 37, and Third Request for Production of Documents 36 and 38 as follows:

FIPUG's above recited interrogatories and production requests each address issues not appropriate to this docket but issues that are either; 1) considered directly and appropriately only as part of the fuel adjustment docket, or 2) were finally determined by the Commission in the nuclear decommissioning docket. FIPUG's attempt to revisit these issues in this rate proceeding is improper and the Commission should not encourage such actions by ordering Florida Power to respond to FIPUG's irrelevant discovery requests.

To begin, FIPUG's Interrogatory number 35 requests that FPC provide the delivered fuel price for each separate generating unit by commodity costs, transportation cost, or handling costs. FIPUG's inquiry is not relevant to this docket and is not reasonably calculated to lead to

the discovery of admissible evidence. As the Commission well knows, the only "fuel" issue in the a rate case is the amount recoverable in base rates for fuel inventory. The Commission conducts a entirely separate docket to consider, review, and analyze Florida Power's fuel related expenses and recovery - the fuel adjustment docket - that FIPUG participates in regularly.

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Indeed, in its motion at paragraph 4, FIPUG admits that Florida power has removed fuel revenues and expenses from its filing “that are not recovered through base rates.” This is exactly the point. Florida Power has enough legitimate discovery to respond to in this expedited proceeding and should not be additionally burdened in this proceeding with having to respond to discovery not appropriate to this docket.

As its rationale for seeking this fuel related information, FIPUG asserts that it needs this detailed break-down of fuel expenses, because Florida Power’s removal of fuel revenues and expenses “appear to have resulted in an unexplained reduction Florida Power’s projected Net Operating Income.” As Florida Power explained in response to FIPUG’s First Set of Interrogatories number 16, the decrease in Net Operating Income is primarily due to the interest on the Tiger Bay regulatory asset which is not recognized in arriving at Net Operating Income, but is recorded as interest expense, which is included in arriving at Net Income.

Having addressed FIPUG’s concern directly, Florida Power has responded to the question relevant to this proceeding eliminating FIPUG’s identified “need” for this discovery. As such, there is no longer any rationale for the Commission to compel Florida Power to respond and FIPUG’s motion should be denied.

In addition, FIPUG’s suggests that its interrogatory number 35 subpart (d) raises a question related to the question of whether Florida Power’s fuel supplier or transporter is an affiliate. As FIPUG is well aware, Electric Fuels Corporation supplies and transports coal to Florida Power’s coal units. These transactions are subject to direct scrutiny in the fuel adjustment proceeding as well. See issues 19(a), 19(b) and 19(c) in Docket No. 010001-EI, dated November 19, 2001 that establish and/or address the special requirement governing transactions between EFC and Florida Power.

This having been said, Florida Power has effectively answered Interrogatory 35(d), however, the matter bears further discussion as FIPUG's attempt to insert this issue into the rate proceeding is wholly inappropriate.

Florida Power's transactions with EFC, as distinguished from other types of affiliate transactions, are not relevant in this docket. To the contrary, the Commission has carved out transactions relating to the purchase of fuel and transportation services from affiliates and determined to consider such transactions separately and exclusively in fuel adjustment proceedings. Commission Rule 25-6.1351 on Cost Allocation and Affiliate Transaction expressly excludes from its application "transactions for purchase of fuel and related transportation services" because they are "subject to the Commission's" review and approval in cost recovery proceedings." Thus, it is a waste of time for Florida Power, the Commission, and indeed, FIPUG to raise the issue here, in the rate case, where the Commission will not address these transactions.

For all these reasons, FIPUG's motion with regard to interrogatory number 35 should be denied.

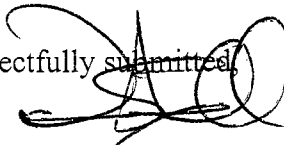
Next, FIPUG seeks information through Interrogatory 37 and production request 38 relating to nuclear decommissioning and depreciation expense. Florida Power will provide information relating to CR-3's depreciation expense, however, any question regarding nuclear decommissioning has been addressed and finally determined by the Commission in Docket 001835. It will not aid FIPUG in this or any other proceeding to obtain "all assumptions used to develop CR-3's decommissioning expense" as requested in Interrogatory 37. Indeed, Florida Power can see no benefit to FIPUG's obtaining this information except for the purpose of attempting to challenge the Commission's decision in the nuclear decommissioning docket by

making an end-run at it in this proceeding. Administrative finality precludes FIPUG's action and negates any reason for its request.

As its rationale, FIPUG claims that it seeks the information (underlying the Commission's decision) to "analyze FPC's compliance with the Commission's decision." Florida Power's initial filing in this case was made prior to the Commission's decision in Docket 001835 and as such the filing does not reflect that decision and will have to be modified accordingly. However, all that is left for Florida Power to do to comply with the Commission's decision is to reflect the Commission's decision in the form of a journal entry on the books and records of the Company, which it has done (see attachment), and adjust the final revenue requirements in this proceeding when the time comes. Thus, FIPUG's rationale offers no support for its discovery and the Commission should deny FIPUG's motion to compel discovery that is superceded by the Commission's decision in a prior docket. To do otherwise would be tantamount to sanctioning a strike at the Commission nuclear decommissioning decision in this case.

Finally, FIPUG's production request 36, according to FIPUG, seeks "documentation from FPC to show that the price paid to its affiliates for fuel commodities or fuel transportation" was priced at or below market." As discussed in detail above, however, fuel related affiliate transactions are simply not a part of this proceeding. Again, the Commission has carved out transactions relating to the purchase of fuel and transportation services from affiliates and determined to consider such transactions separately and exclusively in fuel adjustment proceedings. See Rule 25-6.1351. As such, FIPUG's discovery has no place in this proceeding and can hardly lead to the discovery of admissible evidence when it expressly relates to an issue expressly reserved by the Commission for fuel adjustment proceedings in its own rules. Thus,

the Commission should also deny FIPUG's motion to compel Florida Power to respond to production request 36.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of foregoing has been furnished via hand delivery (where indicated by *) and via U.S. Mail to the following this 14th day of January, 2002.

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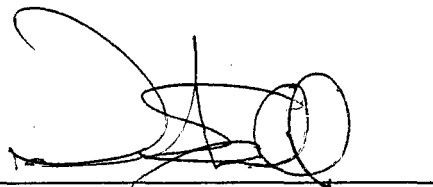
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