ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition To Determine Need For an Electrical Power Plant in Martin County by Florida Power & Light Company.	)	**Docket No. 020262-EI**
In re: Petition To Determine Need For an Electrical Power Plant in Manatee County by Florida Power & Light Company.	)	**Docket No. 020263-EI**
	)	**Filed: October 14, 2002**

JOINT FACT, TWOMEY, GREENFIELD, ET AL. POST-HEARING STATEMENT OF ISSUES AND POSITIONS, PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW AND BRIEF

Pursuant to Order No. PSC-02-0992-PCO-EI, issued July 23, 2002, and Rule 28-106.215, Florida Administrative Code, the Florida Action Coalition Team ("FACT"), Thomas P. Twomey and Genevieve E. Twomey, and Burton Greenfield, Rita Warren, Walter Feinman, Rena Gold, William Berman, Jan Cooper and Frank and Loralie Strand (collectively the "Customers") file their Joint Post-Hearing Response and state:

STATEMENT OF BASIC POSITION IN THE PROCEEDING

CUSTOMERS: *FPL's biased bid process ensured FPL's self-build options won. Bidders were denied critical evaluation criteria. The 15 MW shortfall supporting building at both plant sites simultaneously is insignificant and could be overcome by several alternatives. The "equity penalty" is unsupported by the record or sound policy, but remains the largest single factor for rejecting bids. Fairly judged, other projects, or combinations, would have been more "cost-effective." One or both projects should be rejected and rebid on an expedited basis.*

AUS
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SEC 1
OTH

ISSUE 1: Is the output of Florida Power & Light Company's Martin Unit 8 fully committed for use by Florida retail electric customers?

CUSTOMERS: *Adopt post-hearing position of PACE.*

ISSUE 2: Is the output of Florida Power & Light Company's Manatee Unit 3 fully committed for use by Florida retail electric customers?

CUSTOMERS: *Adopt post-hearing position of PACE.*

ISSUE 3: Does Florida Power & Light Company have a need for Martin Unit 8, taking into account the need for electric system reliability and integrity?

CUSTOMERS: *Adopt post-hearing position of PACE.*

ISSUE 4: Does Florida Power & Light Company have a need for Manatee Unit 3, taking into account the need for electric system reliability and integrity?

CUSTOMERS: *Adopt post-hearing position of PACE.*

ISSUE 5: Does Florida Power & Light Company have a need for Martin Unit 8, taking into account the need for adequate electricity at a reasonable cost?

CUSTOMERS: *Among other flaws, FPL's use of the "equity penalty" adjustment biased FPL's determination that Martin Unit 8 was the most cost-effective generating alternative available with the result that there is not a need for Martin Unit 8 on the basis of its costs being the most reasonable.*

ISSUE 6: Does Florida Power & Light Company have a need for Manatee Unit 3, taking into account the need for adequate electricity at a reasonable cost?

CUSTOMERS: *Among other flaws, FPL's use of the "equity penalty" adjustment biased FPL's determination that Manatee Unit 3 was the most cost-effective

generating alternative available with the result that there is not a need for Martin Unit 8 on the basis of its costs being the most reasonable.*

ISSUE 7: Are there any conservation measures taken by or reasonably available to Florida Power & Light Company that might mitigate the need for Martin Unit 8?

CUSTOMERS: *Adopt post-hearing position of PACE.*

ISSUE 8: Are there any conservation measures taken by or reasonably available to Florida Power & Light Company that might mitigate the need for Manatee Unit 3?

CUSTOMERS: *Adopt post-hearing position of PACE.*

ISSUE 9: Has Florida Power & Light Company adequately ensured the availability of fuel commodity and transportation to serve Martin Unit 8?

CUSTOMERS: *Adopt post-hearing position of PACE.*

ISSUE 10: Has Florida Power & Light Company adequately ensured the availability of fuel commodity and transportation to serve Manatee Unit 3?

CUSTOMERS: *Adopt post-hearing position of PACE.*

ISSUE 11: Did Florida Power & Light Company properly and accurately value the use of existing infrastructure at the Martin plant site in determining the construction cost of Martin Unit 8?

CUSTOMERS: *Adopt post-hearing position of PACE.*

ISSUE 12: Did Florida Power & Light Company properly and accurately value the use of existing infrastructure at the Manatee plant site in determining the construction cost of Manatee Unit 3?

CUSTOMERS: *Adopt post-hearing position of PACE.*

ISSUE 13: Did Florida Power & Light Company's Supplemental Request for Proposals, issued on April 26, 2002, satisfy the requirements of Rule 25-22.082, Florida Administrative Code?

CUSTOMERS: *Adopt post-hearing position of PACE.*

ISSUE 14: Was Florida Power & Light Company's decision not to consider proposals to construct generating capacity on property owned by Florida Power & Light Company appropriate?

CUSTOMERS: *No. FPL should have considered allowing competing generating proposals to be constructed on FPL property as doing so would have resulted in utilization of existing "brown field" sites and could possibly resulted in lower cost generation for its customers.*

ISSUE 15: Was the process used by Florida Power & Light Company to evaluate Martin Unit 8, Manatee Unit 3, and projects submitted in response to its Supplemental Request for Proposals, issued on April 26, 2002, fair, reasonable, and appropriate?

CUSTOMERS: *No. FPL's use of an equity penalty, as well as other adjustments, and flaws in the underlying bid process, biased the competition results to the advantage of its own self-build options in a manner that was unfair, unreasonable, and inappropriate.*

ISSUE 15(a): Did FPL administer the evaluation process so as to provide to non-FPL participants a fair opportunity to win the RFP?

CUSTOMERS: *No. Adopt post-hearing position of PACE as to specifics.*

ISSUE 15(b): Did FPL apply to its self-build options the standards and criteria that it applied to respondents?

CUSTOMERS: *No. Adopt post-hearing position of PACE as to specifics.*

ISSUE 15(c): Were the evaluation criteria used by FPL in evaluating the bids disclosed to the bidders prior to the submission of bids?

CUSTOMERS: *No. Adopt post-hearing position of PACE as to specifics.*

ISSUE 16: In its evaluation of Martin Unit 8, Manatee Unit 3, and projects filed in response to its Supplemental Request for Proposals, issued on April 26, 2002, did Florida Power & Light Company employ fair and reasonable assumptions and methodologies?

CUSTOMERS: *No. Amongst other unfair and unreasonable assumptions and methodologies is the use of the equity penalty.*

ISSUE 16(a) Were the assumptions regarding operating parameters that FPL assigned to its own proposed units reasonable and appropriate?

CUSTOMERS: *No. Adopt post-hearing position of PACE as to specifics.*

ISSUE 16(b) When modeling and quantifying the costs of all options, did FPL appropriately and consistently quantify and take into account the impact of variable O&M costs associated with bidders' proposals and variable O&M costs associated with its own self-build options, so as to result in a fair comparison of purchased and self-built alternatives?

CUSTOMERS: *No. Adopt post-hearing position of PACE as to specifics.*

ISSUE 16(c) When modeling and quantifying the costs of all options, did FPL fairly and appropriately compare the costs of projects having different durations?

CUSTOMERS: *No. Adopt post-hearing position of PACE as to specifics.*

ISSUE 16(d) When modeling and quantifying the costs of all options, did FPL employ assumptions regarding the gas transportation costs for the proposals that were fair, reasonable, and appropriate?

CUSTOMERS: *Adopt post-hearing position of PACE.*

ISSUE 16(e) When modeling and quantifying the costs of all options, including its own, did FPL appropriately and adequately take cycling and start-up costs into account?

CUSTOMERS: *Adopt post-hearing position of PACE.*

ISSUE 16(f) When modeling and quantifying the costs of all options, did FPL appropriately and adequately take into account the impact of seasonal variations on heat rate and unit output?

CUSTOMERS: *Adopt post-hearing position of PACE.*

ISSUE 16(g) Did FPL act in a fair, reasonable and appropriate manner in not considering further a proposal from TECO on the basis that TECO's reserve margin requirements might be impaired?

CUSTOMERS: *Adopt post-hearing position of PACE.*

ISSUE 17: Was Florida Power & Light Company's decision to apply an equity penalty cost to projects filed in response to its Supplemental Request for Proposals appropriate? If so, was the amount properly calculated?

CUSTOMERS: * No. The equity penalty was inappropriate and unfair and unsupported both by the facts of this case and the policy decisions of this, or any other regulatory body. It dramatically disadvantaged all outside bids, some, coupled with other FPL process flaws, so severely to cause them to inappropriately lose.*

ARGUMENT

The uncontroverted testimony on the correctness of FPL's equity penalty adjustment was that (1)this Commission has never approved of an equity penalty in a remotely comparable case; (2) no other regulatory body in the country has been demonstrated to have used an equity penalty in a comparable case; (3) the equity penalty's underlying purpose as a tool for ratings agencies is strictly limited by those agencies, while FPL's testimony in this case has greatly mischaracterized its role and substantially exaggerated the extent the equity concept plays for those reviewing FPL's financial status and the riskiness of its parent's debt.

Staff witness Andrew Maurey, Public Utilities Supervisor of the Finance and Tax Section in the Division of Economic Regulation, testified in he disagreed "with the imputation of an equity penalty for purposes of this proceeding." [Tr-1116]. Staff witness Maurey gave a number of convincing reasons that FPL's equity penalty should not be recognized and FPL's cross-examination did not diminish the force of Maurey's testimony. Likewise, none of FPL's witnesses succeeded in rebutting Maurey's conclusions.

It may be instructive to revisit Maurey's summary of his prefiled direct testimony as presented to the Commissioners at hearing. He said:

There are three main points I want to make to explain why I believe it's inappropriate for this adjustment to be recognized for purposes of this proceeding. First of all, it is my testimony that in creating the equity penalty adjustment, FPL has taken an aspect of Standard & Poor's consolidated credit rating methodology and used it for a purpose it was never intended. I agree, Standard & Poor's considers purchased power contracts and the implied off-balance sheet obligations -- or the impact off-balance sheets have on the leverage and financial flexibility of a utility. However, Standard & Poor's analysis is conducted on a relative basis with due consideration of a number of factors to assess the relative level of credit protection for the consolidated entity, not on an absolute basis in isolation for the purpose being advocated by the company in this proceeding.

Moreover, it has been acknowledged in the testimony of at least three of the company's witnesses that Standard & Poor's is never recommended or even suggested that this aspect of its methodology be used to derive an adjustment for the purpose of evaluating competitive capacity alternatives.

I agree with the concept of imputed debt as it's been promulgated by Standard & Poor's. I disagree with the company -- with the manner in which it is applying this concept in this proceeding.

The second point I want to make concerns the company's claim that this Commission must recognize this adjustment to promote a fair comparison of capacity alternatives. The facts and circumstances surrounding this adjustment in this case do not support this claim. First and foremost, the company's adjustment is entirely one-sided. There's absolutely no recognition or compensating adjustment for the benefits and risk avoidance that purchased power provides to the purchasing utility. In addition, it's one matter for FPL to assume a high cost of capital in the determination of the total cost of its self-build option. It's another matter entirely for FPL to use this same high cost of capital to derive an adjustment to add to the bid price of competing alternatives for purposes of the evaluation process.

The final point I want to make concerns the company's claim that this Commission must recognize this adjustment in this proceeding to recognize an implied cost to the company to rebalance its capital structure as a result of imputed leverage associated with purchased power contracts. In light of the significant degree of actual debt leverage used by the holding company to fund its nonregulated investments, this is not a credible argument.

It is true that the investment community and the rating agencies are calling for FPL Group to employ greater equity and less debt leverage to finance its investments. However, with a 63 percent equity ratio capitalizing the utility and an equity ratio less than 20 percent capitalizing the nonutility investments, it's easy to see which business segment is placing downward pressure on the holding company's consolidated equity ratio of 47 percent.

The company's argument for why the Commission should recognize this adjustment as a legitimate cost of rebalancing its capital structure is disingenuous in light of the wide disparity between the actual capital -- the actual equity ratio supported by ratepayers of this utility and the equity ratio the company employs to fund its nonregulated investments.

In conclusion, I believe the relative risks faced by FPL with respect to purchased power has been exaggerated. In addition, I believe FPL is attempting to take an aspect of Standard & Poor's consolidated credit rating methodology and use it for a purpose it was never intended.

Finally, since FPL has not proposed any adjustments to account for the benefits of purchased power contracts or to insulate ratepayers from the effects of other factors identified by Standard & Poor's and the investment community as having a significant impact on the utility's financial position, I believe this adjustment is discretionary on FPL's part and is not supported by the claims it has made in this case. This concludes my opening remarks.

[Tr. 1117-1120]

Maurey stated that none of this Commission's prior cases involving any consideration of an "equity penalty" were on point with the instant case, where it is being used to largely justify the cost-effectiveness of a self-build option. [Tr - 1096]. He said the first consideration of an equity penalty was in a 1991 Florida Power Corporation need determination case where in the hearing officer: (1) rejected FPC's contention that additional purchased power would "have a negative effect upon its planning and operating flexibility; (2) found that increased reliance on purchased power did "not have to portend lower credit ratings" since "[i]n many cases, various qualitative factors may outweigh the quantitative factors;" (3) recognized that "constructing one's own power plant contains risks," just as purchased power is not without risks; and (4) found that FPC's "claim that additional purchased power commitments would result in a credit downgrade to be exaggerated. [Tr - 1094, 1095] (Emphasis supplied.) Maurey said that in the next case, a 1992 joint need determination with FPL and Cypress Energy, FPL witnesses discussed an equity penalty, but that no such adjustment was made to the cost of the Cypress Project by FPL during its evaluation of it.

According to Maurey, the next case to consider an equity penalty adjustment was a 1999 FPL standard offer contract case in which the Commission apparently recognized an adjustment to the standard offer contract to "recognize the effect of purchased power contracts and to avoid possible double recovery." While the adjustment to the standard offer contract was recognized, the Commission did so specifically noting "the unique circumstances surrounding FPL's Stipulation," while stating that "the broader policy issue of who should bear the incremental cost of additional equity to compensate for purchased power contracts has not been addressed." [Tr - 1096] (Emphasis supplied.)

Maurey testified that the last prior equity penalty consideration was a 2000 FPC case involving Panda Energy in which the penalty was not considered significant because the cost of the FPC proposed unit was less than the Panda unit even without consideration of an equity penalty. [Tr- 1096]. In sum, Maurey said that none of the cases cited by FPL for the proposition that this Commission approved of the use of an equity penalty in a case such as this was directly on point with the facts of the instant case.

Maurey went on to explain that Standards & Poor's used the concept of purchased power contracts as an off-balance sheet obligation potentially impacting required equity levels. He stated that S&P does not recommend that regulators recognize its adjusted debt-equity ratios for rate making purposes. He noted that his exhibit, taken from a FPL interrogatory response, showed:

> there is no indication the equity penalty concept has been recognized by other state regulatory commissions nor is there any evidence that this concept is applied when FPL or its affiliated companies participate in RFPs to sell power to other investor-owned utilities in other states.

[Tr- 1099] Maurey stated that S&P assigned corporate credit ratings based on the parent's risk of default and he noted that S&P had lowered FPL's rating last year on the basis of the increasing business risk of the parent mostly as the result of the "growing non-regulated independent power producer (IPP) portfolio . . . ." [Tr-1101] Maurey pointedly noted that FPL did not attempt to assign the same degree of significance to the clearly adverse consequences of the non-regulated activities to the regulated company as it did for the equity penalty. [Tr-1102]

Maurey stated that S&P used purchased power as just one factor of several in determining ratings and he noted that the level of new contracts that would have been represented by both

these plants being awarded to outside suppliers would be substantially less than the amount of capacity being built new by FPL at its Fort Myers and Sanford sites, and, further, that thousands of MW of existing purchased power contracts would be expiring by 2010. Thus, he said, new purchased power contracts would merely be replacing those that were ending. [Tr- 1103, 1104]

Maurey noted that FPL is in the upper quartile of all electric companies in terms of having a high equity ratio and that it could easily buy or build new capacity without risking its ratings. [Tr-1104] He went on to say that it was important to remember that ratings agencies looked at the corporate parent and that adverse factors, like FPL using significant degrees of debt leverage to finance non-regulated growth in its other affiliates, should not be ignored. [Tr-1107] He said that the leveraged financing by the non-regulated affiliates had a greater adverse impact on FPL's credit rating than the potential purchased power contracts here. [Tr-1108]

Very tellingly, Maurey testified that a group of electric companies that were in "FPL's peer group" for comparable risk had substantially greater percentages of purchased power contracts in their capacity mix and substantially lower equity ratios, all while not eroding the credibility of their debt. [Tr-1112] He discussed the favorable rating agency views on purchased power contracts [Tr-1114] and focused on the huge percentage (nearly half in each case) of FPL's revenues and expenses that were recovered through Commission-approved recovery clauses, for which there was very little perceived risk. [Tr-1115]

FPL's witnesses were unable to successfully rebut the force of Maurey's testimony.

The equity penalty adjustments were as great as $215 million, which, coupled with other flawed FPL evaluation procedures, clearly caused otherwise acceptable bids to be rejected. The

equity penalty has no basis in fact or law for being utilized by FPL in evaluating competing bids and the Commission should reject its use here.

ISSUE 18: Did FPL negotiate with the short-listed bidders in good faith?

CUSTOMERS: *No. Adopt post-hearing position of PACE as to specifics.*

ISSUE 19: If the Commission grants FPL's petition for a determination of need authorizing it to construct its proposed Manatee 3 and Martin 8 units, should FPL be required to limit any requested rate base increase to the amount bid?

CUSTOMERS: *Yes, it is essential FPL's subsequent requests to include these units in its rate base be limited to the amount of its "winning" bids so as to preclude any ability on FPL's part to "game" the bid rule process by intentionally underbidding so as to win.*

ISSUE 20: If the answer to the above issue is no, is each of FPL's proposals based on sound and reasonable assumptions and estimates, such that the Commission may conclude that the Commission and FPL's ratepayers may realistically expect FPL to implement the non-binding proposal at the stated cost?

CUSTOMERS: *No. Adopt post-hearing position of PACE as to specifics.*

ISSUE 21: If the Commission grants FPL's proposal to construct Manatee 3 and/or Martin 8, are consumers estopped from challenging the prudence of the investment in any subsequent rate case?

CUSTOMERS: *No.*

ISSUE 22: Has FPL met its burden of proof to demonstrate that it has fairly chosen the most cost-effective alternatives available?

CUSTOMERS: *No. Adopt post-hearing position of PACE as to specifics.*

ISSUE 23: What would be the impact on ratepayers if the Commission were to deny either or both of FPL's petitions?

CUSTOMERS: *It appears clear the Manatee unit could be denied, fairly rebid and safely be built one year later than currently scheduled. Likewise, it appears the Martin unit could also be denied and adequate capacity could be found to meet demands while it, too, were fairly rebid.*

ISSUE 24: Is Florida Power & Light Company's Martin Unit 8 the most cost-effective alternative available?

CUSTOMERS: *No. Adopt post-hearing position of PACE as to specifics.*

ISSUE 25: Is Florida Power & Light Company's Manatee Unit 3 the most cost-effective alternative available?

CUSTOMERS: *No. Adopt post-hearing position of PACE as to specifics.*

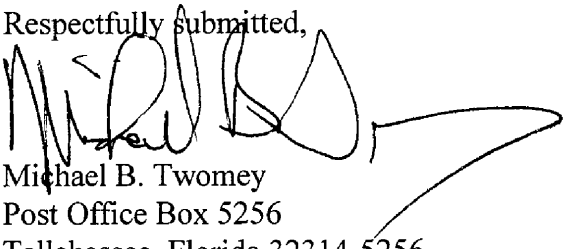
ISSUE 26: Based on the resolution of the foregoing issues, should the Commission grant Florida Power & Light Company's petition for determination of need for Martin Unit 8?

CUSTOMERS: *No.*

ISSUE 27: Based on the resolution of the foregoing issues, should the Commission grant Florida Power & Light Company's petition for determination of need for Manatee Unit 3?

CUSTOMERS: *No.*

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this petition has been served by U.S. Mail, hand delivery and/or email this 14th day of October, 2002 on the following:

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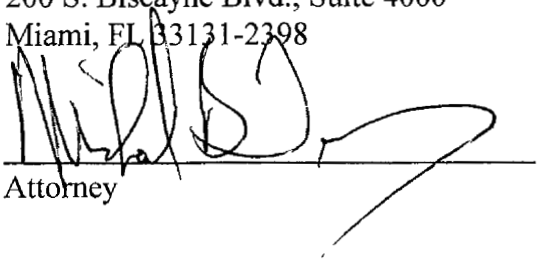

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