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December 10, 2003

Ms. Blanca S. Bayo, Director
Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Room 110
Tallahassee, Florida 32399-0850

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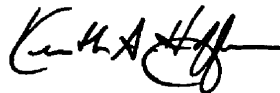
Re: Docket No. 030623-EI

Dear Ms. Bayo:

Enclosed herewith for filing on behalf of Florida Power & Light Company ("FPL") are an original and fifteen copies of FPL's Petition on Proposed Agency Action.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me. Thank you for your assistance with this filing.

Sincerely,



Kenneth A. Hoffman

KAH/rl

Enclosures

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K. J. N.
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Complaints by Southeastern Utility Services,
Inc. on behalf of various customers, against)
Florida Power & Light Company concerning)
thermal demand meter error)
_____)

Docket No. 030623-EI

Filed: December 10, 2003

**FLORIDA POWER & LIGHT COMPANY'S
PETITION ON PROPOSED AGENCY ACTION**

Florida Power & Light Company ("FPL") by and through its undersigned counsel, and pursuant to Sections 120.569 and 120.57, Florida Statutes, and Rules 25-22.029 and 28-106.201, Florida Administrative Code, hereby files this protest to the Notice of Proposed Agency Action Order Resolving Complaints, Order No. PSC-03-1320-PAA-EI issued November 19, 2003 (hereinafter referred to as the "PAA Order"). As grounds for and in support of its Protest, FPL states as follows:

1. The name and address of the Agency affected and the Agency's File Number are:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
Docket No. 030623-EI

2. All notices, pleadings, staff recommendations, orders, discovery and other documents filed or served in this docket should be served on the following on behalf of FPL:

12829 DEC 10 6
FPSC-COMMISSION CLERK

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3. Counsel for FPL received a copy of the PAA Order on November 19, 2003.

BACKGROUND

4. This proceeding arose as a result of complaints filed by Southeastern Utility Services, Inc. ("SUSI"), a consulting firm retained by certain customers of FPL who have received electric service provided by FPL metered by a certain meter known as a 1V thermal demand meter.

5. FPL tests its meters on an annual basis consistent with FPL's Meter Test Plan approved by the Commission. FPL has historically tested thermal demand meters by group. A group typically covers several meter types used by customers covering a certain range of demand. As noted in the PAA Order, FPL had a certain 1V thermal demand meter fail an individual meter test in the summer of 2002. That event triggered a decision by FPL to further refine its meter test

procedures and test thermal demand meters by meter type, instead of by group.¹ FPL thereafter conducted a statistically valid sample test of 1V meters and subsequently conducted statistically valid sample tests of the remaining types of thermal demand meters in 2002 and 2003.

6. The sample of the 1V meters, and only the 1V meters, failed the statistically valid test. Once FPL became aware that the 1V meters, as a population, had failed the sampling test, FPL sought and received approval from Staff in October 2002 to remove and test each of the approximate 3,900 1V meters. See PAA Order at 7 . FPL has completed the removal and testing of all of the approximate 3,900 1V meters and has made refunds to essentially all affected customers whose meter tests reflected that the meter registered above the Commission approved 4% tolerance level - - with the exception of the approximate 28 accounts represented by SUSI and at issue in the PAA Order.

7. FPL wishes to emphasize to the Commission that the PAA Order, in large part, embraces and approves a protocol for settling the remaining approximate 28 accounts that was agreed to by FPL and SUSI as a mechanism for settling these remaining accounts. Numerous features of the settlement protocol exceed the requirements of the applicable Commission rules **for the benefit of FPL's customers**. For example, FPL and SUSI agreed and the Commission approved in the PAA Order, a mechanism for settling the SUSI accounts at issue which includes:

a. No backbilling on the part of FPL even though FPL is authorized to backbill meters that under-register beyond the 4% level specified under Rule 25-6.103(2), Florida Administrative Code; and

¹For example, 1V is a type of thermal demand meter. A group of thermal demand meters consists of multiple types.

b. Retesting of 1V meters that were originally and lawfully tested at 40% of full scale value (and over-registered) at 80% of full scale value to determine eligibility for a refund even though FPL is authorized by rule to test a thermal demand meter at any point between 25% and 100% of full scale value to determine whether a refund or backbilling may apply. See Rule 25-6.052(2)(a), Florida Administrative Code.

8. FPL does not agree with certain aspects of the PAA Order. For example, FPL does not necessarily agree with the proposed newly developed methodology in the PAA Order for determining the amount of the meter error for the purpose of calculating a potential refund. Nor does FPL agree with that part of the PAA Order requiring the use of the higher demand rate class with the lower kwh rate for calculating potential refunds for meters that over registered and the erroneous kw demand level placed the customer in a higher kw demand classification (with lower rates). Nonetheless, FPL maintains that the individual features of the PAA Order, taken as a collective whole, provide a fair and equitable mechanism for settling the 1V meter accounts that remain at issue in the PAA Order.

9. Accordingly, FPL has filed this Protest to reserve its rights to proceed to a final hearing under a strict application of the applicable rules of the Commission. In the event SUSI (or some other unknown intervenor) does not file a protest to the PAA Order, FPL will promptly file a motion to withdraw its Protest conditioned upon an order by the Commission clarifying that the PAA Order, if it becomes final, does not necessarily have precedential effect on any future negotiations or proceedings that may arise in connection with other 1V meters not at issue in the PAA Order and would have no precedential effect on any future litigation concerning other types (non-1V) of thermal demand meters.

SUBSTANTIAL INTERESTS OF FPL

10. FPL is a “public utility” as defined by Section 366.02(1), Florida Statutes. FPL provides retail electric service to approximately 4 million customers along the East Coast, Southeast Coast and Southwest Coast of the State of Florida. Approximately 3900 customers received electric service from FPL metered by a 1V thermal demand meter. Approximately 28 of those 3900 customers are represented by SUSI in this proceeding.

11. The meters at issue in this proceeding have been tested by FPL in a manner and through a process that exceeds the requirements of applicable Commission rules. For the meters that have over-registered above the 4% tolerance level, FPL has offered and is prepared to pay a refund to the customer for a period of 12 months of overbilling, with interest, consistent with Rules 25-6.103(1) and 25-6.109, Florida Administrative Code, and the PAA Order, at 9-10. SUSI has filed complaints in this proceeding requesting the Commission to order FPL to pay refunds in excess of those required by Rule 25-6.103(1) and 25-6.109, Florida Administrative Code, and the PAA Order. Thus, FPL’s substantial interests will be directly affected in this proceeding and FPL has standing to protest the PAA Order to preserve its legal rights to proceed to final hearing under a strict application of the Commission’s rules in the event all or part of the PAA Order is protested by SUSI or some other unknown intervenor.

DISPUTED ISSUES OF MATERIAL FACT

12. Subject to further discovery and refinement of the issues that will be appropriate for final hearing, the disputed issues of material fact and law known at this time include, but are not limited to, the following:

a. Whether FPL’s initial test of the 1V meters at issue under a PAA Order complied

with Rule 25-6.052(2)(a), Florida Administrative Code, and is to be used for the purpose of determining whether a specific customer's 1V meter exceeded the 4% tolerance levels and is subject to backbilling or a refund.

b. Whether each customer's 1V meter at issue under the PAA Order has been tested by FPL in a manner consistent and in conformance with Rule 25-6.052(2)(a), Florida Administrative Code.

c. Whether each 1V meter at issue under the PAA Order under-registered or over-registered in excess of the 4% error registration standard mandated by Rule 25-6.052(2)(a), Florida Administrative Code.

d. The amount of the meter test error that should be used in calculating any backbilling or refunds under applicable Commission rules.

e. Whether any meters at issue in the PAA Order have under-registered beyond the 4% tolerance level mandated by the Commission and, if so, the amount that the customer should be backbilled by FPL and the appropriate period of time, terms and conditions for such backbilling of such customers by FPL.

f. Whether any of the meters at issue under the PAA Order have over-registered in excess of the 4% tolerance level mandated by the Commission and are, therefore, entitled to refunds.

g. For any customers eligible for refunds, whether such customer has shown that the error in the meter was due to some cause, the date of which can be fixed, as required under Rule 25-6.103, Florida Administrative Code, to be eligible for a refund beyond twelve months.

h. For any meters subject to the PAA Order that are eligible for a refund, the appropriate kwh rates to be applied in calculating the refund.

ULTIMATE FACTS ENTITLING FPL TO RELIEF

13. FPL reconfirms that it is protesting the entire PAA Order for the purpose of preserving its rights and legal positions for final hearing. In such an event, FPL maintains that the only appropriate and lawful resolution of the 1V meter accounts at issue under the PAA Order is as follows:

a. Any 1V meter at issue removed by FPL pursuant to Staff approval in 2002 and lawfully tested between 25% and 100% of full scale value that under-registered beyond 4% is subject to backbilling, applying the rates that would apply after adjusting for the meter error, for a period of twelve months.

b. Any 1V meter at issue removed by FPL pursuant to Staff approval in 2002 and lawfully tested between 25% and 100% of full scale value that over-registered above 4% is subject to a refund applying the rates that would apply after adjusting for the meter error, for a period of twelve months.

14. The relief requested by FPL will be supported by the evidence produced at hearing, Rules 25-6.052, 25-6.058, and 25-6.103, Florida Administrative Code, and any applicable statutes, case law and/or prior Commission orders.

WHEREFORE, FPL requests that the Commission grant this Petition on Proposed Agency Action and schedule a formal administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes, and grant the relief requested by FPL herein.

Respectfully submitted this 10th day of December, 2003.



Kenneth A. Hoffman, Esq.

J. Stephen Menton, Esq.

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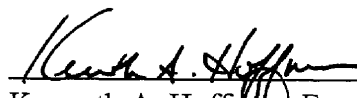
Attorneys for Florida Power & Light Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by United States Mail to the following this 10th day of December, 2003:

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