

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Joint Complaint and Petition)
of the Citizens of the State of)
Florida, Florida Retail Federation,)
AARP, Federal Executive Agencies,) DOCKET NO. 050494 -EI
South Florida Hospital and Healthcare)
Association, and Florida Industrial) FILED: JULY 19, 2005
Power Users Group for a Decrease in)
the Rates and Charges of Florida)
Power & Light Company)
_____)

JOINT COMPLAINT AND PETITION AND REQUEST FOR HEARING
OF THE CITIZENS OF THE STATE OF FLORIDA, FLORIDA RETAIL
FEDERATION, AARP, FEDERAL EXECUTIVE AGENCIES, SOUTH FLORIDA
HOSPITAL AND HEALTHCARE ASSOCIATION, AND FLORIDA INDUSTRIAL POWER
USERS GROUP FOR A DECREASE IN THE RATES AND CHARGES OF FLORIDA
POWER & LIGHT COMPANY

The Citizens of the State of Florida ("Citizens"), by and through their Public Counsel, the Florida Retail Federation ("FRF"), AARP, the Federal Executive Agencies ("FEA"), the South Florida Hospital and Healthcare Association ("SFHHA"), and the Florida Industrial Power Users Group ("FIPUG"), hereinafter collectively the "Consumers" or "Consumer Petitioners," pursuant to Chapters 120, 350, and 366, Florida Statutes,¹ and Rules 25-22.036 and 28-106.201, Florida Administrative Code ("F.A.C."), hereby file this Joint Complaint and Petition and Request for Hearing, by which each respectfully asks the Florida Public Service Commission ("Commission") to reduce the rates and charges imposed by Florida Power & Light Company ("FPL"), a public

¹ All references herein to the Florida Statutes are to the 2004 edition thereof.

utility subject to the Commission's plenary regulatory jurisdiction over FPL's retail rates and service in Florida.

In summary, the Consumers include:

- the Public Counsel of Florida, who represents the Citizens of the State of Florida in rate proceedings like that sought here by the Consumers;
- the Florida Retail Federation, an established association with more than 10,000 members in Florida, including the state's largest groceries, department stores, pharmacies, and other retail stores, such as Publix, Albertson's, Food Lion, Kash'n'Karry, Sweetbay Supermarkets, Macy's, Target, Wal-Mart, and The Home Depot, as well as thousands of smaller retail chains and individual retail stores, many of whom are retail customers of FPL;
- AARP, a nonprofit membership organization dedicated to addressing the needs and interests of persons 50 and older, with approximately 2.7 million members in the state of Florida, a significant number of whom are retail residential customers of FPL;
- the Federal Executive Agencies, certain agencies of the United States Government which have offices, facilities, and/or installations in the service area of FPL and purchase electric utility service from FPL;
- the South Florida Hospital and Healthcare Association, a regional healthcare provider association acting as an

advocate, facilitator and educator for its members, and a voice for improving the health status of its community, a substantial number of whose members receive electric power from and pay the rates of FPL; and

- the Florida Industrial Power Users Group, an ad hoc association consisting of industrial users of electricity in Florida.

Together, the Consumers represent the interests of millions of individual customers of FPL and thousands of commercial, industrial, and governmental customers of FPL, who have now joined together to seek the Public Service Commission's scrutiny of and protection from FPL's current rates, which, if allowed to remain in effect beyond December 31, 2005, will be unfairly, unjustly, and unreasonably high.

Having now had the opportunity to review FPL's Minimum Filing Requirements ("MFRs"), testimony, and exhibits filed in Docket No. 050045-EI, the Consumers have evaluated FPL's rates, revenues, and claimed costs, and most have filed testimony and exhibits in Docket No. 050045-EI. The Consumers have determined that, far from being entitled to a rate increase, the Commission should order FPL to reduce its rates and charges by at least \$679 million per year.

Accordingly, the Consumers hereby file their complaint to the Florida Public Service Commission, stating that FPL's rates are unfairly, unjustly, and unreasonably high. The Consumers

also hereby petition the Commission (a) to review FPL's rates, (b) to determine that, if those rates are allowed to remain in effect beyond December 31, 2005, those rates will be unfairly, unjustly, and unreasonably high for the period beginning January 1, 2006, in violation of Chapter 366, Florida Statutes, including Sections 366.03, 366.06, and 366.07, Florida Statutes, and (c) to determine and fix the fair, just, and reasonable rates to be charged and collected by FPL for retail service beginning on January 1, 2006. Accordingly, respectful of the obligations binding on some of the Consumers under the Stipulation and Settlement entered into in 2002 in Docket No. 001148-EI,² the Consumers also petition the Commission to order FPL to reduce its rates and charges by at least \$679 million per year, effective beginning January 1, 2006.

The Consumers also respectfully petition the Commission to conduct a hearing on contested matters in connection with their Joint Complaint and Petition in accordance with Chapters 120 and 366, Florida Statutes. The Consumers believe that it would be most efficient for the Commission to conduct the hearings on

² In Re: Review of the Retail Rates of Florida Power & Light Company, PSC Docket No. 001148-EI, Order No. PSC-02-0501-AS-EI, "Order Approving Settlement, Authorizing Midcourse Correction, and Requiring Rate Reductions (Fla. Pub. Serv. Comm'n, April 11, 2002) (hereinafter "Order No. 02-0501"). The Stipulation and Settlement (hereinafter the "2002 Settlement") that was approved by this order prohibited those bound thereby, which does not include the SFHHA, from seeking a change in FPL's rates and charges to take effect before January 1, 2006.

their requested rate reduction on the same schedule as the hearings presently scheduled for Docket No. 050045-EI, and accordingly, the Consumers are simultaneously filing a Motion to Consolidate their Joint Complaint and Petition with FPL's petition for a rate increase for hearing and decision purposes. The Consumers are seeking their requested rate relief separate and apart from the FPL-initiated proceeding, however, because the Consumers are entitled to the requested relief in their own rights.

In further support of their Joint Complaint and Petition, the Consumers state as follows.

PROCEDURAL BACKGROUND

1. The name, address, and telephone number of Consumer Petitioners, the Citizens of the State of Florida, are as follows:

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, Florida 32399-1400
(850) 488-9330 Telephone
(850) 488-4491 Facsimile.

2. All pleadings, orders and correspondence should be directed to the OPC's representatives as follows:

Harold McLean, Public Counsel
Charles J. Beck, Deputy Public Counsel
c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, Florida 32399-1400
(850) 488-9330 Telephone
(850) 488-4491 Facsimile.

3. The name, address, and telephone number of Consumer Petitioner the Florida Retail Federation are as follows:

Florida Retail Federation
100 East Jefferson Street
Tallahassee, Florida 32301
Telephone (850) 222-4082
Telecopier (850) 226-4082.

4. All pleadings, orders and correspondence should be directed to the FRF's representatives as follows:

Robert Scheffel Wright, Attorney at Law
John T. LaVia, III, Attorney at Law
Landers & Parsons, P.A.
310 West College Avenue (ZIP 32301)
Post Office Box 271
Tallahassee, Florida 32302
(850) 681-0311 Telephone
(850) 224-5595 Facsimile.

5. The name, address, and telephone number of Consumer Petitioner AARP are:

AARP
200 West College Avenue
Tallahassee, FL 32301

6. All pleadings, orders and correspondence should be directed to AARP's representatives as follows:

Michael B. Twomey, Attorney at Law
Post Office Box 5256
Tallahassee, FL 32314-5256
(850) 421-9530 Telephone
(850) 421-8543 Facsimile.

7. The name, address, and telephone number of Consumer Petitioner the Federal Executive Agencies are as follows:

Federal Executive Agencies
ATTN: Major Craig Paulson
AFCESA/ULT
139 Barnes Drive
Tyndall Air Force Base, Florida 32403
(850) 283-6350 Telephone
(850) 283-6219 Facsimile.

8. All pleadings, orders and correspondence should be directed to the FEA's representatives as follows:

Major Craig Paulson
AFCESA/ULT
139 Barnes Drive
Tyndall Air Force Base, Florida 32403
(850) 283-6350 Telephone
(850) 283-6219 Facsimile.

9. The name, address, and telephone number of Consumer Petitioner South Florida Hospital and Healthcare Association are as follows:

South Florida Hospital and Healthcare Association
6363 Taft Street
Hollywood, Florida 33024
(954) 964-1660 Telephone
(954) 964-1260 Facsimile.

10. All pleadings, orders and correspondence should be directed to the SFHHA's representatives as follows:

Mark F. Sundback, Attorney at Law
Kenneth L. Wiseman, Attorney at Law
Gloria J. Halstead, Attorney at Law
Jennifer L. Spina, Attorney at Law
Andrews & Kurth LLP
1701 Pennsylvania Avenue, N.W., Suite 300
Washington, DC 20006
(202) 662-2700 Telephone
(202) 662-2739 Facsimile.

11. The name, address, and telephone number of Consumer Petitioner the Florida Industrial Power Users Group are as follows:

Florida Industrial Power Users Group
c/o McWhirter, Reeves & Davidson, P.A.
400 North Tampa Street, Suite 2450
Tampa, Florida 33602
(813) 224-0866 Telephone
(813) 221-1854 Facsimile.

12. All pleadings, orders and correspondence should be directed to FIPUG's representatives as follows:

John W. McWhirter
McWhirter, Reeves & Davidson, P.A.
400 North Tampa Street, Suite 2450
Tampa, Florida 33602
(813) 224-0866 Telephone
(813) 221-1854 Facsimile

and

Timothy J. Perry
McWhirter, Reeves & Davidson, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301
(850) 222-2525 Telephone
(850) 222-5606 Facsimile.

13. The agency affected by this Joint Complaint and Petition is the:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850.

14. The name and address of the entity against whom this Joint Complaint and Petition is lodged is:

Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408.

THE PARTIES

15. The Consumers who have filed this Joint Complaint and Petition include the following.

- a. The Citizens of the State of Florida, including the several million persons who receive retail electric service from FPL, are represented by their Public Counsel. By statute, the Public Counsel represents the citizens in proceedings before the Commission. Fla. Stat. § 350.0611. By statute, the Public Counsel is authorized to petition the Commission to commence proceedings to reduce the rates of public utilities and to appear in such proceedings and advance positions that he deems to be in the public interest. Fla. Stat. § 350.0611(1).
- b. The Florida Retail Federation is an established association of more than 10,000 members in Florida, including the state's largest groceries, department stores, pharmacies, and other

retail stores, such as Publix, Albertson's, Food Lion, Kash'n'Karry, Sweetbay Supermarkets, Macy's, Target, Wal-Mart, and The Home Depot, as well as many other major retail stores and thousands of smaller retail chains and individual retail stores, many of whom are retail customers of FPL. The FRF's members require adequate, reasonably-priced electricity in order to conduct their businesses consistently with the needs of their customers and ownership.

- c. AARP is a nonprofit membership organization dedicated to addressing the needs and interests of persons 50 and older. AARP has approximately 2.7 million members in Florida, a significant number -- probably more than 1 million -- of whom are retail residential customers of FPL.
- d. The Federal Executive Agencies comprise certain agencies of the United States Government which have offices, facilities, and/or installations in the service area of FPL and purchase electric utility service from FPL.
- e. The South Florida Hospital and Healthcare Association is a regional healthcare provider association acting as an advocate, facilitator and educator for its members, and a voice for improving the health status of its community, whose members receive electric power from and pay the rates of FPL.
- f. The Florida Industrial Power Users Group is an ad hoc association consisting of industrial users of electricity in Florida.

16. FPL is an investor-owned public utility within the meaning of Section 366.02(1), Florida Statutes, providing retail electric service subject to the Commission's jurisdiction to approximately 4.2 million retail customers. FPL's service area is generally the eastern half of the Florida Peninsula plus most of southwest Florida south of Hillsborough and Pinellas Counties.

RELEVANT HISTORY

17. As noted above, FPL's last rate proceeding before the Commission was resolved via the 2002 Settlement in April 2002. Before that, FPL's rates were also set pursuant to a stipulation and settlement entered into in 1999. In Re: Petition by the Citizens of the State of Florida for a Full Revenue Requirements Rate Case for Florida Power & Light Company, PSC Docket No. 990067-EI, Order No. 99-0519-AS-EI, "Order Approving Stipulation and Settlement" (Fla. Pub. Serv. Comm'n, March 17, 1999). The last time that the Commission actually decided the full range of issues in a general rate case for FPL was in 1984. In Re: Petition of Florida Power & Light Company for an Increase in Its Rates and Charges, PSC Docket No. 830465-EI, Order No. 13537, "Order Authorizing Certain Increases" (Fla. Pub. Serv. Comm'n, July 24, 1984).

18. Since 2002, despite the rate reductions agreed to in the 2002 Settlement and approved by Order No. 02-0501, FPL has continued to earn rates of return on equity that are, in the

opinion of the Consumers, excessive. Even so, honoring the commitments made by some of the Consumers under the 2002 Settlement, the Consumers have not sought rate reductions to take effect during the term of the 2002 Settlement, and are not doing so through this Joint Complaint and Petition. Rather, the Consumers, including the signatories to the 2002 Settlement, are doing exactly what was contemplated by the 2002 Settlement -- they are seeking a reduction of FPL's rates and charges to take effect immediately upon the expiration of the 2002 Settlement.

19. As noted above, in Docket No. 050045-EI, FPL has asked the Commission to allow it to increase its retail rates and charges so as to produce an additional \$430 million per year in base rate revenues. Also as stated above, the Consumers, while they differ to some degree as to certain amounts at issue, unanimously agree that FPL's retail rates should be reduced significantly, by at least \$679 million per year. As explained more fully below, the Consumers are entitled to the relief requested herein in their own respective and collective rights, but the Consumers are entirely amenable to their Joint Complaint and Petition being consolidated for hearing and decision purposes, with Docket No. 050045-EI, on the same schedule, with the same hearing dates, and with all issues of all parties decided simultaneously. Accordingly, the Consumers are filing simultaneously a Joint Motion to Consolidate their Joint Complaint and Petition with Docket No. 050045-EI for hearing and decision

purposes.

STATEMENT OF SUBSTANTIAL INTERESTS AFFECTED

20. In Docket No. 050045-EI, FPL has requested a general rate increase of approximately \$430 million per year. In stark contrast, in this docket initiated by their Joint Complaint and Petition, the Consumers are asking the Commission to reduce FPL's rates by at least \$679 million per year. The Commission is thus presented with the questions (a) whether any rate increases or decreases are justified, and (b) if so, what rates and charges the Commission should fix and determine in order to implement such increases or decreases. As the representatives of their millions of members who are FPL retail customers, the Consumers' substantial interests will be affected by the Commission's decisions in this docket or in Docket No. 050045-EI.

21. The Consumers anticipate that FPL will attempt to prevent the Consumers from pursuing a rate decrease in their own rights by asserting that, as intervenors, the Consumers can vindicate all of their rights and interests in the existing Docket No. 050045-EI. If advanced, this false and misleading analysis must be rejected by the Commission because:

- First, and most importantly, the Consumers are entitled to the relief requested - lower rates and a hearing to determine how much lower those rates should be - as matters of statutory right.

- Second, as a matter of procedure under the Florida Administrative Procedures Act, as intervenors, the Consumers do not have their own independent right to pursue this case through to a hearing and decision by the Commission, because as intervenors, the Consumers ability to pursue this case only exists as long as FPL pursues it. Once FPL evaluates the Consumers' powerful demonstration that a rate decrease is warranted, FPL may decide to withdraw its petition, which would, absent this Joint Complaint and Petition asking the Commission to order lower rates for FPL, terminate this case. Thus, this Joint Complaint and Petition is necessary to protect the Consumers' and the Consumers' members' substantial interests in having the PSC fix and determine the fair, just, and reasonable rates for FPL to charge beginning in January 2006.

22. If FPL should withdraw its petition for a rate increase in Docket No. 050045-EI, the Consumers intend to proceed to hearing by "access[ing] and rely[ing] on the evidence and testimony" that has been filed and that will be filed in Docket No. 050045-EI, as the Florida Supreme Court has recognized is their right. See South Florida Hospital & Healthcare Ass'n v. Jaber, 887 So. 2d 1210, 1214 (Fla. 2004).

23. The Consumers' substantial interests are of sufficient immediacy to entitle them to the relief requested and are the type of interests that the requested proceeding is designed to protect.

The Consumers' testimony and exhibits filed in Docket No. 050045-EI, which are hereby incorporated by reference with this Joint Complaint and Petition, demonstrate that FPL's rates, unless reduced, will be unfair, unjust, and unreasonable for the period beginning January 1, 2006. The millions of FPL customers who are represented by the Consumers are entitled to prompt Commission action to prevent this injustice.

NOTICE OF AGENCY DECISION

24. Insofar as this Joint Complaint and Petition initiates a new case, and also insofar as there is presently pending no agency decision in Docket No. 050045-EI, the Consumers state that Rule 28-106.201(2)(c), F.A.C., is not applicable to this Joint Complaint and Petition.

DISPUTED ISSUES OF MATERIAL FACT

25. The Consumers believe that the disputed issues of material fact in this proceeding will include, but will not necessarily be limited to, the general issues listed below. Additionally, Attachment A to this Joint Complaint and Petition is a copy of the Citizens' (Public Counsel's) preliminary issues list, which identifies many specific issues that have been identified by the parties to Docket No. 050045-EI that would be litigated in this case. The Consumers reserve their collective and individual rights to identify and develop additional issues as provided for by the Commission's normal procedures and procedural

orders, and specifically the provisions in the Order Establishing Procedure in Docket No. 050045-EI.

Issue: What are the appropriate jurisdictional values of FPL's Plant in Service, Accumulated Depreciation, Regulatory Assets and Liabilities, and Rate Base for setting FPL's rates to be effective as of January 1, 2006?

Issue: What are the appropriate jurisdictional values of FPL's operation and maintenance expenses for setting FPL's rates in this case?

Issue: What is the appropriate capital structure for FPL for the purpose of setting FPL's rates in this case?

Issue: What is the appropriate rate of return on equity for FPL for the purpose of setting FPL's rates in this case?

Issue: How should any reduction in FPL's retail rates and charges be allocated to FPL's retail customer classes?

Issue: What are the appropriate rates and charges to be charged by FPL for its services to each customer class?

Issue: What are the appropriate jurisdictional revenue requirements associated with FPL's participation in the GridFlorida Regional Transmission Organization to be used for setting FPL's rates in this case?

Issue: What is the appropriate amount to be included in FPL's base rates for storm damage reserve accrual?

The Consumers reserve all rights to raise additional issues in accordance with the Commission's rules and the Order Establishing

Procedure in Docket No. 050045-EI as though it had been issued in the docket initiated by the Consumers' Joint Complaint and Petition.

STATEMENT OF ULTIMATE FACTS ALLEGED

26. FPL's rates are unfairly, unjustly, and unreasonably high, and allowing those rates to continue in effect beyond December 31, 2005 will result in all of those represented by the Consumers, who ultimately include all customers served by FPL, being burdened with unfair, unjust, and unreasonable rates for electricity that they purchase as the captive customers of FPL.

27. If allowed to remain in effect, FPL's existing rates and charges will be unfairly, unjustly, and unreasonably high in violation of Chapter 366, Florida Statutes. If FPL's existing rates are allowed to continue in effect beyond December 31, 2005, FPL will recover more than is fair, just, and reasonable in at least the following ways.

- a. FPL will continue to earn an excessive rate of return on the equity investment of its shareholders.
- b. FPL will collect rates and charges that are not fair, just, and reasonable, including inflated or non-representative payroll costs, excessive incentive compensation, excessive claimed health care and pension costs, excessive and out-of-test-year rate case expenses, excessive costs for directors' and officers' liability insurance, excessive payments to

affiliates, improperly claimed charitable contribution expenses, and others.

- c. Without adjustments, FPL will unfairly, unjustly, and unreasonably continue to retain staggeringly high amounts already paid into FPL's accounts by the Consumers' members and which now reside, in accounting terms, in FPL's Accumulated Depreciation Reserves, which have a surplus of approximately \$2.4 billion. Any level of FPL's rates that is allowed to remain in effect without amortizing this tremendous surplus over a reasonably short period of time will not only result in unfair, unjust, and unreasonable rates, it will also result in unduly discriminatory rates in that, as more time passes, those who paid in this staggering surplus will realize less and less of the benefits that it provides, and many who have paid nothing toward the accumulation of the surplus will receive greater and greater benefits that have been paid for by others.

28. Extensive details explaining how FPL's rates will be unfair, unjust, and unreasonable for the period beginning January 1, 2006 are set forth in the testimony and exhibits of the Consumers' witnesses, including:

- a. Donna DeRonne, C.P.A., on behalf of the Citizens of the State of Florida;
- b. David E. Dismukes, Ph.D., on behalf of the Citizens of the State of Florida;

- c. Kimberly H. Dismukes, on behalf of the Citizens of the State of Florida;
- d. Hugh Larkin, Jr., on behalf of the Citizens of the State of Florida;
- e. Michael J. Majoros, Jr., on behalf of the Citizens of the State of Florida;
- f. Patricia W. Merchant, C.P.A., on behalf of the Citizens of the State of Florida;
- g. Helmuth W. Schultz, III, on behalf of the Citizens of the State of Florida;
- h. J. Randall Woolridge, Ph.D., on behalf of the Citizens of the State of Florida;
- i. Sheree L. Brown, on behalf of the Florida Retail Federation;
- j. Stephen A. Stewart, on behalf of AARP;
- k. Dennis W. Goins, Ph.D., on behalf of the Federal Executive Agencies;
- l. Matthew I. Kahal, M.A., on behalf of the Federal Executive Agencies;
- m. Stephen J. Baron, on behalf of the South Florida Hospital and Healthcare Association;
- n. Richard A. Baudino, on behalf of the South Florida Hospital and Healthcare Association;
- o. Lane Kollen, M.B.A., C.P.A., C.M.A., on behalf of the South Florida Hospital and Healthcare Association;
- p. James T. Selecky, P.E., M.B.A., on behalf of The Commercial

Group; and

- q. Teresa Civic and Jess Galura, on behalf of The Commercial Group.

In addition, as specifically contemplated by the Florida Supreme Court's decision and opinion in South Florida Hospital v. Jaber, the Consumers intend to proceed by "access[ing] and rely[ing] on the evidence and testimony" that has been filed in Docket No. 050045-EI. See South Florida Hospital v. Jaber, 887 So. 2d at 1214.

29. In summary, the Consumers believe that, if the Commission approves the rate reductions sought herein, the bill for an average FPL residential customer will be decreased by at least \$100 per year. This value is based on the Consumers' requested overall rate decrease of \$679 million per year and the 2003 average usage per FPL residential customer of approximately 14,859 kilowatt-hours per customer per year, or about 1,238 kilowatt-hours per customer per month. The corresponding value for usage at 1,000 kilowatt-hours per month is approximately \$7 per customer per month, or about \$84 per customer per year.

**STATUTES AND RULES THAT ENTITLE THE
CONSUMER PETITIONERS TO RELIEF**

30. The applicable statutes and rules that entitle the Consumer Petitioners to relief include, but are not limited to, Sections 120.569, 120.57(1), 366.03, 366.04(1), 366.05(1), 366.06(1)&(2), and 366.07, Florida Statutes, and Rule 25-22.036

and Chapter 28-106, Florida Administrative Code.

**STATEMENT EXPLAINING HOW THE FACTS ALLEGED BY THE
CONSUMER PETITIONERS ENTITLE THEM TO RELIEF
PURSUANT TO APPLICABLE STATUTES AND RULES**

31. The above-cited sections of Chapter 366 declare the Commission's jurisdiction over FPL's rates and the Commission's statutory mandate to ensure that FPL's rates are fair, just, and reasonable, and that those rates are not unduly discriminatory. The facts alleged here by the Consumers demonstrate (a) that without action by the Commission, FPL's rates will be unfair, unjust, and unreasonable as of January 1, 2006, (b) that millions of Floridians, i.e., FPL's customers represented by the Consumers, will be directly impacted by the Commission's decisions regarding FPL's rates and charges herein, and (c) accordingly, that these statutes provide the basis for the relief requested by the Consumers in this Joint Complaint and Petition.

32. Rules 25-22.036 and 28-106.201, F.A.C., provide that persons whose substantial interests are subject to determination by an agency are entitled to bring a complaint, and to petition the agency, here the Commission, for relief as authorized by statutes and rules. Rule 28-106.201, F.A.C., provides that a petition is the appropriate vehicle by which a party may ask an agency to conduct evidentiary proceedings where disputed issues of material fact are involved.

CONCLUSION AND RELIEF REQUESTED

Together, the Consumer Petitioners represent all of FPL's customers, and together, the Consumer Petitioners hereby petition the Commission to protect their members' interests by holding hearings as provided by Chapters 120 and 366, Florida Statutes, and by setting rates for Florida Power & Light Company that are fair, just, reasonable, and not unduly discriminatory. The facts alleged by the Consumers herein, and described in full detail in their witnesses' testimony and exhibits, demonstrate that the Commission should reduce FPL's rates, effective January 1, 2006, as prayed herein.

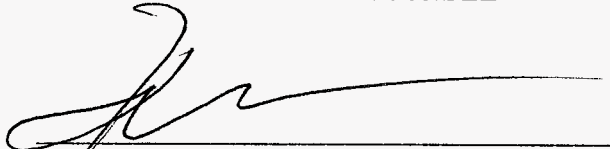
RELIEF REQUESTED

WHEREFORE, the Consumer Petitioners respectfully request the Florida Public Service Commission to hold hearings pursuant to Chapters 120 and 366, Florida Statutes, and to issue its order reducing FPL's retail rates and charges to levels that are fair, just, and reasonable, as required by Florida law.

Respectfully submitted this 19th day of July, 2005.

Respectfully submitted this 19th day of July, 2005.

OFFICE OF PUBLIC COUNSEL



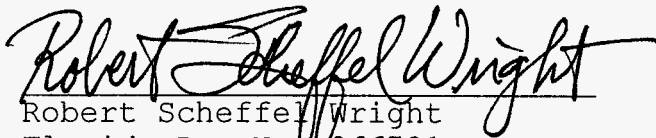
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FLORIDA RETAIL FEDERATION



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FEDERAL EXECUTIVE AGENCIES



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USERS GROUP



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FILED: JULY 19, 2005

ATTACHMENT A

CITIZENS' PRELIMINARY ISSUES LIST

FLORIDA POWER & LIGHT COMPANY

DOCKET NO. 050045-EI

STAFF PRELIMINARY ISSUES (as modified by OPC - additions in bold and deletions in strike-through)

July 17, 2005

TEST YEAR AND FORECASTING

- ISSUE 1:** Is FPL's projected test period of the twelve months ending December 31, 2006 appropriate?
- OPC 1A:** **Is the company's forecast adjustment to its growth and sales projections associated with the 2004 hurricanes appropriate and if not, what adjustments are appropriate to the test year?**
- ISSUE 2:** Are FPL's forecasts of customer growth, kWh by revenue class, and system KW for the projected test year appropriate?
- ISSUE 3:** Are FPL's forecasts of billing determinants by rate class for the projected test year appropriate?

QUALITY OF SERVICE

- ISSUE 4:** Is the quality and reliability of electric service provided by FPL adequate?
- ISSUE 5:** Is FPL's pole inspection, repair, and replacement program sufficient for the purpose of providing reasonable transmission and distribution system protection?
- ISSUE 6:** Is FPL's vegetation management program sufficient for the purpose of providing reasonable transmission and distribution system protection?

DEPRECIATION STUDY

- ISSUE 7:** Is FPL's \$329.75 million accrued unassigned discretionary balance allocation appropriate based upon the approved settlement agreement in Order No. PSC-02-0502-AS-EI?
- OPC 7A:** **What are the appropriate service lives and parameters to use in calculating the depreciation rates for FPL?**
- OPC 7B:** **Has FPL correctly calculated net salvage ratios? If not, what method should be used, and what impact does this have?**

ISSUE 8: ~~Is FPL's \$1.2 billion depreciation reserve excess appropriate and should there be any other corrective reserve allocations?~~ **What are the amounts of FPL's reserve deficiencies and reserve surpluses?**

OPC 8A: **What amortization schedules or other adjustments should be adopted by the Commission to account for reserve deficiencies and surpluses?**

OPC 8B: **What are the appropriate remaining life rates to use in calculating FPL's depreciation rates?**

ISSUE 9: What are the appropriate depreciation rates and recovery/amortization schedules?

ISSUE 10: Should the current amortization of investment tax credits and flow back of excess deferred income taxes be revised to reflect the approved depreciation rates and recovery schedules?

ISSUE 11: What should be the implementation date for FPL's depreciation rates and recovery/amortization schedules?

RATE BASE

OPC 11B: **Should any adjustments be made to the company's projected plant balances for differences between budgeted and actual amounts?**

OPC 11C: **Should any adjustments be made to the projected construction costs of Manatee Unit 3 and Martin Unit 8?**

ISSUE 12: Should adjustments **to plant** be made for the rate base effects of FPL's transactions with affiliated companies?

ISSUE 13: Should the capitalized items currently approved for recovery through the Environmental Cost Recovery Clause (ECRC) be included in rate base?

ISSUE 14: Should any portion of capital and expense items requested in the storm docket be included in base rates?

ISSUE 15: ~~Is FPL's requested level of Plant in Service in the amount of \$23,394,793,000 (\$23,591,644,000 system) for the projected test year appropriate?~~ **What is the appropriate plant in service for the test year?** This is a calculation based upon the decisions in preceding issues.

ISSUE 16: What adjustments, if any, should be made to Accumulated Depreciation to reflect the Depreciation Study filed by FPL?

OPC 16A: **Are any corresponding adjustments necessary to the company's projected reserve for depreciation related to projected plant in service adjustments?**

OPC 16B: Should any adjustments be made to the company's projected accumulated provision for depreciation related to FPL's inclusion of dismantling costs for the Fort Myers Unit No. 3, Martin Unit No. 8 and Manatee Unit No. 3?

ISSUE 17: ~~Is FPL's requested level~~ **What is the appropriate amount** of Accumulated Depreciation and Accumulated Amortization ~~in the amount of \$11,700,179,000 (\$11,803,581,000 system)~~ for the projected test year appropriate? This is a calculation based upon the decisions in preceding issues.

OPC 17A: Should any of the company's 2006 projected construction work in progress (CWIP) balance be considered used and useful in generating, transmitting, or delivering current service to ratepayers?

OPC 17B: If CWIP is excluded from rate base, will FPL's projected times interest earned (TIE) ratio detrimentally impact the coverage ratio required by FPL's bond covenants?

ISSUE 18: **What is the appropriate amount of CWIP to include in rate base?** ~~Is FPL's requested level of Construction Work in Progress (CWIP) in the amount of \$522,642,000 (\$525,110,000 system) for the projected test year appropriate?~~

ISSUE 19: **What is the appropriate amount of** ~~Is FPL's requested level of Property Held for Future Use in the amount of \$135,593,000 (\$136,585,000 system) for the projected test year appropriate?~~

ISSUE 20: Has FPL properly estimated its accumulated provision for uncollectibles?

ISSUE 21: What adjustments, if any, should be made to FPL's fuel inventories?

OPC 21A: Should the Commission exclude from rate base the cost associated with FPL's \$25 million purchase of a gas turbine from FPLE to be used for spare parts?

ISSUE 22: Should unamortized rate case expense be included in working capital?

ISSUE 23: ~~Is \$500,000,000 an appropriate reserve goal for Account 228.1, Accumulated Provision for Property Insurance—Storm Damage? (Not a rate base issue. Better addressed in NOI section after storm accrual.)~~

ISSUE 24: ~~Has FPL properly estimated the amount of storm damage reserve that will be available for the projected test year? (Not a rate base issue. Better addressed in NOI section after storm accrual.)~~

ISSUE 25: Should the net overrecovery/underrecovery of fuel, capacity, conservation, and environmental cost recovery clause expenses for the test year be included in the calculation of working capital allowance for FPL?

OPC 25A: Should derivative assets and derivative liabilities be include in working capital?

OPC 25B: Should the payable to the nuclear decommission reserve fund and the St. Johns River Power Park (SJRPP) accelerated recovery credit be included in the working capital calculation?

OPC 25C: Should an adjustment be made to working capital associated with the gain on sale of emission allowances regulatory liability?

ISSUE 26: What is the appropriate level of working capital for the test year? ~~Is FPL's requested level of Working Capital Allowance in the amount of \$57,673,000 (61,429,000 system) for the projected test year appropriate?~~ This is a calculation based upon the decisions in preceding issues.

ISSUE 27: What is the appropriate level of rate base for the test year? ~~Is FPL's requested level of rate base in the amount of \$12,410,522,000 (\$12,511,188,000 system) for the projected test year appropriate?~~ This is a calculation based upon the decisions in preceding issues.

COST OF CAPITAL

OPC 27A: Should debit accumulated deferred income taxes which have been previously funded by ratepayers be included as a reduction to cost free capital?

ISSUE 28: What is the appropriate amount of accumulated deferred taxes to include in the capital structure?

ISSUE 29: What is the appropriate amount and cost rate of the unamortized investment tax credits to include in the capital structure?

OPC 29A: What are the appropriate capital structure ratios for short-term debt, long-term debt and common equity for the test year?

ISSUE 30: What is the appropriate cost rate for short-term debt for the projected test year?

ISSUE 31: What is the appropriate cost rate for long-term debt for the projected test year?

OPC 31A: Should the Commission decision regarding authorized return on equity be affected by FPL's equity ratio? If so, how?

OPC 31B: Is it appropriate to include 30 additional basis points to the overall ROE for flotation costs, and if not, what amount should the Commission consider to be appropriate?

ISSUE 32: In setting FPL's return on equity (ROE) for use in establishing FPL's revenue requirements and authorized range, should the Commission make an adjustment to reflect FPL's performance?

ISSUE 33: What is the appropriate cost rate for common equity to use in establishing FPL's revenue requirement for the projected test year?

OPC 33A: What is the appropriate range of ROE that should be approved for FPL for future years?

ISSUE 34: What is the appropriate capital structure for FPL?

ISSUE 35: What is the appropriate weighted average cost of capital including the proper components, amounts and cost rates associated with the capital structure? This is a calculation based upon the decisions in preceding issues.

NET OPERATING INCOME

ISSUE 36: Are FPL's estimated revenues for sales of electricity by rate class appropriate, if not what adjustments are should be made?

OPC 36A: Should the Commission include gas margin revenue from FPL Energy Services in the test year?

OPC 36B: Should the Commission include the administrative fee revenue associated with margin trading performed by FPL on behalf of FPL Energy Services?

ISSUE 37: What is the appropriate ~~Is FPL's requested~~ level of Total Operating Revenues in the amount of ~~\$3,888,233,000 (\$3,931,068,000-system)~~ for the projected test year appropriate?

ISSUE 38: Should an adjustment be made to FPL's requested level of security expenses related to the increased threat of terrorist attacks since September 11, 2001?

OPC 38A: What are the appropriate management fee allocation factors for use by FPL for the test year?

OPC 38B: What adjustments should be made to the management fees included in FPL's test year expenses?

- OPC 38C:** Should the Commission allocate test year administrative and general expenses associated with the New England Division Seabrook substation assets purchased by FPL in 2004, and if so, how much?
- OPC 38D:** Should the Commission adjust test year O&M expense charges from FiberNet to FPL?
- ISSUE 39: Should any other adjustments be made for the net operating income effects of FPL's transactions with affiliated companies?
- OPC 39A:** What is the appropriate FPL employee headcount for use in the test year, and what corresponding adjustments to payroll expense are appropriate, if any?
- OPC 39B:** What is the appropriate FPL overtime for use in the test year and what corresponding adjustments to payroll expense are appropriate, if any?
- OPC 39C:** What is the appropriate amount of FPL variable pay that should be approved by the Commission for the test year?
- OPC 39D:** Should the Commission include the total amount of the annual incentive compensation forecasted by the Company for the test year, and if not, what adjustment is appropriate?
- OPC 39E:** Should the Commission include the total amount of long-term incentive compensation forecasted by the Company for the test year, and if not, what adjustment is appropriate?
- OPC 39F:** Should the Commission accept the company's forecast of medical insurance expense for the test year, and if not, what adjustment is appropriate?
- OPC 39G:** Should the Commission accept the company's forecast of its pension credit for the test year, and if not, what adjustment is appropriate?
- ISSUE 40: Is it appropriate to include \$104 million of costs related to GridFlorida RTO in the projected test year?
- ISSUE 41: What is the appropriate amount and method to recover the RTO start-up costs incurred before the Commission makes a final decision regarding implementation of GridFlorida RTO?
- ISSUE 42: Is the amount of postage projected in the 2006 test year in Account 903, Customer Records and Collection Expenses, appropriate? If not, what are the appropriate system and jurisdictional adjustments?

- ISSUE 43:** Should an adjustment be made to Account 904, Uncollectible Accounts, for the projected test year and what is the appropriate factor to include in the revenue expansion factor?
- ISSUE 44:** Should an adjustment be made to remove image building or other inappropriate advertising expenses?
- OPC 44A:** **What is the appropriate methodology to determine the annual storm damage accrual to be included in base rates?**
- ISSUE 45:** Is FPL's requested \$120,000,000 annual accrual for storm damage for the projected test year appropriate?
- ISSUE 23:** **What is the appropriate reserve goal for Account 228.1, Accumulated Provision for Property Insurance – Storm Damage?**
- ISSUE 24:** **Has FPL properly estimated the amount of storm damage reserve that will be available for the projected test year?-(Moved from rate base section.)**
- ISSUE 46:** What is the appropriate amount of ~~Should an adjustment be made to Account 928, Regulatory Commission Expense, for-rate case expense~~ for the projected test year and what is the appropriate amortization period?
- ISSUE 47:** Has FPL made the appropriate adjustments to remove charitable contributions?
- OPC 47A:** **Is the FPL expense of \$6,940,000 for Nuclear Passport Replacement appropriate for inclusion in test year O&M expenses, and if not, what adjustment is appropriate?**
- OPC 47B:** **Should the FPL expense of \$8,468,340 for Directors and Officers Liability insurance be included in the test year, and if not, what adjustment is appropriate?**
- OPC 47C:** **Should the projected FPL expenses for the initial pilot phase of the Automatic Meter Reading project be included in the test year, and if not, what adjustments should be made to plant in service, accumulated depreciation, depreciation expense and O&M expense?**
- OPC 47D:** **Should the Commission approve FPL's proposed \$1.7 million test year expense for Executive Department contingencies, and if not, what adjustment is appropriate?**
- OPC 47E:** **Should FPL's proposed \$48,128,000 test year expense for vegetation management be approved?**

- OPC 47F:** Should any annual under-spending from the amount of distribution vegetation management expenses ultimately approved the Commission be deferred and returned to the ratepayers in the future?
- OPC 47G:** Should FPL be required to report to the Commission on a regular basis on its actual vegetation management expenditures?
- ISSUE 48: Should the O&M expense items currently approved for recovery through the Environmental Cost Recovery Clause be included in base rates?
- ISSUE 49: **What are the appropriate amount of Is FPL's O&M Expenses of \$1,591,191,000—(\$1,608,896,000—system) for the projected test year appropriate?** This is a calculation based upon the decisions in preceding issues.
- ISSUE 50: What adjustments, if any, should be made to the fossil dismantlement accrual?
- ISSUE 51: **What is the appropriate amount of Is FPL's Depreciation and Amortization Expense of \$924,323,000—(\$931,335,000—system) for the projected test year appropriate?** This is a calculation based upon the decisions in preceding issues.
- OPC 51A:** **What is the appropriate amount of gain on sales and disposition of properties for the test year?**
- ISSUE 52: Should the total amount of Gross Receipts tax be removed from base rates and shown as a separate line item on the bill?
- OPC 52A:** **Should the Commission accept the company's forecast of its payroll tax expense for the test year, and if not, what adjustment is appropriate?**
- ISSUE 53: **What are the appropriate amount of Is FPL's Taxes Other Than Income of \$299,798,000—(\$300,496,000—system) for the projected test year appropriate?**
- ISSUE 54: Should a Parent Debt Adjustment be made for the projected test year and if so, what is the appropriate amount of the adjustment?
- ISSUE 55: Has FPL appropriately calculated the adjustment to taxable income to reflect the domestic manufacturer's tax deduction which was attributable to the American Jobs Creation Act?
- OPC 55A:** **What adjustments, if any, are appropriate to account for interest synchronization?**
- ISSUE 56: **What is the appropriate amount of Is FPL's Income Tax Expense of \$291,326,000—(\$286,729,000—system) which includes current and deferred income taxes and interest reconciliation for the projected test year appropriate?**

ISSUE 57: **What is the appropriate amount of Is-FPL's projected Total Operating Expenses of \$3,105,671,000 (~~\$3,140,480,000 system~~) for the projected test year appropriate?** This is a calculation based upon the decisions in preceding issues.

ISSUE 58: **What is the appropriate amount of Is-FPL's Net Operating Income (NOI) of \$782,562,000 (~~\$777,212,000 system~~) for the projected test year appropriate?** This is a calculation based upon the decisions in preceding issues.

REVENUE REQUIREMENTS

OPC 58A: Should an adjustment be made to the company's NOI multiplier to reflect the state impact for the American Jobs Creation Act of 2004?

ISSUE 59: What is the appropriate projected test year revenue expansion factor and the appropriate net operating income multiplier, including the appropriate elements and rates for FPL?

ISSUE 60: **What is the appropriate revenue increase/decrease? Is FPL's requested annual operating revenue increase of \$384,580,000 for the projected test year appropriate?** This is a calculation based upon the decisions in preceding issues.

ISSUE 61: ~~Should the Commission approve the limited scope adjustment in base rates to produce additional annual revenue of \$122,757,000 beginning 30 days following the commercial in-service date of Turkey Point Unit 5 projected to occur in June 2007?~~ Suggested wording: **Should the Commission approved FPL's request to allow an additional base rate increase in 2007 to correspond with the in-service date of the Turkey Point Unit 5?**

COST OF SERVICE AND RATE DESIGN

ISSUE 62: Is FPL's proposed separation of costs and revenues between the wholesale and retail jurisdictions appropriate?

ISSUE 63: What is the appropriate cost of service study to be used in designing FPL's rates?

ISSUE 64: If a revenue increase is approved, how should it be allocated among the customer classes?

ISSUE 65: What is the appropriate adjustment to account for the increase in unbilled revenue due to any recommended rate increase?

ISSUE 66: Is FPL's proposed method for the recovery of the costs of Turkey Point Unit 5 appropriate?

- ISSUE 67: What are the appropriate demand charges?
- ISSUE 68: What are the appropriate energy charges?
- ISSUE 69: How should FPL's time-of-use rates be designed?
- ISSUE 70: What are the appropriate customer charges?
- ISSUE 71: What are the appropriate service charges?
- ISSUE 72: What are the appropriate lighting rate schedule charges?
- ISSUE 73: Is FPL's proposal to eliminate the option allowing lump-sum payment for time of use metering equipment appropriate?
- ISSUE 74: What is the appropriate monthly fixed charge carrying rate to be applied to the installed cost of customer-requested distribution equipment for which there are no tariffed charges?
- ISSUE 75: What is the appropriate Monthly Rental Factor to be applied to the in-place value of customer-rented distribution substations to determine the monthly rental fee for such facilities?
- ISSUE 76: What are the appropriate termination factors to be applied to the in-place value of customer-rented distribution substations to calculate the termination fee?
- ISSUE 77: What are the appropriate termination factors to be applied to the total installed cost of facilities when customers terminate their lighting agreement prior to the expiration of the contract term?
- ISSUE 78: What is the appropriate Present Value Revenue Requirement multiplier to be applied to the installed cost of lighting facilities to determine the lump sum advance payment amount for such facilities?
- ISSUE 79: What are the appropriate per-month facilities charges under FPL's PL-1 and SL-3 rate schedules?
- ISSUE 80: What is the appropriate monthly per kW credit to be provided customers who own their own transformers pursuant to the Transformation Rider?
- ISSUE 81: What is the appropriate level and design of the charges under the Standby and Supplemental Service (SST-1) rate schedule?
- ISSUE 82: What is the appropriate level and design of the charges under the Interruptible Standby and Supplemental Service (ISST-1) rate schedule?

- ISSUE 83: What are the appropriate curtailment credits?
- ISSUE 84: What are the appropriate administrative charges under the Commercial/Industrial Demand Reduction rider?
- ISSUE 85: Should the Commission approve FPL's proposal to change the breakpoint applicable to its inverted residential rate from 750 to 1,000 kilowatt hours?
- ISSUE 86: Should the Commission approve FPL's proposal to establish a single set of demand and energy charges for its GSD-1, GSLD-1, GSLD-2, CS-1 and CS-2 rate schedules?
- ISSUE 87: Should the Commission approve FPL's proposal to eliminate the provision in its GSD-1 rate schedule that exempts from billing the first 10 kW of demand?
- ISSUE 88: Should the Commission approve FPL's proposal to close its Wireless Internet Electric Service (WIES) rate schedule be approved?
- ISSUE 89: Should FPL's proposal to close its Premium Lighting rate schedule to new customers and replace it with a new Decorative Lighting rate schedule be approved?
- ISSUE 90: Should the Commission approve FPL's proposed new General Service Constant Use rate schedule?
- ISSUE 91: Should the Commission approve FPL's proposed new High Load Factor Time-of-Use rate schedule?
- ISSUE 92: Should the Commission approve FPL's proposed new Seasonal Demand Time-of-Use rider?
- ISSUE 93: What is the appropriate effective date for FPL's revised rates and charges?

OTHER ISSUES

- ISSUE 94: How should the Commission address FPL's nuclear decommissioning accrual in this case?
- ISSUE 95: Should the Commission approve FPL's request to move into base rates the security costs that result from heightened security requirements since September 11, 2001, from the Capacity Cost Recovery Clause?
- ISSUE 96: Should FPL continue to seek recovery of incremental security costs above the amount included in base rates through the Capacity Cost Recovery Clause? If so, what mechanism should be used to determine the incremental security costs?

- ISSUE 97: Should the Commission approve FPL's request to transfer to the Capacity Clause certain St. Johns River Power Park capacity costs and certain capacity revenues that are currently embedded in base rates?
- ISSUE 98: Should the Commission approve FPL's request to transfer its 2006 projected incremental hedging costs from Fuel Clause recovery to base rate recovery?
- ISSUE 99: Should FPL be allowed to recover incremental hedging costs in excess of its base rate amount through the Fuel and Purchased Power Cost Recovery Clause, and if so, should netting be required in the clause for these costs?
- ISSUE 100: Should the unrecovered Allowance for Funds Used During Construction (AFUDC) associated with Turkey Point Unit 5 be recovered through the Fuel Cost Recovery Clause?
- ISSUE 101: Should FPL be required to file, within 90 days after the date of the final order in this docket, a description of all entries or adjustments to its annual report, rate of return reports, and books and records that will be required as a result of the Commission's findings in this rate case?
- ISSUE 102: Should this docket be closed?

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by U.S. Mail, hand delivery (*) or facsimile and U.S. Mail (**) on this 19th day of July, 2005, on the following:

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