

Ruth Nettles

090002-EG

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Subject: Electronic Filing / Docket 090002-EG/ FPL's (Executed) Response & Objection to FIPUG's M/Extension of Teim
Attachments: 9 23 09 FPL Response to FIPUG Motion.pdf

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket No. 090002-EI \ In re: Energy Conservation Cost Recovery Clause

c. Document is being filed on behalf of Florida Power & Light Company.

d. There are a total of 5 pages in the attached document.

e. The document attached for electronic filing is Florida Power & Light Company's Response and Objection to FIPUG's Motion for Extension of Time to File Intervenor Testimony

Thank you for your attention and cooperation to this request.

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9/23/2009

DOCUMENT NUMBER-DATE
 09847 SEP 23 8
 FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Energy Conservation)
Cost Recovery Clause)
_____)

DOCKET NO. 090002-EG

FILED: September 23, 2009

**FLORIDA POWER & LIGHT COMPANY'S
RESPONSE AND OBJECTION TO FIPUG'S MOTION
FOR EXTENSION OF TIME TO FILE INTERVENOR TESTIMONY**

Florida Power & Light Company ("FPL"), pursuant to Rule 28-106.204, Florida Administrative Code (F.A.C.), hereby submits the following Response and Objection to Florida Industrial Power User Group's ("FIPUG") Motion for Extension of Time to File Intervenor Testimony, and in support thereof states the following:

1. FPL objects to the relief requested, as FIPUG's Motion seeks an extension of time to file testimony that is unrelated to any issue in this pending docket, or alternatively seeks to significantly shorten the time within which FPL would be required to respond or object to discovery which is in no way relevant to the matters to be decided by the Commission in this docket. In short, FIPUG has chosen the wrong docket in which to raise "the credit issues" (see paragraph 4 of FIPUG's Motion), as any such issues would appropriately be raised and litigated in the process established for approving the DSM plan – consisting of individual DSM programs and the incentive payments/credits offered by each program - that is currently underway (the "DSM Proceeding").¹

2. The DSM Proceeding is the proper forum in which parties may seek to challenge, alter or amend FPL conservation programs, the costs and expenses of which are ultimately projected and tried up in this pending ECCR Docket. Contrary to FIPUG's assertion found at

¹ The Commission is presently determining appropriate DSM goals for FPL in Docket No. 080407-EG. At the conclusion of that process, FPL will be directed to file a revised DSM plan within 90 days, which will then be subject to review and scrutiny. FIPUG is a party to Docket No. 080407-EG.

DOCUMENT NUMBER-DATE

09847 SEP 23 8

FPSC-COMMISSION CLERK

paragraph 4 of its Motion, FIPUG clearly has a “legitimate forum in which to raise issues related to the interruptible and/or curtailable credits and have them decided on the merits by this Commission“, and that forum is the DSM Proceeding. It is thus premature and inappropriate to attempt to raise those issues in this ECCR Docket.

3. Rule 25-17.015, Florida Administrative Code (F.A.C.), entitled “Energy Conservation Cost Recovery” (“ECCR”), specifies the filings to be made in this docket, thereby defining the parameters of the issues to be appropriately addressed in this docket. Those filings include: (a) true-up filing for 2008; (b) annual estimated /actual true-up filing for 2009; (c) projection filing for 2010; (d) “an annual petition setting forth proposed energy conservation cost recovery factors to be effective for the 12-month period beginning January 1 following the hearing.”; and (e) the “Energy Conservation Cost Recovery Annual Short Form”.

4. Consistent with the Rule, FPL’s Petitions and supporting testimony filed in this docket go only to the calculation of ECCR Factors with respect to *projected and actual expenses* incurred for FPL’s existing, approved DSM Plan. FPL has not sought any change to the programs or “the credit issues” (as that term has been used in the FIPUG Motion), nor would it be appropriate to do so in this docket. It is similarly inappropriate for FIPUG to attempt to *interject those issues here*.

5. Because it seeks to interject irrelevant issues into this ECCR proceeding, the FIPUG Motion should be denied. However, even if the Commission determined that FIPUG’s “credit issues” could be properly raised in this ECCR proceeding, there is no reason to grant FIPUG the extension of time or drastically accelerated discovery that it seeks. FIPUG reaffirmed its party status in this docket on February 19, 2009. The Order Establishing Procedure (Order No. PSC-09-0184-PCO-EG) was issued on March 27, 2009 and put all parties on notice that intervenor testimony would be due on September 23, 2009. Nothing in the

petitions or supporting testimony that FPL filed on May 1, 2009 or September 11, 2009 addresses FIPUG's "credit issue," nor was there any reason for FIPUG to expect that it would.² Nor has anything changed in 2009 with respect to the level of the credits that FIPUG seeks to address. In short, it is simply illogical for FIPUG to argue that it had to wait to receive the September 11, 2009 Petition and testimony before propounding the subject discovery which is clearly related to an issue never raised by FPL and not appropriately addressed in this docket. FIPUG chose to wait to serve the subject discovery, and the deadlines set in the Order Establishing Procedure should not be changed to accommodate a party that unnecessarily created its own problem by waiting.

6. For the reasons more fully outlined above, FPL objects to the FIPUG Motion, requests that the Commission maintain the schedule for filing Intervenor testimony outlined in the Order Establishing Procedure, and opposes any modification of the time frames within which discovery objections and/or responses would be due. FPL notes parenthetically that it intends to serve objections to the subject discovery in accordance with Section V.(A.) of the Order Establishing Procedure, as the discovery is directed to matters not properly addressed in this docket and seeks information and documents which are completely irrelevant, immaterial, and not reasonably calculated to lead to the discovery of admissible or relevant evidence in the context of this docket.

² For example, FPL's petitions and supporting testimony filed in the predecessor to this docket (Docket No. 080002-EG) did not address anything related to the FIPUG "credit issues."

Respectfully submitted,

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CERTIFICATE OF SERVICE
DOCKET NO. 090002-EG

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by electronic mail this 23rd day of September, 2009 to the following:

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