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# Public Service Commission

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**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** September 23, 2009  
**TO:** Ann Cole, Commission Clerk - PSC, Office of Commission Clerk  
**FROM:** Stephen C. Larson, Assistant to Commissioner Argenziano  
**RE:** Docket #080677-EI

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Please place the attached letter in the docket file for the above noted docket. Commissioner Argenziano has not viewed this letter.

DOCUMENT NUMBER-DATE

09899 SEP 24 8

FPSC-COMMISSION CLERK



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September 22, 2009

Via Hand Delivery

The Honorable Matthew M. Carter II, Chairman  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Docket No. 080677-EI  
In re: Petition for rate increase by Florida Power & Light Company  
Proposed Schedule

Dear Chairman Carter,

I am writing in response to the proposed schedule announced last Thursday, September 17, during the technical hearing in Florida Power & Light Company's ("FPL" or the "Company") rate case, Docket No. 080677-EI. While we are appreciative of receiving firm dates intended to conclude this proceeding, we have some concerns regarding the announced schedule.

Specifically, we are concerned with the suggestion announced by Staff counsel on Thursday, September 17, that an appropriate schedule for the remainder of this case would include a Special Agenda Session on December 21, 2009, to determine FPL's revenue requirements, and a Special Agenda Session on January 11, 2010, to determine the appropriate rate design. The proposed schedule would not result in a timely decision on FPL's rate request and, as a result would necessitate FPL's putting the proposed rates into effect on January 4, 2010, subject to refund, in accordance with the provisions of Chapter 366, Florida Statutes.<sup>1</sup> While we are fully supportive of the Commission having adequate time to have this matter fully heard, we are also concerned with a schedule that requires FPL to implement proposed rates subject to refund on January 4 rather than putting Commission-approved, permanent rates into effect on that date. Accordingly, we

<sup>1</sup> Section 366.06(3), Florida Statutes, states that the Commission's consent on requested rate changes "shall not be withheld for a period longer than 8 months from the date of filing the new schedules." It goes on to explain that the new rates, or any portion not consented to, shall go into effect under bond or corporate undertaking at the end of such period. Accordingly, FPL believes it would be entitled to put its requested rates into effect automatically, subject to refund, after the end of the minimum term of the 2005 rate case stipulation and settlement.

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Chairman, Florida Public Service Commission  
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respectfully request that the Chair revisit the above schedule, with a view to completing this case such that permanent rates would be implemented on January 4, 2010, thereby ensuring that FPL's statutory and due process rights are protected and avoiding any unnecessary controversy regarding this issue.

FPL is mindful that there may be disputes over the effective date for new rates that could require additional pleadings, oral argument, and a decision by the Commission that would then be subject to appeal. The resulting uncertainty also could necessitate the request for some form of rate relief or other mechanism to recover revenue requirements that would have been recovered had the rates gone into effect on January 4, 2010 due to a unilateral change in the procedural schedule. FPL respectfully suggests that the time to resolve any potential debate would not be time well spent; rather, the parties' time and focus will be better spent on completing the hearings in time to allow new rates, as decided by the Commission in this proceeding, to go into effect January 4, 2010, as originally requested, and consistent with Chapter 366, Florida Statutes and the 2005 Stipulation and Settlement Agreement.

As you know, FPL filed its Test Year Notification Letter initiating this case on November 17, 2008, pursuant to Rule 25-6.140, Florida Administrative Code. In that letter, FPL explained its need for new rates to be effective at the beginning of January 2010. FPL filed its Petition for Rate Increase on March 18, 2009. In its petition, FPL again explained its need for an increase in rates beginning in January 2010, and specifically requested that the Commission "enter a decision on or before November 18, 2009, in accordance with controlling statutes and court decisions, so as to adequately protect the financial integrity of the Company by giving it a reasonable opportunity to earn such fair rate of return as may be fixed by the Commission in this proceeding[.]" In light of the 2005 Stipulation and Settlement Agreement, FPL requested that the new rates take effect January 4, 2010 (the date of the first billing cycle after December 31, 2009).

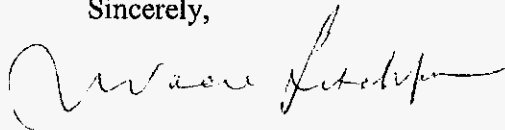
The Order Establishing Procedure (Order No. PSC-09-0159-PCO-EI) was issued on March 20, 2009. It set hearing dates and a briefing schedule that would allow a timely decision by the Commission so that new rates could go into effect on January 4, 2010. No party sought reconsideration of the order on the grounds that the time available for hearing would be inadequate or otherwise has suggested, either before or after the prehearing conference, that this proceeding could not or should not be completed in time for new rates to go into effect on January 4. Moreover, all parties to this proceeding stipulated on Issue 172 in the Prehearing Order (Order No. PSC-09-0573-PHO-EI) to the following: "The effective date for FPL's revised rates and charges for electric service should be for meter readings on and after the first cycle day of January, which is currently scheduled to be January 4, 2010 for the test year and January 4, 2011 for the subsequent year. The effective date for FPL's revised service charges should be January 1, 2010."

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Now, however, in spite of those commitments and the fact that FPL has worked diligently to ensure the timely and efficient determination of the merits of this case, we are faced with a proposed schedule would not allow new permanent rates to go into effect on January 4, 2010 as planned. This is inconsistent with the stipulation for the effective date of new rates by the parties in this proceeding, inconsistent with FPL's petition, and inconsistent with the 2005 settlement agreement. In fact, based on the new schedule and the Commission's practice of requiring that new rates not take effect until 30 days after the Commission's approval of such rates, it does not appear that new rates could go into effect before February 10, 2010. Any delay in the implementation of new rates for FPL beyond January 4, 2010 adversely affects FPL's opportunity to earn a fair rate of return, reduces the amount of revenue that is used to fund the continued operations of the business, and could force FPL to take steps to suspend or cancel existing projects.

To avoid any possible question or dispute on this issue, FPL asks that the Chair consider other scheduling options to enable a Commission decision on or before December 4, 2009. Such a decision date would be two and a half weeks later than FPL's original requested decision date. This request is consistent with FPL's requests throughout the hearing to extend the daily hearing hours and/or work through the weekends in order to complete the hearing in a timely manner. We appreciate your timely consideration of this request.

Sincerely,



R. Wade Litchfield

RWL:ec

cc: Honorable Lisa P. Edgar, Commissioner  
Honorable Katrina J. McMurrian, Commissioner  
Honorable Nathan A. Skop, Commissioner  
Honorable Nancy Argenziano, Commissioner  
All parties of Record in Docket No. 080677-EI  
Ms. Ann Cole, Commission Clerk