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Subject: Docket No. 090002-EG
Attachments: FIPUG Motion to Compel 10.05.09.pdf

In accordance with the electronic filing procedures of the Florida Public Service Commission, the following filing is made:

- a. The name, address, telephone number and email for the person responsible for the filing is:

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- b. This filing is made in Docket No. 090002-EG, In re: Energy conservation cost recovery clause.
c. The document is filed on behalf of Florida Industrial Power Users Group.
d. The total pages in the document are 22 pages.
e. The attached document is FIPUG's Motion to Compel.

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DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

10/5/2009

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Energy Conservation Cost
Recovery Clause

Docket No. 090002-EG

Filed: October 5, 2009

THE FLORIDA INDUSTRIAL POWER USERS' GROUP MOTION TO COMPEL

The Florida Industrial Power Users Group (FIPUG), pursuant to rule 1.280, Florida Rules of Civil Procedure, and rules 28-106.204 and 28-106.206, Florida Administrative Code, files this Motion to Compel Florida Power & Light Company (FPL) to respond to discovery in this docket propounded by FIPUG on September 16, 2009. FIPUG's Motion to Compel should be granted in its entirety and FPL should be required to respond to FIPUG's discovery. As grounds therefore, FIPUG states:

Background

1. FIPUG is an intervenor in both the FPL rate case (Docket Nos. 080677-EI and 090130-EI) and the Progress Energy Florida (PEF) rate case (Docket No. 090079-EI).

2. In each of those dockets, FIPUG raised issues related to the appropriate credits and calculations for interruptible and curtailable customers. These issues were included in the dockets over the objection of the utilities.¹

3. In the PEF rate case, the identified issues are:

ISSUE 109: What is the appropriate level of the interruptible credit?

ISSUE 110: Should the interruptible credit be load factor adjusted?²

4. In the FPL rate case, the corresponding issue states:

¹ FIPUG filed the testimony of witness Pollock in both rate cases related to these issues and Mr. Pollock took the stand to testify about those issues, among others.

² Order No. PSC-09-0638-PHO at 81-82.

ISSUE 167: Is FPL's CDR credit appropriate?³

5. In each case the Prehearing Officer permitted FIPUG's issues to remain in the case. However, Staff and the utilities took the position that such issues should be addressed in a conservation docket.

6. For example in the FPL case, Staff's position on Issue 167 was:

Staff believes that this issue would more appropriately be addressed in the Conservation Cost Recovery Clause docket.⁴

7. PEF addressed these issues in its rate case as follows:

Issue 109 (PEF Position): There should be no change in the current level of the interruptible credit. Any change in the credit should be addressed in the conservation clause docket.

Issue 110 (PEF Position): Yes, the interruptible credit should continue to be load factor adjusted as it is currently. Any change in the application of the credit should be addressed in the conservation clause docket.⁵

8. The final vote in the FPL rate case is not scheduled until January 11, 2010. The vote in the PEF rate case is not scheduled until November 19, 2009. Both of these decisions will occur well after the Commission's hearing in this docket, which is scheduled for November 2-4, 2009.⁶ FIPUG should not be placed in the conundrum of having no forum in which to address its issues.

FIPUG's Discovery/FPL's Refusal to Respond

9. Due to these timing implications and the uncertainty as to where the Commission will address issues related to the appropriate credits for interruptible and curtailable service,

³ Order No. PSC-09-0573-PHO-EI at 140.

⁴ *Id.* at 141.

⁵ Order No. PSC-09-0638-PHO-EI at 81.

⁶ The Commission generally votes from the bench so that the recovery factors can be implemented on January 1.

FIPUG promptly served discovery on PEF and FPL within days after receiving their projection testimony. FIPUG filed testimony on those issues in this docket on October 2, 2009.⁷

10. On September 16, 2009, FIPUG served Interrogatories (Nos. 1-3) and Requests for Production (Nos. 1-4) on FPL. Such requests are attached hereto as Exhibit A and relate specifically to the credit issues FIPUG seeks to have this Commission consider. FPL's objections are attached hereto as Exhibit B.

11. On September 30, 2009, FPL served objections to FIPUG's discovery. FPL refused to answer any of FIPUG's discovery based on its contention that the information sought is "completely irrelevant, immaterial, and not reasonably calculated to lead to the discovery of admissible or relevant evidence in the context of this docket."⁸ FPL then asserts that such issues should have been raised in the conservation goals docket. FPL did not raise the CDR issue in the conservation goals docket and is now attempting to create the classic Catch-22 by making it impossible for FIPUG to address this issue in *any* docket.

12. Assuming the issues FIPUG raises are not substantively decided in FPL's rate case, they should clearly be addressed in this docket which explicitly addresses conservation programs and cost recovery for such programs.

13. FPL contends that FIPUG's issues should be considered in the conservation goals docket (Docket No. 080407-EG). However, FPL's own testimony filed in this case contradicts this view. FPL's testimony states:

The purpose of my testimony is to submit for Commission review and approval the projected ECCR costs for FPL's DSM programs to be incurred by FPL during the months of January 2010 through December 2010....⁹

⁷ FIPUG sought and was granted an extension of time to file its testimony.

⁸ FPL objections at 3.

⁹ Testimony of Anita Sharma at p. 2, filed on behalf of FPL, September 11, 2009.

Further, Schedule C-2, line 12, page 3 of 6, attached to Witness Sharma's testimony specifically seeks recovery for the Commercial/Industrial Load Control program, attached hereto as Exhibit C, which is the subject of the issues FIPUG raises. Thus, to the extent that the Commission does not substantively address these issues in the FPL rate case, they should be dealt with in this docket.

14. FPL's attempt to rely on the conservation rule, rule 25-17.015, Florida Administrative Code, offers no support for its argument. The rule explicitly states that this proceeding will address, among other matters, cost recovery for energy conservation programs. While FPL may take the position that the level of its CDR is appropriate, that does not foreclose a party from raising that issue in this case.

15. FPL says it has not sought any change to the credit issues;¹⁰ however, FPL is not the only entity permitted to raise issues in this docket. Further, while FPL argues that it has "identified the proper forum"¹¹ for the FIPUG issues, FPL is apparently the only party to take this view, including Commission Staff. As noted above, PEF has stated that such issues should be addressed in this docket.¹² TECO has filed testimony regarding its interruptible credits in this docket as well.¹³

16. FPL's failure to respond to FIPUG's discovery prejudices FIPUG in the presentation of its case, if the Commission does not consider such issues in the FPL rate case.

17. FIPUG has raised appropriate issues and filed testimony on them (to the extent they are not addressed in the rate case). The issues FIPUG has raised and the testimony that it

¹⁰ FPL objections at 4.

¹¹ *Id.*

¹² FIPUG sent similar discovery to PEF and PEF did not object on the basis that such issues should not be addressed in this docket.

¹³ See testimony of Howard Bryant, filed September 11, 2009 at pp. 8-9 and Exhibit No. HTB-2 (applying the cost-effectiveness test) as well as TECO's Preliminary List of Issues, filed on September 30, 2009.

has filed are relevant to the conservation issues the Commission will consider in this docket, to the extent the Commission does not consider them in the rate case.

18. In essence, FPL seeks to foreclose FIPUG from any opportunity in any forum to address credit issues which substantially impact it. FPL further seeks to foreclose FIPUG from conducting legitimate discovery on these important issues.¹⁴ The level of these credits and how they are applied substantially affects FIPUG. The Commission should not permit these important issues to be swept aside and should substantively consider them either in this docket or in the utility's respective rate cases.

19. Pursuant to rule 28-106.204(3), Florida Administrative Code, FIPUG has consulted with counsel for FPL and represents that FPL maintains its objection.

WHEREFORE, FIPUG requests that FPL be required to immediately respond to its discovery.

s/ Vicki Gordon Kaufman

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¹⁴ FPL's failure to respond to FIPUG's discovery may well lead to the need for FIPUG to supplement its testimony or seek a continuance of the hearing.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Florida Industrial Power Users Group's Motion to Compel was served by Electronic Mail and First Class United States Mail this 5th day of October, 2009, to the following:

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s/Vicki Gordon Kaufman
Vicki Gordon Kaufman

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Energy conservation cost recovery
clause.

DOCKET NO. 090002-EG
DATED: September 16, 2009

**FLORIDA INDUSTRIAL POWER USERS GROUP'S FIRST REQUEST
FOR PRODUCTION OF DOCUMENTS (NOS. 1-4)
TO FLORIDA POWER & LIGHT COMPANY**

Pursuant to Rule 28-106.206, Florida Administrative Code, and Rule 1.350, Florida Rules of Civil Procedure, The Florida Industrial Power Users Group (FIPUG), by and through its undersigned attorneys, hereby serves the following First Request for Production of Documents (Nos. 1-4) upon Florida Power & Light Company (FPL).

Please produce the following documents at the offices of Keefe, Anchors, Gordon & Moyle, 118 N. Gadsden Street, Tallahassee, FL 32301, within the time specified in Order No. PSC-09-0184-PCO-EG.

DEFINITIONS

The terms "FPL" and "Company" encompass Florida Power & Light Company, together with the officers, employees, consultants, agents, representatives, attorneys, and any other person or entity acting on behalf of Florida Power & Light Company.

"You," "your," and "Company," refer to FPL, as defined in the previous paragraph, together with the officers, employees, consultants, agents, representatives, and attorneys of FPL, as well as any other person or entity acting on behalf of FPL.

"Florida Industrial Power Users Group" is defined as FIPUG.

As used herein, the word "documents" shall mean the original and any non-identical copies of any writing or record, including but not limited to a book, pamphlet, periodical, letter, memorandum, telegram, report, study, interoffice or intraoffice, handwritten or other notes, working paper, draft, application, permit, chart, paper, graph, survey, index, tape, disc, data sheet

or data processing card, computer printout, or any other written, recorded, transcribed, filed or graphic matter, however produced or reproduced.

DOCUMENTS REQUESTED

1. Please provide all documents supporting your response to Interrogatory No. 1, in Excel or Excel compatible format with all formulas intact.
2. Please provide all workpapers supporting the response to Interrogatory No. 2, in Excel or Excel compatible format with all formulas intact.
3. Please provide all documents supporting your response to Interrogatory No. 3 in Excel or compatible electronic format, with all formulas intact.
4. Please provide a copy of all documents used to develop the current cost-effectiveness test identified in Interrogatory No. 3 in Excel or compatible electronic format, with all formulas intact.

s/ Vicki Gordon Kaufman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Florida Industrial Power Users Group's First Request for Production of Documents (Nos. 1-4) to Florida Power & Light Company, was served via Electronic Mail and First Class United States Mail this 16th day of September, 2009, to the following:

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s/Vicki Gordon Kaufman
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Energy conservation cost recovery
clause.

DOCKET NO. 090002-EG
DATED: September 16, 2009

**FLORIDA POWER INDUSTRIAL USERS GROUP'S
FIRST SET OF INTERROGATORIES (NOS. 1-3)
TO FLORIDA POWER & LIGHT COMPANY**

The Florida Industrial Power Users Group (FIPUG), by and through its undersigned attorneys, propounds the following interrogatories, pursuant to Rule 1.340, Florida Rules of Civil Procedure, to Florida Power & Light Company (FPL). These interrogatories shall be answered under oath by you or your agent, who is qualified and who will be identified, with the answers being served as provided by Order No. PSC-09-0184-PCO-EG. As provided by Rule 1.340(a), Florida Rules of Civil Procedure, each interrogatory shall be answered separately and fully in writing under oath unless it is objected to. Each answer shall be signed by the person making it.

Give the name, address, and relationship to FPL of those persons providing the answers to each of the following interrogatories.

If an interrogatory contained herein asks for information that has already been provided or is in the process of being provided to the Commission through a Commission audit, please so state, indicating the date provided and the audit document/record request number.

DEFINITIONS

"You", "your", "Company" or FPL refers to Florida Power & Light Company, its employees and authorized agents.

"Document" refers to written matter of any kind, regardless of its form, and to information recorded on any storage medium, whether in electrical, optical or electromagnetic form, and capable of reduction to writing by the use of computer hardware and software.

"Identify" means:

- (a) With respect to a person, to state the person's name, address and business relationship (e.g., "employee") to the Company;
- (b) With respect to a document, to state the nature of the document in sufficient detail for identification in a request for production, its date, its author, and to identify its custodian. If the information or document identified is recorded in electrical, optical or electromagnetic form, identification includes a description of the computer hardware or software required to reduce it to readable form.

INTERROGATORIES

1. Please identify all assumptions made surrounding the projected costs for the CILC and CDR programs for the January 2010 to December 2010 period, including:
 - a. The credits paid to participants by rate schedule;
 - b. The projected billing determinants assumed in quantifying the dollar amount of the projected costs by rate schedule; and
 - c. Whether the calculations are affected by the increase in the CILC incentives proposed by FPL in its pending base rate case. If so, explain how the calculations are affected.
2. Please calculate the projected costs for the CILC program based on the proposed increase in the Firm On-Peak Demand charge proposed by FPL in its pending rate case.
3. Please identify all cost-effectiveness tests of the CDR program conducted by FPL since January 2008.

s/ Vicki Gordon Kaufman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Florida Industrial Power Users Group's First Set of Interrogatories (Nos. 1-3) to Florida Power & Light Company, was served via Electronic Mail and First Class United States Mail this 16th day of September, 2009, to the following:

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s/Vicki Gordon Kaufman
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 090002-EG

Date: September 30, 2009

**FLORIDA POWER & LIGHT COMPANY'S OBJECTIONS TO FLORIDA
INDUSTRIAL POWER USERS GROUP'S FIRST REQUEST FOR PRODUCTION OF
DOCUMENTS (NOS. 1-4) AND FIRST SET OF INTERROGATORIES (NOS. 1-3)**

Florida Power & Light Company ("FPL"), pursuant to Rules 1.280, 1.340 and 1.350, Florida Rules of Civil Procedure, and Rule 28-106.206, Florida Administrative Code, submits the following Objections to Florida Industrial Power Users Group's ("FIPUG's") First Request for Production of Documents (Nos. 1-4) and First Set of Interrogatories (Nos. 1-3).

I. General Objections.

FPL objects to each and every discovery request that calls for information protected by the attorney-client privilege, the work product doctrine, the accountant-client privilege, the trade secret privilege, or any other applicable privilege or protection afforded by law, whether such privilege or protection appears at the time response is first made or is later determined to be applicable for any reason. FPL in no way intends to waive any such privilege or protection. The nature of the any such document(s) will be described in a privilege log prepared and provided by FPL.

In certain circumstances, FPL may determine, upon investigation and analysis, that information responsive to certain discovery requests to which objections are not otherwise asserted is confidential and proprietary and should not be produced without provisions in place to protect the confidentiality of the information, if at all. By agreeing to provide such information in response to such request, FPL is not waiving its right to insist upon appropriate protection of

confidentiality by means of a protective order or other action to protect the confidential information requested. FPL asserts its right to require such protection of any and all documents that may qualify for protection under the Florida Rules of Civil Procedure and other applicable statutes, rules and legal principles.

FPL is a large corporation with employees located in many different locations. In the course of its business, FPL creates numerous documents that are not subject to Florida Public Service Commission or other governmental record retention requirements. These documents are kept in numerous locations and frequently are moved from site to site as employees change jobs or as business is reorganized. Therefore, it is possible that not every relevant document may have been consulted in developing FPL's responses to the discovery requests. Rather, these responses provide all the information that FPL obtained after a reasonable and diligent search conducted in connection with these discovery requests. To the extent that the discovery requests propose to require more, FPL objects on the grounds that compliance would impose an undue burden or expense on FPL.

FPL objects to each discovery request to the extent that it seeks information that is not relevant to the subject matter of this docket and is not reasonably calculated to lead to the discovery of admissible evidence.

FPL objects to each and every discovery request to the extent it is vague, ambiguous overly broad, imprecise, or utilizes terms that are subject to multiple interpretations but are not properly defined or explained for purposes of such discovery requests. Any responses provided by FPL will be provided subject to, and without waiver of, the foregoing objection.

FPL also objects to each and every discovery request to the extent it calls for FPL to prepare information in a particular format or perform calculations or analyses not previously prepared or performed as purporting to expand FPL's obligations under applicable law.

FPL objects to providing information to the extent that such information is already in the public record before the Florida Public Service Commission and available to the requesting Party through normal procedures.

FPL objects to any production location other than the location established by FPL, at FPL's Tallahassee Office, 215 S. Monroe Street, Suite 810, Tallahassee, FL 32301.

FPL objects to each and every discovery request and any instructions that purport to expand FPL's obligations under applicable law.

In addition, FPL reserves its right to count discovery requests and their sub-parts, as permitted under the applicable rules of procedure, in determining whether it is obligated to respond to additional requests served by any party.

FPL expressly reserves and does not waive any and all objections it may have to the admissibility, authenticity or relevancy of the information provided in its responses.

II. Specific Objections

In addition to the foregoing general objections, FPL further objects to FIPUG's First Request for Production of Documents and First Set of Interrogatories served September 16, 2009, as said discovery seeks information and documents related to issues not properly addressed in this docket and therefore not the proper subject of discovery in this forum. In short, FIPUG has served discovery seeking 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. In the event FIPUG chooses to explore the matters which

form the basis of the discovery propounded to date in this docket, that discovery should instead be propounded at the appropriate time in the DSM Plan docket. As such, FPL respectfully requests that the Commission sustain these objections in accordance with the rules cited above.

In its September 23, 2009 Response and Objection to FIPUG's Motion for Extension of Time to File Intervenor Testimony, FPL explained that the so called "credit issues" raised by FIPUG – the issues which form the basis of the subject discovery – are appropriately raised and litigated in the process established for approving the DSM Plan, but not in this docket. The discovery appears to have been filed in this docket based upon FIPUG's professed concern about having a "legitimate forum in which to raise issues related to the interruptible and/or curtailable credits and [to] have them decided on the merits by this Commission." (See paragraph 4 of FIPUG's Motion for Extension of Time to File Intervenor Testimony dated September 16, 2009.) However, that concern certainly does not make the discovery relevant to this pending docket. Further, FPL has identified the proper forum and docket in which that discovery may be propounded. In short, FIPUG has chosen the wrong docket in which to propound discovery directed to the interruptible and curtailable credits.

The parameters of this docket – and therefore the scope of appropriate discovery – is defined by Rule 25-17.015, Florida Administrative Code (F.A.C.) which outlines the specific filings required and the matters to be decided by the Commission. Consistent with the Rule, FPL's Petitions and supporting testimony and schedules filed in this docket go only to the calculation of the Energy Conservation Cost Recovery ("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", nor would it be appropriate to do so in this docket. It is similarly inappropriate for FIPUG to attempt to interject those issues here. That

is precisely what FIPUG has done by propounding its discovery on the "credit issues" in this docket.

Based upon the foregoing, FPL objects to FIPUG's First Request for Production and First Set of Interrogatories, both of which are dated September 16, 2009.

Respectfully submitted this 30th day of September, 2009.

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BY: /s/ Kenneth M. Rubin
Kenneth M. Rubin
Fla. Bar No. 349038

CERTIFICATE OF SERVICE
Docket No. 090002-EG

I HEREBY CERTIFY that a true and correct copy of the forgoing has been furnished by electronic mail this 30th day of September, 2009 to the following:

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By: s/Kenneth M. Rubin
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Fla. Bar No. 349038

FLORIDA POWER & LIGHT COMPANY
CONSERVATION PROGRAM COSTS
For the Period: January through December 2010 Projection

Program Title	Depreciation & Return	Payroll & Benefits	Materials & Supplies	Outside Services	Advertising	Incentives	Vehicles	Other	Sub-Total	Program Revenues	Total for Period
1. Residential Conservation Service	\$ 112,520	\$ 4,446,810	\$ 85,150	\$ 1,951,983	\$ 3,081,270		\$ 44,823	\$ 799,766	\$ 10,532,422		\$ 10,532,422
2. Residential Building Envelope		324,709		90,850		2,845,037	2,589	60,975	3,325,130		3,325,130
3. Residential Load Management ("On Call")	8,978,814	2,163,643	330,616	(862,668)		44,816,233	36,684	1,146,031	56,609,503		56,609,503
4. Duct System Testing & Repair		339,985	5,000	7,075		382,400	8,722	(9,207)	733,985		733,985
5. Residential Air Conditioning		1,020,862	1,000	685,363		19,399,277	16,030	199,291	21,322,823		21,322,823
6. BuildSmart Program		57,518		6,439		3,360	595	14,894	82,836		82,836
7. Low-Income Weatherization		45,233		120		58,811	152	10,421	114,737		114,737
8. Res. Thermostat Load Control Pilot Proj.									-		-
9. Business On Call	522,576	197,174	5,499	26,295		3,119,790	1,884	49,271	3,932,469		3,932,469
10. Cogeneration & Small Power Production		568,395		5,000				(33,696)	569,699		569,699
11. Business Efficient Lighting		82,294		15,280		197,998	500	25,512	321,585		321,585
12. Commercial/Industrial Load Control		382,913	1,000	20,362		28,760,994	1,729	122,010	29,269,008		29,269,008
13. CA Demand Reduction		189,564	1,100	17,984		8,963,770	1,248	139,682	10,213,348		10,213,348
14. Business Energy Evaluation		2,704,113	81,945	1,221,280	1,412,223		26,061	499,889	5,945,521		5,945,521
15. Business Heating, Ventilating & A/C		853,103	4	101,259		5,685,132	4,351	144,144	6,567,993		6,567,993
16. Business Custom Incentive		51,055		144,392		1,160,000	350	3,291	1,359,088		1,359,088
17. Business Building Envelope		418,091		252,672		2,507,031	4,050	101,057	3,282,911		3,282,911
18. Business Water Heating		6,777		5,263		49,999	57	3,016	65,114		65,114
19. Business Refrigeration		5,434		6,222		7,500	47	3,531	22,734		22,734
20. Conservation Research & Development		36,218		500,000				360	536,578		536,578
21. Common Expenses	1,444,737	12,450,088	500	1,641,376	200		51,046	1,808,673	17,396,620		17,396,620
22. Total All Programs	\$ 11,058,647	\$ 26,153,989	\$ 511,814	\$ 5,857,517	\$ 4,493,793	\$ 118,858,363	\$ 201,068	\$ 5,068,933	\$ 172,224,124		\$ 172,224,124
23. LESS: Included in Base Rates		(1,528,768)							(1,528,768)		(1,528,768)
24. Recoverable Conservation Expenses	\$ 11,058,647	\$ 24,625,221	\$ 511,814	\$ 5,857,517	\$ 4,493,793	\$ 118,858,363	\$ 201,068	\$ 5,068,933	\$ 170,695,356		\$ 170,695,356
Totals may not add due to rounding											

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Exhibit C
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Docket No. 080002-EG
Exhibit No. _____
Florida Power & Light Co.
(SA-1)
Schedule C-2
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