

Ruth Nettles

090002-EG

From: Rubin, Ken [Ken.Rubin@fpl.com]
Sent: Friday, October 23, 2009 4:26 PM
To: Filings@psc.state.fl.us
Subject: Electronic Filing / Docket 090002-EG/ FPL's Objections to FIPUG's 2nd POD (5-6), 2nd INT (4-5) & 3rd POD (7) & 3rd INT (6)
Attachments: 10.23.09 FPL's Objections to FIPUG's 2nd,3rd Set of INTs and PODs.doc; 10.23.09 FPL's Objections to FIPUG's 2nd,3rd Set of INTs and PODs.pdf

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket No. 090002-EG \ 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 9 pages in the attached document.

e. The document attached for electronic filing is Florida Power & Light Company's Objections to Florida Industrial Power Users Group's Second Request for Production of Documents (Nos. 5-6), Second Set of Interrogatories (Nos. 4-5), Third Request for Production of Documents (No. 2) and Third Set of Interrogatories (No. 6).

Thank you for your attention and cooperation to this request.

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10/23/2009

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FPSC-COMMISSION CLERK*

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 090002-EG

Date: October 23, 2009

FLORIDA POWER & LIGHT COMPANY'S OBJECTIONS TO FLORIDA INDUSTRIAL POWER USERS GROUP'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS (NOS. 5-6), SECOND SET OF INTERROGATORIES (NOS. 4-5), THIRD REQUEST FOR PRODUCTION OF DOCUMENTS (NO. 7) AND THIRD SET OF INTERROGATORIES (NO. 6)

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") Second Request for Production of Documents (Nos. 5-6), Second Set of Interrogatories (Nos. 4-5), Third Request for Production of Documents (No. 7) and Third Set of Interrogatories (No. 6). Notwithstanding the filing of these objections, and without waiver of these or the previously filed objections or FPL's position that the subject discovery is not appropriately served in this docket, FPL is on this date serving its responses to the above described discovery.

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

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

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 Second Request for Production of Documents and Second Set of Interrogatories served October 12, 2009, and FIPUG's Third Request for Production of Documents and Third Set of Interrogatories served October 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, and also in its previously filed Objections to discovery and other filings in this docket, 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. That position has recently been reiterated by FPL in the context of the Prehearing Conference. 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.

Further, and with specific reference to FIPUG’s Third Set of Interrogatories (No. 6) and Third Request for Production of Documents (No. 7), the discovery requests specific identification of and information about FPL customers “that are prepared to enroll in the CDR rider at the current level of the CDR rider credit.” Customer-specific information is the type of information that is private and personal to the customer, is protected from disclosure pursuant to Florida law, and which should not be disclosed in the context of or in response to the pending discovery request. It is FPL’s corporate policy not to disclose customer-specific information. This policy is premised upon both the Florida law and the customers’ rights of privacy and the

fact that the disclosure of customer-specific account information, including the disclosure of confidential financial information, would harm customers' competitive interests.

Pursuant to Section 366.093(3), Florida Statutes, the requested information is proprietary confidential business information of FPL and FPL's customers which is owned or controlled by FPL, is intended to be and is in fact treated by FPL as private information, the release of which would cause harm to the ratepayers or the person's or the company's business operations, and which has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public. The information in question constitutes information relating to competitive interests as that term is used in Section 366.093(3)(e), Florida Statutes, the disclosure of which would impair the competitive business of both FPL and its customers. This position is entirely consistent with the Commission's interpretation of this type of information as more fully outlined in Order No. PSC-06-0188-CFO-EG and Order No. PSC-06-0189-CFO-EG issued in Docket No. 060002-EG.

Having identified the specific objections to FIPUG's Third Set of Interrogatories (No. 6) and Third Request for Production of Documents (No. 7), FPL affirmatively states that it has created and produced a document that provides the substantive information responsive to the subject discovery without identifying individual customers, customer account numbers or information, or other confidential, proprietary, and private information.

Based upon the foregoing, FPL objects to FIPUG's Second Request for Production of Documents and Second Set of Interrogatories, both of which are dated October 12, 2009, and FIPUG's Third Request for Production of Documents and Third Set of Interrogatories, both of which are dated October 16, 2009.

Respectfully submitted this 23rd day of October, 2009.

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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 23rd day of October, 2009 to the following:

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