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Subject: Docket No. 080677-EI and 090130-EI
Attachments: FIPUG brief (Final) 11.16.09.doc

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. 080677-EI, In re: Petition for increase in rates by Florida Power & Light Company; and Docket No. 090130-EI, In re: 2009 depreciation and dismantlement study by Florida Power & Light Company.

c. The document is filed on behalf of Florida Industrial Power Users Group.

d. The total pages in the document are 64 pages.

e. The attached document is FIPUG's Post-Hearing Statement of Issues and Positions and Post-Hearing Brief.

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DOCUMENT NO. DATE
11333-09 11/16-09
FPSC - COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for increase in rates by Florida Power & Light Company.	DOCKET NO. 080677-EI
In re: 2009 depreciation and dismantlement study by Florida Power & Light Company.	DOCKET NO. 090130-EI FILED: November 16, 2009

THE FLORIDA INDUSTRIAL POWER USERS GROUP'S POST-HEARING STATEMENT OF ISSUES AND POSITIONS AND POST-HEARING BRIEF

The Florida Industrial Power Users Group (FIPUG),[1] by and through its undersigned counsel, pursuant to Order No. PSC-09-0573-PHO-EI, files its Post-Hearing Statement of Issues and Positions and Post-Hearing Brief.[2]

BASIC POSITION

The evidence in this case clearly demonstrates that Florida Power & Light Company's (FPL) request for a rate increase of nearly $1.5 billion dollars (the largest dollar increase ever sought in the history of the state) is grossly overstated and should not be provided. The evidence shows that FPL has failed to "tighten its belt" as individual rate payers, schools, local governments, small and large businesses have done during the worst economic time in Florida since the Great Depression. FPL's "business as usual" rate case was botched by FPL and FPL failed to take into account the dire economic climate affecting all Floridians. As suggested by Public Counsel, FPL's base rates should be reduced, not raised.

[1] FIPUG was granted intervenor status in Order No. PSC-08-0597-PCO-EI (Sept. 16, 2008).

[2] Throughout this brief, Florida Power & Light Company is referred to as FPL or the company. FPL Group, Inc. is referred to as FPL Group. The Office of Public Counsel is referred to as Public Counsel. The Florida Retail Federation is referred to as FRF. The South Florida Hospital and Healthcare Association is referred to as SFHHA. References to the transcript are designated Tr., followed by the page number.

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Revenue Issues

Cost of Service/ Allocation

The Commission should retain and continue to use the 12CP-1/13th average demand method, a position supported by FIPUG, FPL and the federal agencies, including the armed services. Further, the Commission should continue to apply the principle of gradualism, which prevents any class from receiving an overly large increase resulting from a rate case proceeding. FPL's rate rebalancing proposal would result in CILC, General Service Large Demand-1 and General Service Large Demand-2 receiving increases far in excess of the system average increase in conflict with past Commission precedent and decisions.

Test Year

The Commission should summarily reject FPL's request to impose an additional rate increase on customers in 2011 based on a 2011 test year. When considering base rates, the majority of states rely on historical data and a historical test year. The minority of states that make use of a projected test year, like Florida, typically only attempt to look one year into the future. FPL is asking the Commission to look far beyond the horizon, into 2011, and raise consumers rates not only in 2010 based on a 2010 projected test year, but to raise consumers rates again in 2011 based on speculative and untested projections for a 2011 projected test year. FPL's ambitious overreaching, namely seeking to increase rates in 2011, a subsequent year adjustment, should be rejected. Not only is this an unwarranted second year increase, it is based upon information that is simply too unreliable and speculative to support a rate increase.

Depreciation

Depreciation forms the single biggest component of FPL's request and FPL has vastly overstated its requirements, especially given the huge depreciation surplus of $1.2 billion it

currently has. Further, the Commission should require FPL to utilize reasonable life spans for its coal units (at least 55 years) and combined cycle units (at least 35 years) and should require FPL to continue to make the $125 million depreciation adjustment authorized in its 2005 rate case.

The Commission has previously strayed from a depreciation approach based on the average remaining useful life in unusual or atypical situations. For instance, when there was discussion of and speculation about merchant plants being located in Florida, the Commission departed from the average remaining useful life approach and permitted FPL to accelerate depreciation for assets that FPL feared might be "stranded" should merchant plants and a competitive generation market take root in Florida. The concern prompting the Commission's accelerated depreciation treatment did not come to pass. Conversely, in this case, the unusual or atypical facts, Florida's troubled economy, are not speculative. Numerous witnesses and documents left no room for doubt that Florida is facing the worst economic crisis since the Great Depression, marked by double digit unemployment, high home foreclosure rates, and a reduction in household disposable income. These facts should prompt this Commission to use FPL's depreciation surplus to permit Florida electric consumers, businesses and residents alike, to keep more money in their collective pockets now, during these dire economic times.

Executive Compensation

While FPL President Olivera, and other top executives, acknowledged the troubling and difficult economic times facing FPL ratepayers, witness Oliver nonetheless attempted to justify his multimillion dollar compensation as well as the continuing escalating compensation for both himself and his executives. He further refused to accept the suggestion that he and his executives agree to a compensation freeze as many other Floridians have done. FPL's failure to appreciate the constrained fiscal circumstances of its ratepayers and the state of the Florida economy as a whole

reflects a disregard or indifference for its customers as they attempt to cope with and hopefully pull out of a recession. The position of Public Counsel regarding compensation should be adopted.

Return on Equity (ROE)

Put simply, FPL is overreaching when asking this Commission to award it an authorized return on equity of 12.5%, and to include an ROE adder which recognizes good service. Honoring FPL's request would put this Commission in the position of awarding the highest ROE in the nation during 2009 should a 12.5% ROE be adopted. Instead, this Commission should award an ROE sum at or near the figure suggested and supported by Public Counsel, 9.5%. Every 100 basis points in return equates to $120 million. (Tr. 360). Thus, a reduction from 12.5% to 9.5% would save ratepayers $360 million, (Tr. 360-361), is appropriate, and is supported by the record. (See expert testimony from Dr. Woolridge, a Penn State University economics professor, supporting the 9.5% figure.) The average ROE awarded by state commissions in 2009 is 10.51%. Many companies receiving a 10.5% ROE have higher bond ratings than FPL, suggesting that FPL can still maintain adequate access to capital, given its lower risk profile, with an authorized ROE of 10.5% or lower.

The Commission should reject any notion that FPL should receive a "reward" in terms of a higher ROE because it provides good service. As part of the regulatory compact, FPL is required to provide reliable, efficient, cost-effective service. In return, FPL has a monopoly on service and ratepayers have no choice as to their electric supplier. The idea that FPL should receive a "reward" for fulfilling its statutory duties should be rejected out of hand.

To the contrary, if anything, FPL's actions warrant a lower ROE. This Commission could send a clear message that it does not approve of certain FPL actions, supported by the record in this proceeding, by reducing further FPL's ROE and linking the additional reduction to certain FPL

conduct. Among the conduct that warrants a reduced ROE is: a) FPL's efforts to "stack the deck" at public hearings, designing and implementing an elaborate and detailed plan to ensure those with favorable views of the Company testified; b) FPL's top management violation of internal cost allocation policies for cost allocation between FPL, unregulated subsidiary companies and personal expense, violations that was only discovered when a PSC Commissioner asked for an independent, detailed review of certain corporate aircraft flights;[3] c) FPL's failure to reduce its workforce or freeze or reduce salaries paid to its workforce (all salaries were increased) in the 2010 test year, actions that can hardly reasonably be characterized as belt tightening; and d) using two brand new generators, originally slotted to be used as power plants by Next Era, FPL Group's unregulated business unit, for spare parts, essentially cannibalizing these two power plants, while charging FPL ratepayers rent to house the units in question.

Capital Structure

FPL should not be permitted to include as a component of its capital structure an increased equity component due to purchase power obligations. FPL has no risk of recovery as to these contracts. In addition, FPL's capital structure should be adjusted to reduce the amount of common equity to 50.2% on an adjusted basis, which is comparable to the equity ratios of other comparably-rated electric utilities.

Generation Based Rate Adjustment (GBRA)

The Commission should reject FPL's request for the generation based rate adjustment, commonly known as GBRA. Capital expenses should be evaluated in the context of all other utility

[3] FPL's letter dated October 7, 2009 with attachments filed with the Commission and admitted into evidence reflects that a number of flights were inappropriately allocated. FPL ratepayers were originally charged for flights taken by FPL top management to Louisville, Kentucky during the Kentucky Derby weekend and to Napa Valley. (See Attachment II, page 8, entry 19 and page 9, entry 22). Only after subsequent review, were adjustments made. Leadership starts at the top. To the extend any ROE adjustment is to be made, FPL's action should not be rewarded with a higher "performance enhanced" ROE, but should be discouraged with a lower "performance deduction" ROE.

cost and expenses, not in isolation. Though FPL has couched its request as a "continuation" of the GBRA, this is highly inaccurate. The GBRA was part of the settlement of FPL's 2005 rate case and ends with the expiration of the settlement at the end of this year.

Furthermore, a rate case acts as the "ultimate regulatory true up" of all regulatory accounts maintained by a utility. Historically, rate cases have not occurred frequently. However, a rate case is an opportunity for the utility, staff, the Commission and intervenors to have a multitude of issues considered, a two way street so to speak. Should the Commission approve the GBRA, which would allow a utility to have a limited proceeding, a one way street, limited only to consideration of the costs of a new power plant to be placed into rate base, it would make the opportunity for a full blown rate case even more remote than it is today. In other words, the "ultimate regulatory true up", i.e., the rate case, which currently resides on the Commission's back burner, would become even more distant should the GBRA mechanism be adopted as requested by FPL. The GBRA is not appropriate and should not be authorized.[4]

AUSTERITY ADJUSTMENT

Given the amount of testimony the Commission heard in this case regarding the difficult economic times facing all Floridians, FIPUG suggests that an "austerity adjustment" like the one recently imposed by the New York Public Service Commission is appropriate. As the New York Commission stated:

> Expenditures that are reasonable during average or good economic times are not necessarily reasonable when economic conditions are extremely poor. When consumers are experiencing the extraordinary harsh economic realities we see today, a certain measure of frugality is properly expected from utilities and a reprioritizing of expenditures may be needed.

[4] Even if the GBRA were something the Commission were interested in pursuing, it would likely have generally applicability to all similarly situated investor owned utilities, not just FPL. The proper course of action to adopt a policy which has general applicability is through rulemaking, not in a rate case. See section 120.54, Florida Statutes.

> The record provides only general information about the effect of our deteriorating economic circumstances on customers' ability to pay. However, it is not seriously disputed that we are now experiencing significant weakness in the New York State economic climate. . . . .
>
> In these extraordinary times, we recognize the need for utilities to implement austerity programs to constrain cost and tighten belts to limit discretionary spending. We will require a meaningful further downward adjustment to the Company's revenue requirement amounting to $60 million.[5]

The comments of the New York Commission are equally applicable to FPL and FIPUG commends such an adjustment to the Commission.

ISSUES AND POSITIONS

2010 PROPOSED TEST PERIOD

ISSUE 1: Does the Commission have the legal authority to approve a base rate increase using a 2010 projected test year?

POSITION: *No position.*

ISSUE 2: Is FPL's projected test period of the 12 months ending December 31, 2010, appropriate?

POSITION: *No position.*

ISSUE 3: Are FPL's forecasts of customers, kWh, and kW by revenue and rate classes for the 2010 projected test year appropriate?

POSITION: *No. Agree with OPC.*

2011 PROPOSED SUBSEQUENT YEAR TEST PERIOD

ISSUE 4: Does the Commission have the legal authority to approve a subsequent year base rate adjustment using a 2011 projected test year?

[5] Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service, Case 08-E-0539, Petition for Approval, Pursuant to Public Service Law, Section 113(2), of a Proposed Allocation of Certain Tax Refunds between Consolidated Edison Company of New York, Inc. and Ratepayers, Case 08-M-0618, *Order Setting Electric Rates* at 342-343, April 24, 2009.

POSITION: *No, not in this case. FPL's projections are too speculative to support a ratemaking finding related to rates in 2011. Any finding based on such projections would not be based on competent substantial evidence and would be an unlawful abuse of discretion.*

ISSUE 5: Should the Commission approve in this docket FPL's request to adjust base rates in January 2011?

POSITION: *No. This request is an objectionable "pancaking" of two separate and distinct rate cases into one proceeding. Further, FPL's 2011 projections are highly speculative as they are based on projections made in 2008 and cannot be prudently relied upon as reasonable projections upon which to base rates in 2011.*

ISSUE 6: Is FPL's projected subsequent year test period of the 12 months ending December 31, 2011, appropriate?

POSITION: *No. This request is the inappropriate bundling of two separate and distinct rate cases into one proceeding. Further, FPL's 2011 projections are highly speculative as they are based on projections made in 2008 and cannot be prudently relied upon as reasonable projections upon which to base rates in 2011. If FPL can demonstrate its need for rate relief in 2011, it may file a rate case with all supporting documentation at the appropriate time.*

ISSUE 7: Are FPL's forecasts of customers, kWh, and kW by revenue and rate classes for the 2011 projected test year appropriate?

POSITION: *No. Such forecasts are highly speculative and cannot be relied upon to set rates.*

DISCUSSION

This group of issues relates to FPL's request that the Commission approve a subsequent test year and increase in 2011 – both based on completely forecasted data, which in turn is based on data drawn from 2008. The Commission should reject this request for a number of reasons.

As a preliminary matter, the Commission should keep in mind that the "subsequent year adjustment" is simply a second rate increase. If approved, this adjustment would increase rates above the level proposed in the 2010 increase by another $247.4 million effective January 2011.

This additional increase would also be above and beyond the increase that would occur if the Commission approves FPL's GBRA request. (Tr. 2963).

Objectionable Rate Pancaking

First, FPL's request for an additional increase is nothing more than the objectionable pancaking of two separate rate proceedings into one. (Tr. 2963). What FPL has actually done is file two separate rate increases as one. FPL's request is a thinly-disguised attempt to package a second proposed base rate increase filed at the same time as the first base rate increase as something other than what it is—a full scale 2011 base rate case and attendant rate increase. (Tr. 2964). Furthermore, this is not a request to cover some specific item. It is a second rate filing in which FPL seeks to have increased rates put into effect to cover all manner of cost increases ranging from an increase in the overall cost of capital from 8% to 8.18%, (2010 MFR Schedule A-1 and 2011 MFR Schedule A-1), increases in operation and maintenance (O&M), depreciation, and tax expenses, adjustments to billing determinants, capital additions and even inflation-related adjustments, all based on speculative costs projected for 2011. These are not specific subsequent year adjustments, but rather the full panoply of adjustments that are seen as part of a full rate increase filing. (Tr. 2964).

Requests for back to back rate increases are inappropriate. Assuming its 2011 assumptions are accurate (which FIPUG disputes), FPL is really asking the Commission to guarantee that it will achieve the authorized return. Providing such a guarantee is contrary to accepted regulatory practice, which is to an *opportunity* to earn the authorized return. (Tr. 2965).

Speculative Information

Second, the basis for FPL's subsequent year adjustment is fatally flawed. FPL proposes to use data and information developed in 2008 (Tr. 353, Morely, 1196, 2963) to forecast rates in

2011 – some two and a half years earlier. While predictions of the future are always difficult, given the uncertain economic times (demonstrated by high unemployment and a high foreclosure rates) (Exhibit Nos. 389, 390, 405), it is even more difficult to predict what the economic situation in Florida and the United States will be in 2011.

FPL President Olivera recognized the difficult economic times facing Floridians (Tr. 534-535) as did FPL's witness, Dr. Morley. Dr. Morley, FPL's forecast witness, agreed that certainly more timely data would be available for 2011 if the forecast was done in 2010. Similarly, Mr. Hanser, who was brought in to verify FPL's model, agreed that the closer one gets to the period one is attempting to predict, the more accurate the predictions will be. (Tr. 1199). Even witness Olivera acknowledged the farther out in time one goes, the more difficult the future is to predict. (Tr. 350-351).

Related to the speculative nature of FPL's projections, the proposed 2011 rates do not even reflect FPL's current budget for 2011. FPL witness Barrett described FPL's budgeting process in his testimony. The underlying budget assumptions used for 2011 were all prepared prior to May 21, 2008. The assumptions that FPL used were included in the Planning Process Guidelines FPL issued on May 21, 2008. (Tr. 1219). This planning process resulted in an O&M budget for 2009 as well as budgets for 2010 and 2011, a capital budget for 2009, and forecasted capital expenditures for 2010 through 2013. (Tr. 1219). The results were reviewed in June 2008 and finally approved in late 2008. (Tr. 1220). The O&M budget is prepared annually for the next year and for two additional years, with the next year done at a monthly level while the two "out" years are done on an annual basis. (Tr. 1224).

Such a "budget" should not form the basis for rates in 2011 because use of projections calculated some two and half years prior to the date rates are to take effect by necessity will

result in rates that are based on highly speculative information. The farther out in time projections are, the less likely they are to be accurate. (Tr. 2967).

In Florida, no doubt due in part to the numerous recovery clauses, many years often elapse between rate cases. If the Commission were to base 2011 rates on speculative data from 2008 – which will change as 2011 gets closer – these inaccurate rates may be in effect for a long time and ratepayers may be paying more than necessary. (Tr. 2967).

In addition, the information in the 2011 test year is not even FPL's approved budget for 2011. Rather, it is a forecast of sales, revenues and expenses (both O&M and capital) in 2011 based on information available in 2008 and which changes annually. (Tr. 2968). The 2011 budget will not even be approved until 2010 and the Commission has no way to know if it will bear any relationship to the 2008 forecast. (Tr. 2968). And in fact, FPL has already made changes to its 2008 O&M schedules by reducing the number of planned distribution stations contained in the 2008 budget. (Tr. 2968; Exhibit No. 30 (response to SFHHA Interrogatory No. 254).

Further, a review of the capital budget numbers provided in a series of FPL 10Q filings with the Securities and Exchange Commission (SEC) for the quarters ending June 30, 2008, September 30, 2008 and March 31, 2009 indicate that the capital expenditures have changed over the nine-month period. (See Exhibit No. 261.) For example, both the 2010 and the 2011 total capital expenditures have increased by over $300 and $200 million, respectively, from September 2008 to March 2009. During the same period (September 2008 to March 2009), the 2009 capital expenditures have decreased by over $300 million. From the quarter ending June 2008 to the quarter ending March 2009, the 2009 expenditures have decreased by over $1 billion.

These changes highlight the extent to which expenditures may change over a relatively short period of time. (Tr. 2969).

Cost Recovery Clauses

Third, because FPL collects a majority of its revenues through cost recovery clauses and because it may file for a limited proceeding, section 364.076, Florida Statutes, if justified, a subsequent year increase is simply unnecessary. (Tr. 2964).

Avoidance of a Rate Case Does Not Justify a Second Year Increase

Certainly it would seem the best course of action is for the Commission to deny FPL's request for an increase for 2011. When there is data which of necessity will be more accurate because it will be more proximate it time, FPL can file for an increase, if necessary. FPL's main opposition to proceeding in this way is based on its allegation that this will increase rate case expense. Such a position should be rejected.

FPL's main justification for its request for a second test year appears to be that such a second increase will avoid the need for a rate case and thus save ratepayers money. Such a position is wrong for several reasons. First, rate cases are not something to be avoided. As witness Olivera said, rate cases are part of the regulatory tools which the Commission utilizes in its oversight of regulated companies. As intervenors pointed out, a rate case allows a "check up" of the utility's well-being; it is the ultimate regulatory true up; it is not something to be avoided, but rather something which should be regularly done.

If such savings actually outweighed the amount of the rate increase, they would be embraced by the intervenors. However, there is not a single intervenor that supports the subsequent year increase. This is no doubt because the rate case expense of $3 to $5 million dollars pales in comparison to the request for an increase of nearly $1.5 billion – the largest

amount ever sought in Florida. While $5 million dollars is a considerable sum of money, when considering what is at stake, nearly $1.5 billion dollars, the rate case expense, assuming a $5 million dollar sum, is approximately 1/3 of 1 percent of FPL's rate request. The intervenors welcome the opportunity for a full review, the ultimate regulatory true up, offered by a rate case. This Commission should not be persuaded that, as FPL argues, saving ratepayers a smidgen of the overall dollars FPL seeks to recovery from ratepayers, less than 1/3 of 1 percent of the rate increase sought, should justify awarding FPL a rate increase for 2011. This conclusion is further bolstered when one considers the speculative evidence FPL cobbled together attempting to peer years into the future, and have rates set for 2011.

Finally, it is not necessary for the Commission to reach the legal question of its authority to approve a subsequent test year in order to come to the conclusion that FPL's subsequent year increase must be rejected. Because the subsequent year information is so speculative and uncertain, any rates based on it would fail to meet the requirement that the Commission's decisions be based on competent substantial evidence.

GENERATION BASE RATE ADJUSTMENT

ISSUE 8: Should the Commission approve a Generation Base Rate Adjustment (GBRA) mechanism which would authorize FPL to increase base rates for revenue requirements associated with new generating additions approved under the Power Plant Siting Act, at the time they enter commercial service?

POSITION: *No. Capital additions should not be automatically recovered through the GBRA. If FPL believes that the addition of generating plant necessitates a rate change, it may petition for such a change in a full rate case where the Commission and the parties may examine all of FPL's revenues and expenses.*

ISSUE 9: If the Commission approves a GBRA mechanism for FPL, how should the cost of qualifying generating plant additions be determined?

POSITION: *The appropriate costs of the qualifying generating plant should be determined in a separate proceeding and based on the most current information available.*

ISSUE 11: If the Commission approves a GBRA mechanism for FPL, how should the GBRA be designed?

POSITION: *A base rate increase should be considered only when the addition of the plant's revenue requirements to the most recent surveillance report cause the company to earn less than the floor of its last authorized ROE. Minimum filing requirements should be provided as well as a point of entry.*

ISSUE 12: If the Commission approves a GBRA mechanism for FPL, should the maximum amount of the base rate adjustment associated with a qualifying generating facility be limited by a consideration of the impact of the new generating facility on FPL's earned rate of return ("earnings test")? If so, what are the appropriate financial parameters of the test, and how should the earnings test be applied?

POSITION: *FIPUG opposes the establishment of the GBRA. If it is approved, the Commission should limit any recovery to bringing FPL to the low end of its ROE range. This review should be done in a separate proceeding where a point of entry is provided for all parties.*

ISSUE 13: If the Commission approves a GBRA mechanism for FPL, how should FPL be required to implement the GBRA?

POSITION: *See Issues 11 and 12.*

ISSUE 14: If the Commission chooses not to approve the continuation of the GBRA mechanism, but approves the use of the subsequent year adjustment, what is the appropriate adjustment to FPL's rate request to incorporate the revenue requirements reflected in the West County Unit 3 MFR Schedules?

POSITION: *For the reasons stated in Issues 4-11, the Commission should not approve a subsequent year adjustment. Thus, the costs for WCEC3 should not be considered at this time.*

DISCUSSION

This group of issues concerns FPL's request for the Commission to institute a Generation Base Rate Adjustment (GBRA). The GBRA would allow FPL to add new generating plant to rate base without a review of all FPL's costs; in essence, it is an automatic rate increase with no review of whether current revenues are sufficient to absorb some or all of the costs of the capital addition. Such a lop-sided, myopic mechanism should not be approved.

As a preliminary matter, it is necessary to correct FPL's oft-repeated claim that it is simply seeking to "continue" the GBRA. The GBRA was a time-limited mechanism which was part and parcel of the settlement of FPL's last rate case. *See,* Order No. PSC-05-0902-S-EI.

As PEF witness Barrett recognized on cross-examination, the settlement was in effect for four years; with limited exceptions, FPL's current base rates remained in effect without change; no party would request a rate change, except in limited circumstances; and under certain limited circumstances, FPL could request a rate increase. Those exceptions were if FPL's ROE fell below a certain level or through the GBRA. (Tr. 1398-1400). These agreed upon parameters stand in stark contrast to this fully litigated rate case where FPL seeks nearly a $1.5 billion increase and seeks to make the GBRA permanent.

As FPL President Olivera recognized, there was much give and take in the settlement's terms. (Tr. 356). Further, FPL witness Davis, in discussing the settlement agreement, said: "Settlement Agreements by nature are based on give and take in which all the parties agree to a compromise for the good of all." (Tr. 6426).

In essence, what FPL has done in this case is to take one component of a comprehensive settlement that it received in negotiation of a full settlement and commend it to the Commission in a litigated rate case. (Tr. 1410). This ignores the fact that the settlement explicitly provides that: "This Stipulation and Settlement is contingent on approval in its entirety by the FPSC." *Id.* Thus, the GBRA was part of a global agreement and has no applicability to this fully litigated proceeding. If FPL wants to have the Commission consider the GBRA mechanism as a matter of policy applicable to all similarly situated utilities, which appears to be the case based in its pre-filed testimony, it should file a petition for rulemaking, which is the legally appropriate mechanism for this GBRA issue to be determined. See section 120.54, Florida Statutes.

Substantively, numerous FPL witnesses claimed that the GBRA was an efficient mechanism and appropriate for approval by the Commission. (*See, i.e.*, Tr. 1404). However, as Mr. Barrett acknowledged, the GBRA looks only at the power plant FPL wants to include in rate base and does not take into consideration any other circumstances affecting FPL's financial condition. (Tr. 1411). If FPL is earning within its range, it may, under normal circumstances without the GBRA, be able to absorb some of the cost of new plant and still earn within its authorized earnings range. (Tr. 1414).

And as with its request for an increase in a subsequent year, FPL also claims that the GBRA will "avoid costly and lengthy rate proceedings ....". For the reasons discussed in Issues 4-7 above, this basis for the GBRA, avoidance of a rate case, the ultimate regulatory true up, should be rejected.

While, for all the reasons discussed above, FIPUG opposes the approval of a GBRA, if the Commission does approve a GBRA (appropriately done in a rulemaking proceeding, not a rate case), it must provide appropriate safeguards for ratepayers. These include a point of entry for parties to participate and review the GBRA filings, if necessary. Further, in any GBRA filing, FPL should be required to make a showing similar to the showing required for interim rate increases: revenue requirement calculations should be reflected with adjustments made consistent with its last rate case proceeding and by using the range of its last authorized rate of return on equity in determining the cost of capital. The amount of increase should be limited to that necessary to restore the company to the bottom of its authorized overall fair rate of return. Because the filing would be based on estimates, the rate increase should be held subject to refund pending the filing of actual amounts to protect customers in case the rate increase generated excess earnings.

JURISDICTIONAL SEPARATION

ISSUE 15: Does FPL's methodology of including its transmission-related investment, costs, and revenues of its non-jurisdictional customers when calculating retail revenue requirements properly and fairly identify the retail customers appropriate revenue responsibility for transmission investment? If no, then what adjustments are necessary?

POSITION: *Agree with OPC.*

ISSUE 16: What is the appropriate jurisdictional separation of costs and revenues between the wholesale and retail jurisdictions?

POSITION: *Agree with OPC.*

QUALITY OF SERVICE

ISSUE 17: Is the quality and reliability of electric service provided by FPL adequate?

POSITION: *No position.*

DEPRECIATION STUDY

ISSUE 19A: What are the appropriate capital recovery schedules?

POSITION: *Agree with OPC.*

ISSUE 19B: Is FPL's calculation of the average remaining life appropriate?

POSITION: *Agree with OPC.*

ISSUE 19C: What are the appropriate depreciation parameters (remaining life, net salvage percentage and reserve percentage) and resulting rates for each production unit (including but not limited to, coal, steam, combined-cycle, etc)?

POSITION: *FPL has significantly understated the life span of its units. The Commission should use a life span of at least 55 years for FPL's coal units and a life span of at least 35 years for FPL's combined cycle units. *

ISSUE 19D: What are the appropriate depreciation parameters (remaining life, net salvage percentage and reserve percentage) and resulting rates for each transmission, distribution, and general plant account?

POSITION: *Agree with OPC.*

ISSUE 19E: Based on the application of the depreciation parameters that the Commission has deemed appropriate to FPL's data, and a comparison of the theoretical reserves to the book reserves, what are the resulting imbalances?

POSITION: *FPL's depreciation reserve excess is at least $1.245 billion.*

ISSUE 19F: What, if any, corrective reserve measures should be taken with respect to the imbalances identified in Issue 19E?

POSITION: *The Commission should require FPL to continue to book the $125 million depreciation expense, to cease contributions to the fossil dismantlement fund and to use a portion of the depreciation surplus to offset the $314 million of accelerated capital recovery. *

ISSUE 19G: What should be the implementation date for revised depreciation rates, capital recovery schedules, and amortization schedules?

POSITION: *January 1, 2010.*

DISCUSSION

This group of issues relates to FPL's requested changes in its depreciation rates. The depreciation changes FPL requests comprise the single largest component of FPL's rate request -- $266 million. (Exhibit No. 69) (setting aside temporarily the difference between FPL's requested ROE of 12.5% and the intervenors suggested ROE of 9.5%, a total dollar difference of $360 million dollars). FIPUG's testimony focuses on the appropriate lives to use for the generating plants at issue.

Depreciation reflects the consumption or use of assets used to provide utility service. Thus, it provides for capital recovery of a utility's current or original investment. Generally, this capital recovery occurs over the average service life of the investment or assets. (Tr. 2940).

Depreciation Lives

Because depreciation accounting allows the recovery of the original cost of an asset over its life span minus net salvage, it is critical that the appropriate average life span be used to develop depreciation rates so that present and future ratepayers are treated fairly. (Tr. 2940). The

large depreciation increase FPL seeks is primarily due to the shorter life spans FPL assigns to the assets.

In general, FPL witness Clarke obtained his information regarding the retirement dates for the plants at issue from FPL personnel. (Tr. 2863, 2866). And in fact, witness Clarke was unfamiliar with any individual information about the FPL plants about which he opined. (Tr. 2866). Witness Clarke knew nothing about FPL's maintenance practices nor could he describe anything unique about such practices. (Tr. 2867); he could relate nothing that was unique about the design life of the FPL units and had not even reviewed any maintenance information from the plant manufacturers. (Tr. 2867). In essence, witness Clarke took what FPL told him and plugged it into his study.

Coal Plants

FPL proposes to use a 41 year life span for its coal plants. (Exhibit No. 115). This significantly understates the lives of these plants. As Mr. Pollock testified, the life spans FPL has utilized are much shorter than the average life of coal-fired plants as indicated in a number of regulatory proceedings, including proceedings before this Commission:

- 60 years for Indiana-Michigan Power company's Tanner Creek Units 1 through 4 and for its Rockport Unit 1 (Indiana Utility Regulatory Commission, Cause No. 43231, *Interim Order,* 6/13/2007);
- 55 years for coal plants operated by Southwestern Public Service Company (New Mexico Public Regulatory Commission, Case No. 07-00319-UT, *Order*, August 26, 2008);
- 60 to 63 years for coal units owned by AmerenUE (Missouri Public Service Commission, Cause No. ER-2007-0002, *Order,* May 22, 2007);
- 61 years for coal units owned by Rocky Mountain Power (Wyoming Public Service Commission, Docket No. 20000-257-EA-6, *Record No. 10794*, June 12, 2008);
- 60 years for Public Service Company of Oklahoma (Oklahoma Corporation Commission, Cause No. PUD 200600285, *Order No. 545168*, October 9, 2007); and

- 55 years for Georgia Power Company's Plant Scherer Units 1-3 (Georgia Public Service Commission, Docket No. 25060-U Document 103566, 2007 Rate Case).

(Tr. 2944).

Further, the two biggest operators of coal units in the nation, American Electric Power Company and The Southern Company, have determined that life spans of 60 years or more are achievable (Indiana Utility Regulatory Commission, Cause No. 43231, *Interim Order,* 6/13/2007, Florida Public Service Commission, Docket No. 050381-EI, *Order No. PSC-07-0012-PAA-EI,* January 2, 2007). (Tr. 2945). In addition, FPL's Plant Scherer Unit 4 is located at the same site as Georgia Power's Units 1-3 and Georgia Power uses a longer average life span for units 1 – 3 than FPL uses for Scherer Unit 4. (Tr. 2945).

Progress Energy Florida (PEF) proposes a 52-year average life span for its Crystal River Coal units in its pending rate case (Docket No. 090079-EI). In addition, Gulf Power Company extended the lives of the Plant Crist and Plant Smith units to 65 years (Docket No. 050381-EI, *Order No. PSC-07-0012-PAA-EI,* January 2, 2007). (Tr. 2945). Based on these examples, it is clear that FPL has significantly understated the life spans of its coal units.

In addition, in support of his shorter life spans for coal units, FPL witness Clarke provided a telling exhibit, which was affixed to his pre-filed rebuttal testimony as exhibit CRC-3 and subsequently entered into the record in this proceeding. This document shows life spans of retired coal plants of 10 MWs or greater. All of the units in this document are retired and no longer in service. (Tr. 2839). Thus, if any coal-fired plant exceeds those in this exhibit, it is not included in the list. (Tr. 2840).

Further, FPL witness Clarke claimed that unique circumstances led him to conclude that shorter lives for FPL's coal plants were appropriate. (Tr. 2849). However, upon cross-examination, it became clear that Witness Clarke simply accepted the lives provided to him by

FPL employees. (Tr. 2863); thus, his much shorter lives should be rejected and life spans of 55 years should be used for FPL's coal plants. Increasing life spans as recommended by Mr. Pollock would reduce depreciation expense by approximately $10.5 million. (Exhibit No. 258).

Finally, witness Clarke admitted that the 55 year coal plant life Mr. Pollock recommended was within the range of the lives of coal plants in service today. (Tr. 2867-2868).

Combined Cycle Plants

FPL proposes an average life span for its combined cycle units of 27 years. As with the lives of its coal plants, FPL has significantly understated the lives of these units. And as is the case with FPL's proposed coal unit lives, FPL's combined cycle units are out of step with industry projections and practices. The following orders illustrate that FPL has understated the lives of its combined cycle plants:

- 40 years for Rocky Mountain Power's CC units (Utah Public Service Commission, Docket No. 07-035-13 and Public Utility Commission of Oregon UM 1329, *Order No. 08-327*, June 17, 2008);
- Over 60 years for Public Service Company of Oklahoma (Oklahoma Corporation Commission Cause No. 200600285, *Order No. 545168*, October 9, 2007);
- 35 years for Nevada Power Company Silverhawk and Lenzie CC units (Nevada Public Utilities Commission, Docket No. 06-11022, May 24, 2007; Modified Order of July 17, 2007);
- 35 years for Georgia Power Company McIntosh CC units (Georgia Public Service Commission, Docket No. 25060-U, 2007 Document 103566, 2007 Rate Case).

(Tr. 2948).

In addition, Progress Energy Florida (PEF) proposes a 30-year life span for its Hines Units in its pending rate case.[6] Further, Gulf Power recently extended the life of Plant Smith Unit

[6] Docket No. 090079-EI.

3 to 34 years.[7] While conservative in light of the non-Florida examples cited above, these Florida examples also highlight the unreasonableness of FPL's proposed life spans. (Tr. 2948).

FPL witness Clarke admitted that he did not take into consideration the manner in which FPL cycles its combined cycle units, the manner in which FPL maintains its combined cycle units or any of FPL's maintenance policies. (Tr. 2854). Further, in testimony provided in Nevada, witness Clarke recommended a 35 to 45 year life for combined cycle units. (Tr. 2855; Exhibit No. 450). Further, FPL's own Putnam combined cycle plant has a life in the 42 to 43 year range. (Tr. 2859).

Increasing the lives of FPL's combined cycle plants to a reasonable life of 35 years would lower FPL's depreciation accrual by approximately $84.5 million. (Exhibit No. 258). The increased life span would also decrease annual accruals of WCEC-3 by about $12.8 million. (Tr. 2949).

Accelerated Recovery

FPL is also proposing to accelerate the recovery of certain capital investments, which would further increase depreciation expense by an additional $78.6 million (Exhibit No. 115 at 51; Tr. 2941). FPL proposes the early retirement of several steam plants and meters that it says will become obsolete because of the deployment of its Automated Metering Infrastructure (AMI). Due to this early retirement, FPL asserts that it has not recovered $44.9 million of steam production plant and $101 million of meter investment (including estimated removal costs). It proposes to recover these costs over four years. FPL is also proposing a four-year recovery of $168 million of investment resulting from various nuclear plant uprates, including estimated removal costs. (Exhibit No. 115 at 57; Tr. 2949).

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[7] Docket No. 050381-EI, *Order No. PSC-07-0012-PAA-EI*, January 2, 2007.

The Commission should reject this request. Because FPL has a $1.2 billion surplus in its depreciation reserve, ratepayers should not have to pay for capital costs FPL has chosen to retire early. (Tr. 2950).

Depreciation Reserve Surplus

Based on the assumed remaining lives of its investments and the projected book value as of December 31, 2009, FPL's book depreciation reserve is $1.245 billion higher than the "theoretical reserve". (Exhibit No. 115 at 53). The theoretical reserve is the amount necessary to allow recovery of the existing investments over their projected remaining life spans. That is, FPL has accrued a $1.245 billion reserve surplus. (Tr. 2941-2942). It should also be noted that this very large surplus reserve occurs *after* FPL made a $500 million depreciation expense reduction as a result of the 2005 rate case settlement. (Order No. PSC-05-0902-S-EI;[8] Tr. 2757; Tr. 2942).

As Mr. Pollock testified, the purpose of depreciation is to recover capital investment. The recovery of such investment should come from the customers who use such service. Due to the large surplus FPL has, current ratepayers have paid a disproportionate share of the assets consumed to provide utility services. Thus, FPL depreciation rates are not fair or equitable. (Tr. 2942).

Further, the very large depreciation surplus ($1.2 billion) demonstrates that action must be taken promptly to restore generational equity. Therefore, the Commission should require FPL to continue to book the $125 million depreciation expense adjustment and stop all contributions to the fossil dismantlement fund. The Commission should require this treatment to continue until FPL files its next depreciation study. (Tr. 2950-2951). Coupled with FIPUG's

[8] In re: Petition for rate increase by Florida Power & Light Company; In re: 2005 comprehensive depreciation study by Florida Power & Light Company, Docket Nos. 050045-EI, 050188-EI.

recommendation to offset the $314.2 million of capital retirements and assuming FPL's next depreciation study is filed in 2012 (three years from the filing date of this case), the book reserve would be reduced by an additional $749 million. This would still leave nearly $0.5 billion in excess book depreciation reserve. (Tr. 2950-2951).

FIPUG's recommendations regarding the reserve surplus are similar to actions the Commission has taken in the past to correct reserve deficiencies. Such adjustments should work both ways. For example, in Order No. PSC-96-0461-FOF-EI,[9] FPL was ordered to record additional expense to correct a deficiency in its nuclear depreciation reserve as well as to correct the reserve deficiency as to other FPL production facilities. Similarly, in Order No. PSC-98-1723-FOF-EI, FPL was ordered to amortize the gain realized from the sale of a combustion turbine from Port St. Joe to be used to offset the reserve deficiency at the Suwannee Peaking Plant. Because FPL now has a huge reserve surplus, similar adjustments are appropriate and necessary to restore generational equity and to help mitigate the impact of the proposed base rate increases. (Tr. 2952). Previously, the Commission deviated from a depreciation approach based on the average remaining useful life in unusual or atypical situations. For instance, when there was discussion of and speculation about merchant plants being located in Florida, the Commission departed from the average remaining useful life approach and permitted FPL to accelerate depreciation for assets that FPL feared might be "stranded" should merchant plants and a competitive generation market take root in Florida. (Tr. 6739-6741). The concern prompting the Commission's accelerated depreciation treatment did not come to pass. Conversely, in this case, the unusual or atypical facts are not speculative. Numerous witnesses and documents left no room for doubt that Florida is facing the worst economic crisis since the

[9] In Re: Petition to establish amortization schedule for nuclear generating units to address potential for stranded investment by Florida Power & Light Company, Docket No. 950359-EI.

Great Depression, marked by double digit unemployment, high home foreclosure rates, and a reduction in household disposable income. These facts should prompt this Commission to use FPL's depreciation surplus to permit Florida electric consumers, businesses and residents alike, to keep more money in their collective pockets now, during these dire economic times.

In summary, FIPUG recommends the following depreciation adjustments:

Adjustments	Amount ($Millions)
Increase Coal Plant Life Spans to at Least 55 Years	$ 10.5
Increase Combined Cycle Plant Life Spans to at Least 35 Years:	
Existing Plants	$ 84.5
West County Unit No. 3	$ 12.8
Charge Early Retirements to the Depreciation Reserve	$314.2
Continue the Depreciation Expense Adjustment	$125.0
Cease Contributions to the Dismantlement Fund	$ 15.3

FOSSIL DISMANTLEMENT COST STUDY

ISSUE 40: Should the currently approved annual dismantlement provision be revised?

POSITION: *Yes. Agree with OPC.*

ISSUE 41: What, if any, corrective reserve measures should be approved?

POSITION: *See Issue 40. *

ISSUE 42: What is the appropriate annual provision for dismantlement?

POSITION: *See Issue 40. *

ISSUE 43: Does FPL employ reasonable depreciation parameters and costs when it assumes that it must restore all generation sites to "greenfield" status upon their retirement?

POSITION: *See Issue 40. *

ISSUE 44: In future dismantlement studies filed with the Commission, should FPL consider alternative demolition approaches?

POSITION: *Yes.*

RATE BASE

(A decision on the 2011-related items marked as (B) below will be necessary only if the Commission votes to approve FPL's request for a subsequent year adjustment.)

ISSUE 46: Should the net over-recovery/under-recovery of fuel, capacity, conservation, and environmental cost recovery clause expenses be included in the calculation of working capital allowance for FPL?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

POSITION: *Consistent with Commission practice, clause overrecoveries should be included (as a reduction) and underrecoveries should be excluded from working capital.*

ISSUE 47: Are the costs associated with Advanced Metering Infrastructure (AMI) meters appropriately included in rate base?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

POSITION: *No position.*

ISSUE 50: Are FPL's requested levels of Plant in Service appropriate?
A. For the 2010 projected test year in the amount of $28,288,080,000?
B. If applicable, for the 2011 subsequent projected test year in the amount of $29,599,965,000?

POSITION: *No. Agree with OPC.*

ISSUE 51: Are FPL's requested levels of accumulated depreciation appropriate?
A. For the 2010 projected test year in the amount of $12,590,521,000?
B. If applicable, for the 2011 subsequent projected test year in the amount of $13,306,984,000?

POSITION: *No. Agree with OPC.*

ISSUE 52: Is FPL's proposed adjustment to CWIP for the Florida EnergySecure Line (gas pipeline) appropriate?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

POSITION: *No position.*

ISSUE 55: Are FPL's requested levels of Construction Work in Progress (CWIP) appropriate?

A. For the 2010 projected test year in the amount of $707,530,000?

B. If applicable, for the 2011 subsequent projected test year in the amount of $772,484,000?

POSITION: *No. Agree with OPC.*

ISSUE 56: Are FPL's requested levels of Property Held for Future Use appropriate?

A. For the 2010 projected test year in the amount of $74,502,000?

B. If applicable, for the 2011 subsequent projected test year in the amount of $71,452,000?

POSITION: *No. Agree with OPC.*

ISSUE 58: Is FPL's proposed accrual of Nuclear End of Life Material and Supplies and Last Core Nuclear Fuel appropriate?

A. For the 2010 projected test year?

B. If applicable, for the 2011 subsequent projected test year?

POSITION: *No. Agree with OPC that FPL's current accrual for end-of-life materials and supplies and last core fuel should be suspended and no increase should be allowed, that the nuclear amortization should be discontinued and the December 31, 2009 balance transferred to the end-of-life materials and supplies and last core reserves.*

ISSUE 59: Should nuclear fuel be capitalized and included in rate base due to the dissolution of FPL Fuels, Inc.?

A. For the 2010 projected test year?

B. If applicable, for the 2011 subsequent projected test year?

POSITION: *No position.*

ISSUE 60: Are FPL's requested levels of Nuclear Fuel appropriate

A. For the 2010 projected test year in the amount of $374,733,000?

B. If applicable, for the 2011 subsequent projected test year in the amount of $408,125,000?

POSITION: *No. Agree with OPC.*

ISSUE 61: Should the unamortized balance of the FPL Glades Power Park (FGPP) be included in rate base?

POSITION: *No position.*

ISSUE 62: Are FPL's requested levels of Working Capital appropriate?

A. For the 2010 projected test year in the amount of $209,262,000?

B. If applicable, for the 2011 subsequent projected test year in the amount of $335,360,000?

POSITION: *No. Agree with OPC.*

ISSUE 63: Is FPL's requested rate base appropriate?

A. For the 2010 projected test year in the amount of $17,063,586,000?

B. If applicable, for the 2011 subsequent projected test year in the amount of $17,880,402,000?

POSITION: *No. The adjustments recommended by Intervenors should be made.*

COST OF CAPITAL

(A decision on the 2011-related items marked as (B) below will be necessary only if the Commission votes to approve FPL's request for a subsequent year adjustment.)

ISSUE 64: What is the appropriate amount of accumulated deferred taxes to include in the capital structure?

A. For the 2010 projected test year?

B. If applicable, for the 2011 subsequent projected test year?

POSITION: *Agree with OPC.*

ISSUE 66: What is the appropriate amount and cost rate of the unamortized investment tax credits to include in the capital structure?

A. For the 2010 projected test year?

B. If applicable, for the 2011 subsequent projected test year?

POSITION: *Agree with OPC.*

ISSUE 67: What is the appropriate cost rate for short-term debt?

A. For the 2010 projected test year?

B. If applicable, for the 2011 subsequent projected test year?

POSITION: *Agree with OPC.*

ISSUE 68: What is the appropriate cost rate for long-term debt?

A. For the 2010 projected test year?

B. If applicable, for the 2011 subsequent projected test year?

POSITION: *Agree with OPC.*

ISSUE 69: Have rate base and capital structure been reconciled appropriately?

A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

POSITION: *No. Agree with OPC.*

ISSUE 70: Has FPL appropriately described the actual 59.6% equity ratio that it proposes to use for ratemaking purposes as an "adjusted 55.8% equity ratio" on the basis of imputed debt associated with FPL's purchased power contracts?

POSITION: *No. The Commission should reject FPL's request to impute $949.3 million of debt related to purchase power contracts. Such contracts are a direct pass through to ratepayers and represent no risk to FPL. In the recent Tampa Electric rate case, the Commission rejected a similar request for a PPA adjustment.*

ISSUE 71: What is the appropriate equity ratio that should be used for FPL for ratemaking purposes in this case?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

POSITION: *The appropriate common equity ratio for FPL is 50.2% on an unadjusted basis. FPL's requested equity ratio of 59.6% is unreasonably high and is over 900 basis points higher than comparably rated utilities. Further, the Commission should reject FPL's request to impute $949.3 million of debt related to purchase power contracts. Such contracts are a direct pass through to ratepayers and represent no risk to FPL. In the recent TECO rate case, the Commission rejected a similar request for a PPA adjustment.*

ISSUE 73: What is the appropriate capital structure for FPL for the purpose of setting rates in this docket?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

POSITION: *See Issues 71-72.*

DISCUSSION

This group of issues concerns the appropriate capital structure to be used for setting FPL's rates and the effect, if any, of FPL's purchase power obligations on its capital structure.

No Adjustment Should Be Made for PPAs

FPL's adjusted capital structure includes over $949 million of imputed debt related to purchase power obligations. Without this imputed debt, FPL's equity ratio would be close to

60%. A 60% equity ratio would make FPL among the least leveraged utilities in the nation (Ex. 462). The Commission should exclude imputed debt from FPL's capital structure and should authorize the inclusion of no more than 50% common equity in FPL's capital structure. (Tr. 2954).

As to FPL's imputation of debt for purchase power contracts, FPL witness Pimental states that FPL has long-term purchase power agreements (PPAs) which require it to make fixed payments. FPL then says that rating agencies regard these PPAs as the same as long-term debt. (Tr. 4851). (No witness from any rating agency offered testimony in this proceeding.) However, given the certainty of the regulatory structure in Florida, particularly the historical treatment by the Commission of PPAs and permitting FPL to recover costs associated with its PPAs, FPL's PPAs are not the equivalent of long-term debt. In fact, they are far from it.

First, as witness Pollock testified, the Commission's approval of PPAs is governed by Rule 25-17.0832, Florida Administrative Code (for standard offer and negotiated contracts). (Tr. 2954). Once approved, FPL is allowed full and direct recovery of firm energy and purchased power capacity costs under the Fuel and Capacity Cost Recovery (CCR) clauses. Though such contracts are reviewed in the annual fuel adjustment proceeding, there is minimal recovery risk associated with PPAs. Witness Pimental, the Chief Financial Officer of FPL, testified that he was not aware of any circumstance in Florida in which payments under PPAs had been disallowed. (Tr. 5247-5248).

Second, while FPL's debt adjustment may reflect the methodology of Standard & Poor's, this adjustment is based on general criteria. FPL applied a 25% risk factor, (Tr. 4851-4852), but this factor fails to consider the actual risks associated with PPA recovery in Florida. As the Commission is well aware, in Florida, purchased power capacity costs are subject to dollar-for-

dollar recovery through the capacity cost recovery clause on an annual basis. This includes a true-up procedure that establishes a forward-looking charge, which is then reconciled based on actually incurred costs, with interest. PPAs in Florida are essentially risk free. (Tr. 2956).

In contrast to the S&P approach, Moody's recognizes that PPA "risk" is related specifically to the applicable recovery mechanism in a particular state:

> Pass-through capability: Some utilities have the ability to pass through the cost of purchasing power under PPAs to their customers. As a result, the utility takes no risk that the cost of power is greater than the retail price it will receive. Accordingly Moody's regards these PPA obligations as operating costs with no long-term debt-like attributes. PPAs with no pass-through ability have a greater risk profile for utilities. In some markets, the ability to pass through costs of a PPA is enshrined in the regulatory framework, and in others can be dictated by market dynamics. As a market becomes more competitive, the ability to pass through costs may decrease and, as circumstances change, Moody's treatment of PPA obligations will alter accordingly.

(Moody's, *Rating Methodology: Global Regulated Electric Utilities*, March 2005 at page 9).

Thus, it is clear that Moody's does not regard PPAs as inherently risky and imputes no debt for these contracts where recovery is guaranteed. (Tr. 2956-2957).

Further, Moody's recognizes PPAs as being less risky in certain situations:

> Risk management: An overarching principle is that PPAs have been used by utilities as a risk management tool and Moody's recognizes that this is the fundamental reason for their existence. Thus, Moody's will not automatically penalize utilities for entering into contracts for the purpose of reducing risk associated with power price and availability. Rather, we will look at the aggregate commercial position, evaluating the risk to a utility's purchase and supply obligations. In addition, PPAs are similar to other long-term supply contracts used by other industries and their treatment should not therefore be fundamentally different from that of other contracts of a similar nature.[10]

[10] Moody's, *Rating Methodology: Global Regulated Electric Utilities*, March 2005 at 9.

Based on Moody's comments, it seems unlikely that debt will be imputed to FPL based on the cost recovery mechanisms applicable to purchased power capacity costs. (Tr. 2958-2959).

Third, the Commission has very recently ruled against making an adjustment for PPAs. Though the adjustment is not identical, the rationale for it is.

In the recent Tampa Electric rate case order,[11] the Commission rejected a similar request from Tampa Electric and stated:

> TECO included a $77 million adjustment to equity in its 2009 projected capital structure for purposes of setting rates in this proceeding. TECO witness Gillette testified that, since the rating agencies consider portions of long-term fixed payments associated with purchased power agreements (PPAs) as debt and analyze company credit profiles with an adjustment to its credit parameters, the Company's proposed capital structure reflects an adjustment for this imputation of additional debt.
>
> . . .
>
> The pro forma adjustment to equity proposed by TECO is not an actual equity investment in the utility. If this adjustment is approved for purposes of setting rates in this proceeding, the Company would essentially be allowed to earn a risk-adjusted equity return without having actually made the equity investment. The revenue requirement impact of recognizing this pro forma adjustment to equity in the capital structure is approximately $5 million per year.
>
> Companies with PPAs are not required by the rating agencies to make the pro forma adjustment in question. As the following passage explains, the Standard & Poors' (S&P) practice with respect to PPAs described in witness Gillette's testimony is strictly for the rating agency's own analytical purposes:
>
>> We adjust utilities' financial metrics, incorporating PPA fixed obligations, so that we can compare companies that finance and build generation capacity and those that purchase capacity to satisfy customer needs. The analytical goal of our financial adjustments for PPAs is to reflect fixed obligations in a way that depicts the credit exposure that is added by PPAs. That said, PPAs also benefit utilities that enter into contracts with suppliers because PPAs will typically shift various risks to the suppliers, such as construction risk and most of the operating risk. PPAs can also provide utilities with asset diversity that might not have been achievable through self-build. The

[11] Order No. PSC-09-0283-FOF-EI.

> principal risk borne by a utility that relies on PPAs is the recovery of the financial obligation in rates.

With this proposed adjustment, we find that the Company is attempting to take a portion of S&P's consolidated credit assessment methodology and use it for a purpose it was never intended.[12]

The adjustment should be rejected in this case as well.

Equity Ratio

The common equity ratio for FPL should be 50.2% on an unadjusted basis. (This translates into a 40.36% regulatory common equity ratio). FPL uses a common equity ratio of 55.8%, incorporating the PPA adjustment discussed above. Without the PPA adjustment, FPL's common equity ratio is 59.62%. (Tr. 2953). That is, FPL uses the imputation argument to attempt to support an excessively high common equity ratio. Without the PPA adjustment, FPL's equity ratio would approach 60%, making FPL one of the least leveraged, equity rich regulated electric utilities in the nation. Thus, the Commission should reduce the amount of common equity in determining FPL's cost of capital.

Exhibit No. 259 is a comparison of common equity ratios for the 2006 to 2009 (1st quarter) time frame published by SNL Financial. For this period, average common equity ratios for all electric utilities ranged from 46.1% to 47.6% (line 85). On a comparable basis, FPL's proposed 2010 common equity ratio is 59.6%, far above the average. FPL proposes a common equity ratio that is over 1,200 basis points higher than the electric utility average. (Tr. 2961).

Common equity is more expensive than debt. In this instance, FPL is asking for a common equity return that is nearly 700 basis points higher than its embedded cost of long-term debt. A utility that has too much equity in its capital structure has a higher cost of capital than a

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[12] *Id.* at 34-36.

utility with a more balanced common equity ratio. All else being equal, the higher the overall common equity ratio, the higher the rates all FPL ratepayers will bear. (Tr. 2961).

A nearly 60% equity ratio is not necessary for FPL to retain its current bond rating. FPL is currently rated "A1" by Moody's and "A" by both Fitch and S&P. The chart below is a comparison of the common equity ratios for other A-rated electric utilities. As the chart demonstrates, FPL's 59.6% proposed (unadjusted) common equity would be 940 basis points higher than comparably rated electric utilities. (Tr. 2961-2962). This common equity ratio is unreasonable and should be rejected.

Year	All Electric Utilities	A-Rated Electric Utilities
2006	47.6%	50.9%
2007	47.3%	51.0%
2008	46.4%	49.5%
2009 (Q1)	46.1%	49.5%
Average	46.9%	50.2%

Furthermore, an exhibit used repeatedly throughout this proceeding, Exhibit No. 462, shows the common equity requested by utilities seeking rate increases in 2009 and the common equity awarded by Commissions in 2009. FPL witness Deason acknowledged that should this Commission award FPL its requested common equity of 55.83%, such an award would be the highest awarded common equity ratio in the country for 2009. (Tr. 6786-6787). Indeed, based upon an average of the common equity awarded to 21 utilities throughout the country in 2009, the average common equity is 47.9 percent. (Ex. 462).

If the Commission approves FPL's requested capital structure, its common equity would be 940 basis points higher than comparable electric utilities. Rather, than accepting FPL's

position, FPL's common equity ratio should be reduced to 50.2% (or the national average for 2009 of 47.9%) on an adjusted basis for setting its cost of capital in this proceeding. Awarding a 50.2% common equity ratio translates into a 40.36% regulatory common equity ratio. Reducing the regulatory common equity ratio to 40.36% lowers FPL's requested 2010 base revenue increase by about $192.9 million. (Exhibit No. 260).

ISSUE 80: What return on common equity should the Commission authorize in this case?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

POSITION: *FPL's request for an ROE of 12.5% is unreasonable and should be rejected given financial conditions today. Further, FPL's ROE should not be increased for "good" service. As a monopoly provider, it is part of FPL's regulatory compact to provide quality service. It should not be "rewarded" for doing what it is required to do. FPL's ROE should be set no higher than 9.5% as recommended by Public Counsel's witness.*

DISCUSSION

The Commission heard much discussion at the evidentiary hearing in this matter relating to the difficult economic times facing Floridians. The high foreclosure rates and high unemployment rates were mentioned often. Many FPL witnesses acknowledged such circumstances, and FPL witness Deason expressly acknowledged that Florida is facing the most troubling economic times since the Great Depression. (Tr. 6774-6776).

However, despite these economic realities, FPL seeks a mid-point ROE of an astonishing 12.5%. FPL also asks that the Commission reward it for its "exemplary management." (Tr. Avera direct at 11). FPL witness Avera suggests that: "Considering exemplary performance in establishing a point estimate from within my ROE range offers an appropriate incentive for FPL to continue to innovate and take risks in pursuit of superior results." (Tr. 4380).

As to any "reward" for exemplary behavior, the Commission must recognize that the regulatory compact between FPL, this Commission and the ratepayers requires that FPL provide

efficient and cost-effective service. See Chapter 366, Florida Statutes. FPL witness Bennett testified that part of what the Commission expects a regulated utility to do is to provide more efficient and cost-effective service to ratepayers. Witness Bennett expects all his employees to do this. He further agreed that such actions on the part of the utility are part of the regulatory compact. (Tr. 3442-3444). In return, FPL has a monopoly and a base of captive customers to whom it provides service. That is, FPL is doing what it is statutorily required to do and should not be "rewarded" for that.

To the contrary, if anything, FPL's actions warrant a lower ROE. This Commission could send a clear message that it does not approve of certain FPL actions, supported by the record in this proceeding, by reducing further FPL's ROE and linking the additional reduction to certain FPL conduct. Among the conduct that warrants a reduced ROE is: a) FPL's efforts to "stack the deck" at public hearings, designing and implementing an elaborate and detailed plan to ensure those with favorable views of the Company testified; b) FPL's top management violation of internal cost allocation policies for cost allocation between FPL, unregulated subsidiary companies and personal expense, violations that was only discovered when a Commissioner asked for an independent, detailed review of certain corporate aircraft flights; c) FPL's failure to reduce its workforce or freeze or reduce salaries paid to its workforce (all salaries were increased) in the 2010 test year, actions that can hardly reasonably be characterized as belt tightening; and d) using two brand new generators, originally slotted to be used as power plants by Next Era, FPL Group's unregulated business unit, for spare parts, essentially cannibalizing these two power plants, while charging FPL ratepayers rent to house the units in question. In summary, FPL's own witness, Mr. Reed, acknowledged that the Commission could lower FPL's ROE if it found its behavior or attitude

problematic. (Tr. 6628, 6634). The facts referenced above, as well as others, suggest that, should an ROE adjustment for management be made, it should be a downward adjustment.

In regard to the appropriate ROE for FPL, FIPUG adopts and supports the position of OPC witness Woolridge, namely that an ROE of 9.5% is sufficient. Witness Woolridge's review of the factors which should be considered in arriving at a reasonable ROE, including a review of a reasonable premium above current risk-free rates required by equity investors as well as FPL's low (relative to other electric utilities) risk—shown by its high equity ratio and the fact that it receives 61% of its revenues through cost recovery clauses operating outside base rates—demonstrates that a fair and reasonable return on equity for FPL is 9.5%.

Furthermore, the average ROE awarded to utilities throughout the country during 2009 is 10.51%. (Ex. 462). Many of the utilities receiving an ROE award of 10.5% have more financial and operational risk that FPL according to the rating agencies. Thus, as a key theoretical underpinning of fixing an appropriate ROE is that it represents the return an investor would expect to receive to invest capital, investors will demand less of a return from FPL, with its superior ratings, as compared to other utility companies with more financial and operational risk. FPL can still access capital markets with a ROE of 9.5% or 10%, and the Commission should fix FPL's authorized ROE within that range.

ISSUE 81: What is the appropriate weighted average cost of capital including the proper components, amounts and cost rates associated with the capital structure?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

POSITION: *Agree with OPC.*

NET OPERATING INCOME
(A decision on the 2011-related items marked as (B) below will be necessary only if the Commission votes to approve FPL's request for a subsequent year adjustment.)

ISSUE 82: What are the appropriate inflation and customer growth for use in forecasting?

A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

POSITION: *No position.*

ISSUE 83: Should FPL's proposal to transfer capacity charges and capacity-related revenue associated with the St. John's River Power Park from base rates to the Capacity Cost Recovery Clause be approved?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

POSITION: *No. Agree with OPC.*

ISSUE 84: Has FPL made the appropriate test year adjustments to remove fuel revenues and fuel expenses recoverable through the Fuel Adjustment Clause?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

POSITION: *No position.*

ISSUE 85: Has FPL made the appropriate test year adjustments to remove conservation revenues and conservation expenses recoverable through the Conservation Cost Recovery Clause?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

POSITION: *No position.*

ISSUE 86: Has FPL made the appropriate test year adjustments to remove capacity revenues and capacity expenses recoverable through the Capacity Cost Recovery Clause?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

POSITION: *No position.*

ISSUE 87: Has FPL made the appropriate test year adjustments to remove environmental revenues and environmental expenses recoverable through the Environmental Cost Recovery Clause?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

POSITION: *No position.*

ISSUE 88: Should an adjustment be made to operating revenue to reflect the incorrect forecasting of FPL's C/I Demand Reduction Rider Incentive Credits and Offsets?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

POSITION: *No position.*

ISSUE 89: Is an adjustment appropriate to FPL's Late Payment Fee Revenues if the minimum Late Payment Charge is approved in Issue?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

POSITION: *Yes. Agree with OPC.*

ISSUE 90: Are any adjustments necessary to FPL's Revenue Forecast?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

POSITION: *Agree with OPC.*

FRF:
A. Yes. Agree with OPC that FPL's 2010 revenues should be increased by $46,500,182.
B. Yes. Agree with OPC that FPL's 2011 revenues should be increased by $40,351,388.

ISSUE 91: Are FPL's projected levels of Total Operating Revenues appropriate?
A. For the 2010 projected test year in the amount of $4,114,727,000?
B. If applicable, for the 2011 subsequent projected test year in the amount of $4,175,024,000?

POSITION: *Agree with OPC.*

ISSUE 92: Has FPL made the appropriate adjustments to remove charitable contributions?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

POSITION: *No position.*

ISSUE 93: Should an adjustment be made to remove FPL's contributions recorded above the line for the historical museum?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

POSITION: *Yes. Agree with OPC.*

ISSUE 94: Should an adjustment be made for FPL's Aviation cost for the test year?

A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

POSITION: *Yes. Evidence adduced at hearing demonstrates that FPL and its executives and affiliates have used corporate aircraft paid for by the ratepayers for purposes unrelated to ratepayers' interests. Because FPL failed to carry its burden of proof on this issue, all corporate aircraft expense included in the test year should be disallowed.*

DISCUSSION

ISSUE 95: Are the cost savings associated with AMI meters appropriately included in net operating income?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

POSITION: *No. Agree with OPC. Further, this project to replace all residential and small business meters is a project that can be pushed off into the future to lower revenue requirements.*

ISSUE 96: What is the appropriate level of Bad Debt Expense?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

POSITION: *Agree with OPC.*

ISSUE 97: Should an adjustment be made to remove the portion of Bad Debt Expense associated with clause revenue that is currently being recovered in base rates and include them as recoverable expenses in the respective recovery clauses?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

POSITION: *Yes. Agree with OPC.*

ISSUE 100: Are any adjustments necessary to FPL's payroll to reflect the historical average level of unfilled positions and jurisdictional overtime?

POSITION: *Yes. Agree with OPC.*

ISSUE 101: Should FPL reduce expenses for productivity improvements given the Company's lower historical rate of growth in payroll costs?

POSITION: *Yes. Agree with SFHHA.*

ISSUE 102: Is it appropriate for FPL to increase its forecasted Operating and Maintenance Expenses due to estimated needs for nuclear production staffing?

POSITION: *No. Agree with OPC.*

ISSUE 103: Should an adjustment be made to FPL's requested level of Salaries and Employee Benefits?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

POSITION: *Yes. Agree with OPC.*

ISSUE 106: Should an adjustment be made to Pension Expense?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

POSITION: *No position.*

ISSUE 107: Is a test year adjustment necessary to reflect FPL's receipt of an environmental insurance refund in 2008?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

POSITION: *Yes. Agree with OPC.*

ISSUE 108: Is a test year adjustment appropriate to reflect the expected settlement received from the Department of Energy?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

POSITION: *No. Agree with OPC.*

ISSUE 109: Should adjustments be made for the net operating income effects of transactions with affiliated companies for FPL?

POSITION: *Yes. Agree with OPC.*

ISSUE 116a: Is an adjustment necessary to reflect the gains on sale of utility assets sold to FPL's non-regulated affiliates?

POSITION: *Yes. Agree with OPC.*

ISSUE 119: Should the Commission order notification requirements to report the future transfer of the FPL-NED assets from FPL to a separate company under FPL Group Capital?

POSITION: *Yes. Agree with OPC.*

ISSUE 120: Should an adjustment be made to FPL's requested storm damage reserve, annual accrual of $150 million, and target level of $650 million?

A. For the 2010 projected test year?

B. If applicable, for the 2011 subsequent projected test year?

POSITION: *Yes. Agree with OPC.*

DISCUSSION

The Commission should not authorize an adjustment to FPL's requested storm damage reserve to permit FPL to accrue annually an additional $150 million dollars. FPL failed to present sufficient evidence that such accrual in needed. Additionally, FPL's expert who forecast the requested $150 million dollars did not consider the engineering or design standards to which FPL's transmission and distribution system is designed, making his damage estimate of little value. (Tr. 3513-3515). FPL's top management acknowledged that knowing and taking into consideration the engineering standards to which its transmission and distribution system is designed is a relevant factor that should be considered in estimating hurricane damage. (Tr. 5245 – 5246). FPL's hurricane expert also failed to consider the PSC ordered storm hardening or vegetation management measures when preparing his report. (Tr. 3514-3516). The expert's total damage figure for storm accrual was not arrived at independently, but provided to him by FPL. (Tr. 3536). Additionally, on cross examination, FPL witness Harris made clear that he was not supporting the $150 million annual storm reserve figure. (Tr. 3536).

FPL has sufficient funds and mechanisms to address hurricane damage should a hurricane affect FPL's service territory. Specifically, as acknowledged by FPL's Chief Financial Officer, FPL currently has approximately $200 million in its hurricane reserve fund. (Tr. 5240). FPL also has a line of credit in the amount of $2.75 billion that could be used in emergency situations of which approximately $1 billion dollars is unencumbered and could be used to address hurricane damage. (Tr. 5241). FPL's hurricane expert, witness Harris, acknowledged this fact

when he admitted during cross examination that, "It is our understanding that FPL in past storm events has fixed all the damage to their system and financed that in some way." (Tr. 3520). Further, this Commission has previously approved the implementation of storm surcharges when hurricanes have caused excessive damage to a utility's assets. The facts above, which clearly demonstrate that FPL has adequate ability to address adequately hurricane storm damage, coupled with the dire economic conditions confronting Floridians, lead to the clear conclusion that FPL should not be permitted an adjustment for storm damage reserve. FPL has existing resources and mechanisms to address storm damage; its request is another example of regulatory overreach and should be denied.

ISSUE 121: What adjustment, if any, should be made to the fossil dismantlement accrual?

POSITION: *Contributions to the fossil dismantlement accrual should cease until the next dismantlement study is filed.*

ISSUE 122: What is the appropriate amount and amortization period of Rate Case Expense?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

POSITION: *The rate case expense amortization period should be 5 years. In no event should the amortization period be less than four years as found appropriate in the recent Tampa Electric rate case.*

ISSUE 124: Should FPL's request to move payroll loading associated with the Energy Conservation Cost Recovery Clause (ECCR) payroll currently recovered in base rates to the ECCR be approved?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

POSITION: *No. This would allow FPL to reflect changes in payroll loading (an indirect cost) in the clause. Clause recovery should be limited to recovery of direct costs.*

ISSUE 125: Should an adjustment be made to remove payroll loadings on incremental security costs that are currently included in base rates and include them in the Capacity Cost Recovery Clause?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

POSITION: *No. This would allow FPL to reflect changes in payroll loading (an indirect cost) in the clause. Clause recovery should be limited to recovery of direct costs.*

ISSUE 126: Should an adjustment be made to move the incremental hedging costs that are currently being recovered through the Fuel Cost Recovery Clause to base rates?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

POSITION: *No, hedging costs should be reviewed on an annual basis for prudence and reasonableness.*

ISSUE 128: Is FPL's requested level of O&M Expense appropriate?
A. For the 2010 projected test year in the amount of $1,694,367,000?
B. If applicable, for the 2011 subsequent projected test year in the amount of $1,781,961,000?

POSITION: * No. Agree with OPC.*

ISSUE 129: Should FPL be permitted to collect depreciation expense for its new Customer Information System prior to its implementation date?

POSTION: *No. It appears that FPL agrees with this position.*

ISSUE 130: Should FPL's depreciation expenses be reduced for the effects of its capital expenditure reductions?

POSITION: *Yes. FIPUG agrees with OPC. Depreciation expense should be reduced consistent with the corresponding reductions to projected plant.*

ISSUE 131: Should any adjustment be made to Depreciation Expense?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

POSITION: * Yes. See FIPUG's positions on Issues 19A-19F.*

ISSUE 132: Should an adjustment be made to Taxes Other Than Income Taxes for the 2010 and 2011 projected test years?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

POSITION: * Yes. Agree with OPC.*

ISSUE 133: Should an adjustment be made to reflect any test year revenue requirement impacts of "The American Recovery and Reinvestment Act" signed into law by the President on February 17, 2009?
A. For the 2010 projected test year?

B. If applicable, for the 2011 subsequent projected test year?

POSITION: * Yes. Agree with OPC. It is FIPUG's understanding that FPL has agreed to make the appropriate adjustment."

ISSUE 134: Should an adjustment be made to Income Tax expense?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

POSITION: *Yes. Agree with OPC.*

ISSUE 135: Is FPL's projected Net Operating Income appropriate?
A. For the 2010 projected test year in the amount of $725,883,000?
B. If applicable, for the 2011 subsequent projected test year in the amount of $662,776,000?

POSITION: * No. Agree with OPC.*

REVENUE REQUIREMENTS

(A decision on the 2011-related items marked as (B) below will be necessary only if the Commission votes to approve FPL's request for a subsequent year adjustment.)

ISSUE 136: What are the appropriate revenue expansion factors and the appropriate net operating income multipliers, including the appropriate elements and rates, for FPL?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

POSITION: *Agree with OPC.*

ISSUE 137: Is FPL's requested annual operating revenue increase appropriate?
A. For the 2010 projected test year in the amount of $1,043,535,000?
B. If applicable, for the 2011 subsequent projected test year in the amount of $247,367,000?

POSITION: * No increase is warranted and rates should be decreased as recommended by OPC.*

COST OF SERVICE AND RATE DESIGN ISSUES

(A decision on the 2011-related items marked as (B) below will be necessary only if the Commission votes to approve FPL's request for a subsequent year adjustment.)

ISSUE 139: Has FPL correctly calculated revenues at current rates for the 2010 and 2011 projected test year?
A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

POSITION: No. See FIPUG's position on Issues 3-7.

ISSUE 140: Should FPL use a minimum distribution cost methodology (utilizing either a "zero intercept" or a "minimum size" approach) to allocate distribution plant costs to rate classes?

POSITION: *This is a reasonable method to use for distribution costs. Some portion of the distribution network is a customer-related component because a utility must invest in facilities to connect a customer to the grid, irrespective of the amount of electricity the customer uses. Recognizing a customer component of certain distribution plant costs is cited in the NARUC *Electric Utility Cost Allocation Manual*, which should be recognized in setting rates.*

ISSUE 141: What is the appropriate Cost of Service Methodology to be used to allocate base rate and cost recovery costs to the rate classes?

POSITION: *The Commission should retain and continue to use the 12CP-1/13th average demand method. This is the methodology FPL has suggested.

DISCUSSION

A cost-of-service study is an analysis used to determine each class' responsibility for the utility's costs. It determines whether the revenues a class generates cover the class' cost-of-service. A class cost-of-service study separates the utility's total costs into portions incurred on behalf of the various customer groups. (Tr. 2973). A properly conducted class cost-of-service study recognizes two key cost-causation principles. First, customers are served at different delivery voltages. This affects the amount of investment the utility must make to deliver electricity to the meter. Second, since cost-causation is also related to how electricity is used, both the timing and rate of energy consumption (i.e., demand) are critical. (Tr. 2974). It is FIPUG's view that FPL's cost of service study is consistent with industry practice and recognizes the different types of costs as well as the different ways electricity is used. (Tr. 2977).

In this case, FPL has recommended the use of the 12 coincident peak (CP) and 1/13th average demand (AD) methodology. (Tr. 4158). As described by FPL witness Ender:

> The 12 CP and 1/13th methodology has a significant history of regulatory acceptance in Florida. The 12 CP and 1/131h methodology was approved in Docket No. 830465-E1 for allocating all of FPL's production plant with the exception of one generating unit, discussed below. Furthermore, the FPSC has approved the 12 CP and 1/13" methodology for allocating production plant in rate cases involving other investor-owned utilities.

(Tr. 4056). Witness Ender noted that FPL was very comfortable with the 12CP and 1/13th methodology and further explained that the 12 CP and 1/13th methodology is the best fit with the way FPL plans its system:

> The 12 CP and a 13th methodology accurately reflects the effects of not only – it recognizes that both energy and peak demand influence the type of generation unit that is added, and therefore the costs that are accurately incurred for that generation unit. And it recognizes that FPL must meet its peak demand for the winter, to maintain the reserve margin of 20 percent for the summer and winter, as well as being able to meet the peak demands for every month.

(Tr. 4160).

While it is FIPUG's position that the 12CP-1/13th AD method does not reflect cost-causation because of FPL's seasonal load characteristics and the fact that reserve margins are much tighter during the summer months, the Commission has traditionally used this method as a reasonable basis to allocate costs to rate classes. Despite its flaws, this method does recognize the role that load duration plays in determining production plant costs. Thus, it is more compatible with system planning principles than peak and average methods, which not only place greater emphasis on average demand, but are flawed because peak demand is double-counted. (Tr. 2984).

If the Commission decides to place more weight on average demand (a premise with which FIPUG disagrees), FIPUG recommends that the Commission adopt the Average and Excess (A&E) methodology. A&E is superior to other energy weighting methods because it gives substantial weight to average demand or energy in determining cost causation. Further, it does not double count average and coincident peak demand. This is a method recognized by the *NARUC Electric Cost Allocation Manual*. (Tr. 2981-2982).

Under A&E, a portion of production/transmission plant costs equal to the utility's annual system load factor (or 59% as projected by FPL during the 2010 test year) would be allocated on average demand. The remaining costs would be allocated on the difference between a class' maximum demand and its average demand, which is the "Excess Demand" (ED) component of the A&E formula. (Tr. 2980-2981). As witness Ender admitted, residential rates would go down more under the A&E method than under the 12 CP and $1/13^{th}$ method. (Tr. 4168; Exhibit No. 463).

ISSUE 142: How should the change in revenue requirement be allocated among the customer classes?

POSITION: *The Commission should continue to apply the principle of gradualism which prevents any class from receiving an overly large increase. FPL's proposal would result in CILC, General Service Large Demand-1 and General Service Large Demand-2 receiving increases in excess of the system average increase (at the rates FPL proposes). This would conflict with past Commission precedent and be patently unfair to customers.*

DISCUSSION

Class revenue allocation is the process of determining how any base revenue change the Commission approves should be apportioned to each customer class the utility serves. Base revenues should reflect the actual cost of providing service to each customer class as closely as practicable. However, the Commission has often limited the immediate movement to cost-based

rates based on principles of gradualism. (Tr. 2985). Gradualism is a concept that is applied to prevent a class from receiving an overly-large rate increase. That is, the movement to cost-of-service should be made gradually rather than all at once because it would result in rate shock to the affected customers. (Tr. 2985).

The Commission has had a long standing practice of applying the principle of gradualism to prevent rate shock by limiting the rate increase to any rate schedule to 1.5 times the system average. Ironically, this policy was first articulated in FPL's 1981 rate case. In Order No. 10306 in Docket No. 810002-EU,[13] the Commission said:

> To balance the objective of moving the individual rate schedules toward the overall authorized rate of return with the goal of equity and continuity of rate design, we have adopted criteria to govern the extent of increases in this case. Specifically, revenue increases have been allocated with the objective of moving each class within plus or minus 20% of the overall rate of return. *However, we have placed a constraint upon this objective, in that no class shall be increased by an amount exceeding 1.5 times the system average increase.*[14]

And, as recently as the April 30, 2009 decision in the Tampa Electric rate case, Order No. PSC-09-0283-FOF-EI at 87,[15] the Commission said:

> No class should receive an increase greater than 1.5 times the system average percentage increase in total, and no class should receive a decrease.

It should also be noted, as Ms. Deaton admitted, that had the Commission *not* applied this policy, the industrial class would have received a rate decrease. (Tr. 4300).

In contravention of this well-established practice, FPL has proposed a flash cut movement to parity with disastrous results for customers. While the average system increase FPL seeks is 25%, several classes receive increases well in excess of 1.5 times the system

[13] In re: Petition of Florida Power & Light Company for Authority to Increase Its Rates and Charges.
[14] Emphasis added.
[15] In re: Petition for rate increase by Tampa Electric Company, Docket No. 080317-EI.

average. For example, increases for the CILC class as well as General Service Large Demand-1 and General Service Large Demand-2 exceed 1.5 times the system average increase. (Tr. 2988; Exhibit No. 266). In additional, the actual increases proposed are just staggering. For example, FPL is proposing to increase the base rates for the CILC class by **231%**. FPL wants to increase the base rates of the General Service Large Demand-1 class by **216%**. (Exhibit No. 266; *see also*, Exhibit No. 159). Even FPL's Mr. Ender admitted that the cost of bringing customers to parity is significant and that these types of increase constitute rate shock. (Tr. 4164).

FPL's basis for the significant and unprecedented deviation from the 1.5 system average increase rule for some classes appears to be premised on the notion that in 2010, FPL bills will decrease. FPL witness Deaton attempts to justify abandonment of this long-standing policy by noting that "overall bills are projected to decrease for most customers in 2010 with moderate increases in 2011." (Tr. 4208-4209).

Such a position should be rejected for two reasons. First, the overall bill increase is only projected for 2010 as FPL admits. It is a short term reduction based on lower fuel costs. However, as witness Deaton testified, the fuel factors change once a year or more often due to FPL's ability to seek a mid-course correction. (Tr. 4296). Witness Deaton further admitted that FPL's 2009 fuel prices have declined substantially (Tr. 4296-4297) and that fuel is very volatile (Tr. 4298), especially natural gas which fuels many FPL plants and whose supply could be disrupted in a hurricane. (Tr. 4297).

FPL has calculated bill impacts in MFR Schedule A-1 based on an assumed reduction in fuel charges. While a reduction is possible given the continued decline in natural gas prices since last summer and because FPL is installing more efficient generation, fuel costs are a function of commodity (e.g., coal, natural gas, and oil) prices, market energy prices, and FPL's

generation mix, all of which are subject to (sometimes volatile) changes from time-to-time. These changes have nothing to do whatsoever with setting base rates as they are recovered annually outside of any rate case proceeding – if prices of natural gas, for example, increase, FPL would collect such costs in the fuel docket and gradualism is not a consideration in setting the cost recovery clauses. Thus, a sudden increase in natural gas prices should not affect how base rates are determined in this case. (Tr. 2989). Because the cost recovery clauses are separate ratemaking mechanisms and can have positive or negative impacts on customers, depending on the circumstances, any projected short-term changes should not be considered in setting base rates or in disregarding the Commission's gradualism policy. (Tr. 2990).

Second, FPL attempts to liken its request to cases where the Commission has made an exception to the 1.5 system average rule. However, such cases do not support FPL's position. FPL first "relies" on its own 1981 rate case quoted above where the Commission articulated and *applied* the 1.5 system average rule to FPL. Thus, this case lends no support to FPL's position.

FPL next relies on the Peoples Gas rate case, Order No. PSC-09-0411-FOF-EU, Docket No. 080318-GU.[16] However, Witness Deaton does not direct the Commission to any provision in the order that supports her view; rather, she directs the Commission to the staff recommendation. As the Commission was advised at hearing, the Commission's order is its expression of its decision in the case. There is no discussion whatsoever in the order of the long standing Commission policy of gradualism to suggest abandonment of that policy. Thus, any reliance on this case is sorely misplaced.

[16] Petition for rate increase by Peoples Gas System. At hearing, concern was expressed that reconsideration is currently pending as to this Order; however, the basis for reconsideration do not include an issue related to the 1.5 system average policy.

Witness Deaton next attempts to rely on a Gulf Power rate case, Order No. 10557, Docket No. 810136-EU.[17] This case is inapposite for a number of reasons. First, the Commission prefaces its comments with its long held view that it is "committed to *gradual progress* toward uniform rates of return for all classes...." It then goes on to note that it is making its calculations *without considering fuel*. This is in stark contrast to FPL's position in which declining fuel prices are a major component of the decrease it touts. The Gulf Power rate case order next states that the deviation the Commission approves is *5.71%* for the RS rate and *5.34%* for the OS rate. This is in dramatic contrast to the "deviations" proposed here. Such "deviations" amount to 57.6% for the CILC class, 53.8% for the GSLD-1 class and 49.3% for the GSLD-2 class. (Exhibit No. 266).

Finally, as noted above, Witness Deaton dismisses the Commission's most recent discussion of the 1.5 system average rule by stating: "[p]arity discrepancies in the TECO case were not as large as in this case which is why the 150% cap only needed to be applied to the lighting rate class. (Tr. 4210). However, this "qualification" is witness Deaton's, not the Commission's, which unequivocally reaffirmed its gradualism policy just six months ago.

Consistent with Commission policy and precedent, rates for each class should be set at a level that will recover the cost of serving that class, subject to the Commission's long-standing policy that no class should receive an increase greater than 150% of the retail average base rate increase. *See,* Exhibit No. 267.[18] In this exhibit, the increases to the CILC, General Service Large Demand-1, and General Service Large Demand-2 rate groups are limited to 150% of the system average, while no class receives a decrease. The remaining revenue shortfall is spread to those classes that would receive below-average base rate increases to move them equally toward

[17] In Re: Petition of Gulf Power Company for an Increase in Its Rates and Charges.
[18] Exhibit No. 267 shows the appropriate allocation using FPL's 2010 revenue requirement for illustrative purposes only; it is not an endorsement of FPL's revenue request.

cost. (Tr. 2990).

ISSUE 144: Are FPL's proposed service charges for initial connect, field collection, reconnect for non-payment, existing connect, and returned payment charges appropriate?

POSITION: *No position.*

ISSUE 148: Are FPL's proposed termination factors to be applied to the total installed cost of facilities when customers terminate their Premium Lighting or Recreational Lighting agreement prior to the expiration of the contract term appropriate? (8.722 and 8.745)

POSITION: *No position.*

ISSUE 150: Is FPL's proposed Present Value Revenue Requirement multiplier to be applied to the installed cost of premium lighting facilities under rate Schedule Premium Lighting (PL-1) and the installed cost of recreational lighting facilities under the rate Schedule Recreational Lighting (RL-1) to determine the lump sum advance payment amount for such facilities appropriate? (8.720 and 8.743)

POSITION: *No position.*

ISSUE 152: Should FPL's proposal to close the relamping option on the Street Lighting (SL-1) and Outdoor Lighting (OL-1) tariffs for new street light installations be approved? (8.716 and 8.725)

POSITION: *No. position.*

ISSUE 154: Is FPL's proposed monthly kW credit to be provided customers who own their own transformers pursuant to the Transformation Rider appropriate? (8.820)

POSITION: *No position.*

ISSUE 155: Is FPL's proposed monthly fixed charge carrying rate to be applied to the installed cost of customer-requested distribution equipment for which there are no tariffed charges appropriate? (10.010)

POSITION: *No. Agree with FRF.*

ISSUE 156: Is FPL's proposed 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 appropriate? (10.015)

POSITION: *No position.*

ISSUE 157: Are FPL's proposed termination factors to be applied to the in-place value of customer-rented distribution substations to calculate the termination fee appropriate? (10.015)

POSITION: *No position.*

ISSUE 159: What are the appropriate customer charges?

POSITION: *No position.*

ISSUE 160: What are the appropriate demand charges?

POSITON: *FPL's demand-related costs should be recovered through the demand charge and energy-related base rate costs should be collected through the energy charge. However, FPL's proposed General Service Demand rate designs do not follow this practice. FPL has underpriced the demand charge and overpriced the energy charge. Demand charges should be increased to recover the target revenues assigned to the CILC class.*

ISSUE 161: What are the appropriate energy charges?

POSITION: *FPL's demand-related costs should be recovered through the demand charge and energy-related base rate costs should be collected through the energy charge. However, FPL's proposed General Service Demand rate designs do not follow this practice. FPL has underpriced the demand charge and overpriced the energy charge and the non-fuel energy costs exceed FPL's unit costs. FPL's proposed energy charges for the GSLD-1 and GSLD-2 rate classes exceed their costs by 87% and 111% respectively. Thus, energy costs should be decreased to reflect unit costs.*

ISSUE 165: Is FPL's design of the HLFT rates appropriate?

POSITION: *No. First, FPL's proposed HFLT rates exhibit the same problems with the energy and demand charge described in Issues 160 and 161 which must be corrected. In addition, HLFT rates were designed for higher load factor customers. Second, the average load factors for HLFT customers are about 80% compared to only 64% for GSLDT customers. However, FPL's proposed rates would make HLFT more expensive than GSLDT unless the customer can achieve load factors above 84% for HLFT-2 and over 100% for HLFT-3. This requirement is impractical, and it would result in customers migrating back to Rate GSLDT-2. The HLFT rates should be designed for customers with load factors above 70%. Blending the rates at a 70% load factor reflects the HLFT class' characteristics, and would be consistent with encouraging customers to improve load factor.*

DISCUSSION

These three issues relate to the appropriate rate design for FPL's demand and non-fuel energy charges. Issue 165 also addresses the HFLT rate design.

Demand and non-fuel energy charges are designed to recover base rate (non-fuel) costs. Demand charges are billed relative to a customer's maximum metered (kW) demand in the billing month, while the non-fuel energy charges are billed on the kWh purchased. The demand and non-fuel energy charges should closely reflect the corresponding demand and non-fuel energy related costs as derived in the class cost-of-service study. (Tr. 2991-2993).

FPL has not appropriately designed its demand and non-fuel energy charges because its costs do not follow the primary principle of cost-causation. Principles of cost causation require that demand-related costs be recovered through the demand charge and energy-related base rate costs be collected through the energy charge. However, FPL's General Service Demand rate designs do not follow this practice. FPL has underpriced the demand charge and overpriced the energy charge. (Tr. 2991-2992).

The charts below compare the unit costs with the proposed unit charges:

Costs:

Demand Unit Cost	$11.95 per kW-Month
Non-Fuel Energy Unit Cost	0.715¢ per kWh

Proposed rates:

Rate	Demand Charge	Non-Fuel Energy Charge
GSLD-1	$10.45	1.506¢
GSLD-2	$10.45	1.337¢

FPL's proposed non-fuel energy charges are *87%* and *111%* higher than the corresponding non-fuel energy costs. The proposed time-of-use (TOU), High Load Factor (HLFT), and Seasonal (SDTR) rates, which are derived from the standard rates, exhibit similar tendencies. (Tr. 2992-2993).

Non-fuel energy charges should not exceed unit costs. Thus, such charges should be decreased to reflect cost and demand charges should be increased to recover the appropriate revenues from each class. (Tr. 2993).

As to HLFT rates, these rates are designed for higher load factor customers. The average load factors for HLFT customers are about 80% as compared to only 64% for GSLDT customers. However, FPL's proposed rates would make HLFT more expensive than GSLDT unless the customer can achieve load factors above 84% for HLFT-2 and over 100% for HLFT-3. The latter requirement is impractical, and it would result in customers migrating back to Rate GSLDT-2. (Tr. 2993).

The HLFT rates are a derivative of the GSLDT rates. Thus, it is essential to maintain a consistent relationship between GSLDT and HLFT to prevent customer migration. Therefore, HLFT rates should be designed for customers with load factors above 70%. Blending the rates at a 70% load factor reflects the HLFT class' characteristics and would be consistent with encouraging customers to improve load factor. (Tr. 2993-2994).

<u>ISSUE 162</u>: What are the appropriate lighting rate charges?

<u>POSITION</u>: *No position.*

<u>ISSUE 163</u>: What is the appropriate level and design of the charges under the Standby and Supplemental Services (SST-1) rate schedule?

POSITION: *No position.*

ISSUE 164: What is the appropriate level and design of charges under the Interruptible Standby and Supplemental Services (ISST-1) rate schedule?

POSITION: *No position.*

ISSUE 166: Is FPL's design of the CILC rate appropriate?

POSITION: *No. FPL has assumed an incorrect level of CILC incentive payments in the rate design. FPL calculated the CILC base revenue requirements as the difference between the allocated firm cost of service (which assumed CILC customers receive firm service) and an assumed level of incentive payments. But the incentives embedded in FPL's rate design are much higher than those used to calculate the class' revenue requirements. This created a shortfall which FPL attempts to recover by increasing the non-fuel energy charge. This is why the non-fuel CILC energy charges are higher than unit costs.

To correct this problem, FPL should restate the incentive payments to reflect the amounts embedded in the CILC rate design. The revised incentive payments should then be allocated to all customer classes (in the same manner as FPL allocated the estimated payments) in determining class revenue requirements.*

DISCUSSION

The CILC rates have been designed to recover this class' cost of service. As explained in above, the CILC non-fuel energy charges are significantly above the corresponding non-fuel energy costs. Yet, the demand charges are set to reflect unit demand costs. This anomaly indicates a rate design problem. If the rate is designed to recover actual cost, then both the demand and energy charges should reflect the corresponding per unit demand and energy costs. (Tr. 2994).

The cause of this rate design issue is the fact that FPL has included the wrong level of CILC payments in the rate design for this class. While FPL calculated the CILC base revenue requirements as the difference between the allocated firm cost of service (which assumed CILC customers receive firm service) and the following assumed level of incentive payments shown in the chart below (approximately $30.6 million), it did not use the same assumptions in its rate

design. Rather, for rate design purposes, FPL used approximately $53 million as the amount of incentive payments and allocated the $22 million difference directly to CILC. (Tr. 2995).

As the chart shows, the payments used in the rate design are much higher than those used to calculate the class' base revenue requirements:

Rate	CILC Payments Embedded in the Proposed Rate Design			CILC Payments Assumed in Determining Class Revenue Requirements ($ Millions)
	Firm On-Peak - Load Control Charge ($/kW)	Load Control Billing Demand (MW)	Embedded CILC Payments ($ Millions)	
CILC-D	$7.26	4,942.9	$35.9	$19.7
CILC-G	$6.99	395.6	$2.8	$1.4
CILC-T	$6.92	2,104.7	$14.5	$9.5
TOTAL	$21.17	7,443.2	$53.2	$30.6
Source: Schedule E-14.				

Because the incentives reflected in the CILC rate design are higher than the incentives FPL used in deriving the CILC revenue requirement, it indicates that there is a revenue shortfall. FPL seeks to recover this "shortfall" from within the CILC classes by increasing the non-fuel energy charges. This is why the CILC non-fuel energy charges are higher than the CILC non-fuel energy unit costs. (Tr. 2995).

This rate design is wholly inappropriate. The CILC payments should be restated to reflect the amounts in FPL's rate design. The $53 million should then be allocated to all customer classes (in the same manner as FPL allocated the estimated payments) in determining class revenue requirements. (Tr. 2996).

ISSUE 167: Is FPL's CDR credit appropriate?

POSITION: *The CDR credit should be set at least $5.50/KW to reflect the cost of FPL's next avoided unit.*

DISCUSSION

As a preliminary matter, it should be noted that it is FPL's position as well as Staff's that this issue should be addressed in a conservation docket. FIPUG disagrees – the CDR is part and parcel of FPL's rates. The appropriate amount and design is an issue appropriate for a rate case. The Prehearing Officer declined to remove this issue. (Prehearing Conference Transcript at 167).

The Commercial/ Industrial Demand Reduction Rider (CDR Rider) is an optional service under which a customer can elect to have its electricity curtailed under a variety of circumstances. The customer is required to have load control equipment installed to provide FPL direct control over the customer's electrical load. Thus, curtailments are made by FPL and not by the customer. This equipment is paid for by the customer through an additional Customer Charge. In return for agreeing to curtail load, the participating customers receive a credit. The current and proposed CDR Rider credit is $4.68 per kW of the Customer's Utility Controlled Demand. (Tr. 2994).

Under the CDR, load may be curtailed under any of the following circumstances:

> Control Condition:
> The Customer's controllable load served under this Rider is subject to control when such control alleviates any emergency conditions or capacity shortages, either power supply or transmission, or whenever system load, actual or projected, would otherwise require the peaking operation of the Company's generators. Peaking operation entails taking base loaded units, cycling units or combustion turbines above the continuous rated output, which may overstress the generators.

Therefore, curtailments may occur during shortages of either generation or transmission capacity. (Tr. 2996).

Further, while the tariff states that FPL will typically provide four hours advance notice, in emergencies, the required notice is 15 minutes. However, FPL reserves the right to interrupt in "less than 15 minutes' notice…in the event that failure to do so would result in loss of power to firm service customers or the purchase of emergency power to serve firm service customers." (Tr. 2997).

The current CDR credit is $4.68 per KW. This credit is significantly understated and in need of upward adjustment. While the CDR credit has not changed in years, costs for new generation and transmission capacity, upon which the CDR Rider is based, have increased since 2004. These higher costs are reflected in FPL's most recent *Ten Year Site Plan*. For example, WCEC Units 1 and 2 are projected to cost $512/kW based on 2009 in-service dates. However, WCEC-3 (2011 in-service date) is projected to cost over $780/kW, while subsequent combined cycle capacity additions are projected to cost over $1,000/kW.

Further, load management is an important resource for the state of Florida. Interruptible tariffs have been in place for decades. In fact, FPL is projecting significant growth in non-firm load. Thus, this load has been and is projected to be a valuable resource to FPL and to the state as a whole. When capacity is needed to serve firm load customers, interruptible customers, statewide, may be called upon (with or without notice and without limitation as to the frequency and duration of curtailments) to discontinue service so that the lights will stay on for the firm customer base. Such interruptions often cause production to be shut down resulting in business and production losses for the interruptible customer. (Tr. 2998).

The Commission should increase the CDR Rider credit to at least $5.50/kW. This modest increase would allow the CDR to remain a viable non-firm rate option and encourage greater participation. This recommended increase is based on the fact that FPL's most recent Standard Offer filing (Docket No. 090166, filed April 1, 2009) shows that its next avoided unit will not come on line until 2021. The 2021 avoided capacity cost has been discounted to the period 2010 through 2012 -- the period in which the rates approved in this proceeding will be in effect – to arrive at the $5.50/kW amount. (Tr. 2999).

This recommended revision to the CDR credit is conservative because FPL's avoided unit assumptions are based on projected lower load growth and the timely completion of its Turkey Point Units 6 and 7 in 2018 and 2020, respectively. These units will be among the first advanced design nuclear plants to be commissioned in the United States. No advanced design nuclear plants have been built and placed in operation in the U.S. Thus, there is considerable risk of delay. Any delay in completing these units may require FPL to add capacity sooner than 2021. (Tr. 2999).

ISSUE 168: What is the appropriate method of designing time of use rates for FPL?

POSITION: *Time of use rates should be designed so as to reflect actual usage costs. They should enable customers to manage their energy needs.*

ISSUE 170: Should FPL evaluate the merits of a prepayment option in lieu of monthly billing for those customers who can benefit from such an alternative? If so, how?

POSITION: *Yes.*

OTHER ISSUES

ISSUE 173: Should an adjustment be made in base rates to include FPL's nuclear uprates being placed into service during the projected test years if any portion of prudently incurred NCRC recovery is denied?

A. For the 2010 projected test year?
B. If applicable, for the 2011 subsequent projected test year?

POSITION: *No. Agree with OPC. These issues should not be addressed in this docket.*

ISSUE 177: Should this docket be closed?

POSITION: *No position.*

OTHER MATTERS

At the Prehearing Conference, FIPUG (and other intervenors) proposed numerous issues that the Prehearing Officer declined to include in the Prehearing Order in this case. The Prehearing Order states:

> In their Prehearing Statements, the parties proposed issues for which there was not agreement for inclusion in the Prehearing Order. The parties filed memoranda in support of inclusion of their issues. Upon consideration of the memoranda and further discussion by the parties at the prehearing conference, many of the proposed issues could be addressed in other issues, and other proposed issues were deemed inappropriate for inclusion in this case.

Order No. PSC-09-0638-PHO-EI at 173-174. The issues which were not included are listed at pages 174-179 of the Prehearing Order. The fact that such issues are not included in the Prehearing Order means that the Commission will not vote on such issues. FIPUG reiterates and preserves its objection as to the exclusion of such issues from specific consideration and vote in this case.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing the Florida Industrial Power Users Group's Post-Hearing Statement of Issues and Positions and Post-Hearing Brief was furnished by Electronic and U.S. Mail, on this 16th day of November, 2009 to the following:

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