

Marguerite McLean

080677-EI

From: Lynette Tenace [ltenace@kagmlaw.com]
Sent: Thursday, April 08, 2010 3:49 PM
To: Filings@psc.state.fl.us
Cc: Lisa Bennett; Anna Williams; Jean Hartman; Theresa Walsh; Martha Brown; mcglathlin.joseph@leg.state.fl.us; swright@yvlaw.net; kwiseman@andrewskurth.com; linomendiola@andrewskurth.com; meghangriffiths@andrewskurth.com; jenniferspina@andrewskurth.com; Wade_litchfield@fpl.com; John.Butler@fpl.com; tperdue@aif.com; barmstrong@ngnlaw.com; richardb@gtlaw.com; dmoore@esgconsult.com; Cecilia.bradley@myfloridalegal.com; sda@trippscott.com; sugarman@sugarmansusskind.com; MBraswell@sugarmansusskind.com; shayla.mcneill@tyndall.af.mil; richardb@gtlaw.com; tips@fpscreports.com; Mary.Smallwood@Ruden.com; Jack.leon@fpl.com; jmcwhirter@mac-law.com
Subject: Docket No. 080677-EI and 090130-EI
Attachments: FIPUG Response to FPL Motion for Reconsideration 04.08.10.pdf

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

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

Vicki Gordon Kaufman
 Jon C. Moyle, Jr.
 Keefe Anchors Gordon & Moyle
 118 North Gadsden Street
 Tallahassee, FL 32301
 (850) 681-3828
vkaufman@kagmlaw.com
jmoyle@kagmlaw.com

- 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 5 pages.
- e. The attached document is FIPUG's Response to Florida Power & Light Company's Motion for Reconsideration.

Lynette Tenace

ltenace@kagmlaw.com



Keefe, Anchors, Gordon and Moyle, P.A.
 The Perkins House
 118 N. Gadsden St.
 Tallahassee, FL 32301
 850-681-3828 (Voice)
 850-681-8788 (Fax)
www.kagmlaw.com

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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: April 8, 2010

**THE FLORIDA INDUSTRIAL POWER USERS GROUP'S
RESPONSE TO FLORIDA POWER & LIGHT COMPANY'S
MOTION FOR RECONSIDERATION**

The Florida Industrial Power Users Group (FIPUG), pursuant to rule 25-22.060, Florida Administrative Code, files this Response to Florida Power & Light Company's (FPL) Motion for Reconsideration of Order No. PSC-10-0153-FOF-EI (Rate Case Order).

I. INTRODUCTION

On March 18, 2010, FPL filed a petition for an increase in its base rates. FIPUG intervened in the proceeding and its petition was granted on April 29, 2009.¹ The Commission held a hearing on PEF's request in August, September and October 2009. The Rate Case Order in the case was issued on March 17, 2010.

II. STANDARD FOR RECONSIDERATION

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider. *Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So.2d 315 (Fla. 1974); *Diamond Cab Co. v. King*, 146 So.2d 889 (Fla. 1962); *Pingree v. Quaintance*, 394 So.2d 161 (Fla. 1st DCA 1981).

¹ Order No. PSC-09-0281-PCO-EI.

III. ARGUMENT

As a preliminary matter, FPL makes several references² and attaches several exhibits³ which relate to claims regarding its credit ratings. These materials are outside of the record of this proceeding; parties have not had the opportunity to conduct discovery as to the assertions and documents nor to cross-examine any would-be sponsors regarding such matters. Because these materials and contentions are outside the record, they may not form the basis for reconsideration. *See*, Order No. PSC-03-0951-FOF-TP, footnote 4. The Commission should ignore these materials and/or strike them from the motion.

Substantively, FPL has alleged four computational errors in the Commission's final decision. If FIPUG understands FPL's motion correctly, these "errors" amount to approximately \$41.8 million. The Commission found that FPL has a theoretical reserve imbalance of \$1.2 billion.⁴ That is, under the new approved depreciation rates, FPL has \$1.2 billion too much in its depreciation reserve, which it collected from ratepayers. After further adjustments made in the Final Rate Order, FPL's theoretical reserve still contains a reserve surplus of \$984.6 million.⁵

To the extent that the Commission determines that there is any merit in FPL's motion⁶, it should use the large theoretical reserve to make any corrections. This surplus is sufficient to address any computational errors should the Commission find any to exist.

WHEREFORE, in ruling on FPL's motion, the Commission should ensure that no future rate increase is approved for FPL as a result of its rate filing.

² *See, i.e.*, ¶s 5, 25.

³ Exhibit Nos. 1-3.

⁴ Page 81 of the Rate Case Order states that the reserve imbalance is \$1.208.8 million. This is clearly a typographical error and should read \$1.208.8 billion as illustrated by Table 7 and the discussion on page 86.

⁵ Rate Case Order at 86.

⁶ FIPUG cannot verify the accuracy of some of FPL's proposed adjustments because FPL did not provide the relevant back up work papers. For example, FPL claims that the Commission overstated its late payment charge revenues by \$25 million. But FPL's analysis does not show that it increased its late payment charge to reflect the higher revenues the Commission allowed. Similarly, FIPUG cannot verify how FPL calculated the "inconsistency" in the depreciation expense because it did not provide all relevant work papers.

s/ Vicki Gordon Kaufman

Vicki Gordon Kaufman
Jon C. Moyle, Jr.
Keefe, Anchors, Gordon & Moyle
118 North Gadsden Street
Tallahassee, FL 32301
(850) 681-3828 (Voice)
(850) 681-8788 (Facsimile)
vkaufman@kagmlaw.com
jmoyle@kagmlaw.com

John W. McWhirter, Jr.
P.O. Box 3350
Tampa, FL 33601-3350
(813) 505-8055 (Voice)
(813) 221-1854 (Facsimile)
jmcwhirter@mac-law.com

Attorneys for Florida Industrial Power Users Group

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Florida Industrial Power Users Group's Response to Florida Power & Light Company's Motion for Reconsideration was served via Electronic Mail and First Class United States Mail this 8th day of April, 2010, to the following:

Lisa Bennett, Theresa Farley Walsh
Anna Williams, Jean Hartman,
Martha Brown, Keino Young
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
lbennett@psc.state.fl.us
tfwalsh@psc.state.fl.us
anwillia@psc.state.fl.us
jhartman@psc.state.fl.us
mbrown@psc.state.fl.us
kyoung@psc.state.fl.us

J.R Kelly/Joseph McGlothlin
Office of Public Counsel
111 West Madison Street
Room 812
Tallahassee, Florida 32399
mcglothlin.joseph@leg.state.fl.us

Robert Scheffel Wright
John T. LaVia, III
Young van Assenderp, P.A.
225 South Adams Street, Suite 200
Tallahassee, Florida 32301
swright@yvlaw.net

Barry Richard
Greenberg Traurig, P.A.
101 East College Avenue
Tallahassee, FL 32301
richardb@gtlaw.com

K. Wiseman, Lino Mendiola,
Meghan Griffiths, Jennifer Spina
Andrews Kurth LLP
1350 I Street NW
Suite 1100
Washington, DC 20005
kwiseman@andrewskurth.com
linomendiola@andrewskurth.com
meghangriffiths@andrewskurth.com
jenniferspina@andrewskurth.com

Wade Litchfield
Florida Power & Light Company
215 South Monroe Street
Suite 810
Tallahassee, FL 32301-1859
Wade_litchfield@fpl.com

John T. Butler
Florida Power & Light Company
700 Universe Blvd.
Juno Beach, FL 33408-0420
John.Butler@fpl.com

D. Marcus Braswell, Jr.
Robert A. Sugarman
I.B.E.W. System Council U-4
c/o Sugarman Law Firm
100 Miracle Mile
Suite 300
Coral Gables, FL 33134
MBraswell@sugarmansusskind.com
sugarman@sugarmansusskind.com

Stephanie Alexander
Tripp Scott, P.A.
200 West College Avenue, Suite 216
Tallahassee, FL 32301
sda@trippscott.com

Tamela Ivey Perdue, Esq.
Associated Industries of Florida
516 North Adams Street
Tallahassee, FL 32301
tperdue@aif.com

Captain Shayla L. McNeill
AFLOA/JACL-ULT
AFCESA
139 Barnes Drive, Suite 1
Tyndall Air Force Base, FL 32403
Shayla.mcneill@tyndall.af.mil

Mary Smallwood, Esq.
Ruden, McClosky, Smith, Schuster &
Russell, P.A.
215 South Monroe Street
Suite 815
Tallahassee, FL 32301
Mary.Smallwood@Ruden.com

Bill McCollum/Cecilia Bradley
The Capitol – PL01
Tallahassee, FL 32399-1050
Cecilia.bradley@myfloridalegal.com

Brian P. Armstrong/Marlene K. Stern
City of South Daytona
c/o Nabors Law Firm
1500 Mahan Drive, Suite 200
Tallahassee, FL 32308
barmstrong@ngnlaw.com

Dan Moore
Association for Fairness In Rate Making
316 Maxwell Road, Suite 400
Alpharetta, GA 30009
dmoore@esgconsult.com

Stephen Stewart
P.O. Box 12878
Tallahassee, FL 32317
tips@fpscreports.com

s/Vicki Gordon Kaufman
Vicki Gordon Kaufman