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080677-EI

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Electronic Filing

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b. Docket No. 080677-EI
In Re: Application for Increase in Rates by Florida Power & Light Company

c. The Document is being filed on behalf of Florida Power & Light Company.

d. There are a total of 7 pages

e. The document attached for electronic filing is Florida Power & Light Company's Response to FIPUG's Motion for Reconsideration

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase 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

FLORIDA POWER & LIGHT COMPANY'S
RESPONSE TO FIPUG'S MOTION FOR RECONSIDERATION

Florida Power & Light Company ("FPL"), pursuant to Rule 25-22.060, Florida Administrative Code, hereby files this response in opposition to the Motion for Reconsideration filed April 1, 2010 by the Florida Industrial Power Users Group ("FIPUG"). The effect of approving FIPUG's Motion for Reconsideration would be to change the rates that took effect for FPL customers on March 1, 2010 and shift costs from large commercial and industrial customers to residential and small general service business customers. Because the largest commercial and industrial customers already pay rates below parity, FPL opposes FIPUG's suggestion that some of the rate increase should be moved from those large customers onto residential and small business customers.

In support of its opposition to FIPUG's Motion for Reconsideration, FPL states as follows:

1. FIPUG's request for reconsideration does not satisfy the well-established standard for reconsideration of a Commission order, which requires identification of a point of fact or law that the Commission overlooked or failed to consider in reaching its decision. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So.2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So.2d 161 (Fla. 1st DCA 1981). FIPUG argues that instead of applying its gradualism policy (i.e., limiting rate increases for individual rate classes to no greater than 1.5 times the system average increase) to each class's total

revenues, the Commission should apply the policy only to base revenues. However, nothing in FIPUG's argument identifies any point of fact or law overlooked by the Commission in its final order on FPL's base rate petition. *See* Order No. PSC-10-0153-FOF-EI, dated March 17, 2010 (the "Final Rate Order"). The Commission's decision on how to apply its gradualism policy, as reflected in the Final Rate Order, was thoroughly analyzed and explained by staff in its recommendation, which the Commission approved at the January 13, 2010 Agenda Conference. FIPUG's motion for reconsideration merely reargues points already considered by the Commission in reaching its decision.[1]

2. In its Motion for Reconsideration, FIPUG states "this matter was not considered or brought to the Commission's attention" (FIPUG Motion for Reconsideration, page 2), but this assertion is not supported by the Commission's recommendation in this Docket which thoroughly analyzed the gradualism issue, and then concluded as follows:

> Consistent with the Commission's decision in more recent electric rate cases, staff recommends that no class should receive an increase greater than 1.5 times the system average percentage increase *in total, i.e., with adjustment clauses,* and no class should receive a decrease. *When calculating the percentage increase, FPL should use the approved 2010 adjustment clause factors.* ...

See Staff Recommendation, p. 440 (Issue 142)(emphasis added). The Commission approved Issue 142 without questions or discussion. (Tr. January 13, 2010 Special Agenda Conference, p. 331, 343-44). The language in the Final Rate Order reflects the language from the staff recommendation that was approved by the Commission. *See* Final Rate Order, p. 179. It is clear from this language that the Commission thoroughly considered the fact that the gradualism policy would be applied to the total bill, including clauses, and not just the base rate portion of the bill. No point of fact or law was overlooked by the Commission.

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[1] In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So.2d 96 (Fla. 3rd DCA 1959); citing State ex. rel. Jaytex Realty Co. v. Green, 105 So.2d 817 (Fla. 1st DCA 1958).

3. The orders cited by FIPUG do not support its argument that it was a "dramatic departure" from precedent for the Commission to apply its gradualism policy to the total bill, as opposed to just the base portion. For example, Order No. 10306, issued September 23, 1981 in Docket No. 810002-EU, which is cited by FIPUG in footnote 6 of its Motion for Reconsideration, established the concept of gradualism and calculated the 1.5 times increase based on total revenues, not just base revenues. *See* Order No. 10306, p. 30; *see also* Order No. 13537, p. 47, Docket No. 830465-EI (issued July 24, 1984) (approving rate increase "to be allocated among customer classes so that each class moves toward parity in rate of return for 1984 to the greatest extent practical with no class receiving an increase greater than 1½ times the system average *including base revenue, fuel, conservation, and oil-backout*") (emphasis added). In the Gulf Power rate case cited by FIPUG, the Commission said in its order that "[n]o class should receive an increase greater than 1.5 times the system average percentage increase *in total*" (emphasis added). *See* Order No. PSC-02-0787-FOF-EI, p.75, Docket No. 010949-EI (issued June 10, 2002) (the "Gulf Order").[2] The only difference between the Gulf Order and the Final Rate Order is the addition here of the phrase "*i.e., with adjustment clauses*" to clarify that is what the Commission means when it states "in total." Though no rate increase was ultimately approved by the Commission, the staff recommendation in Progress Energy Florida's ("PEF's") contemporaneous rate case also reiterated the Commission's that "[n]o rate class should receive

[2] The staff recommendation in Docket No. 010949-EI, page 157, made clear that the Commission intended the 1.5 times increase rule to be applied to the total bill "including adjustment clause revenues." The Order in TECO's recent rate case has the same language as the Gulf Order. *See* Order No. PSC-09-0283-FOF-EI, p. 87, Docket No. 080317-EI (issued April 30, 2009). However, the TECO staff recommendation is not as clear and it appears from TECO's compliance filing in Docket No. 080317-EI that TECO applied the increase to only base revenues. *See* Staff Recommendation, p. 183 (dated March 5, 2009); Compliance Filing, Docket No. 080317-EI (dated March 26, 2009). In any event, the TECO case does not represent a meaningful or clear departure from the Commission's past precedent and established practice with respect to the gradualism policy, particularly given the clarity in the more recent staff recommendations and orders in the PEF and FPL rate cases.

an increase greater than 1.5 times the system average percentage increase in total, *including cost recovery clauses*." *See* Staff Recommendation, page 307, Docket No. 090079-EI (emphasis added).[3]

4. As stated above, the effect of approving FIPUG's Motion for Reconsideration would be to change the rates that took effect for FPL customers on March 1, 2010 and shift costs from large commercial and industrial customers to residential and small general service business customers. As a result, rates would go down for about 2% of FPL customers, while going up for the remaining 98%. Indeed, a mere 18 large commercial and industrial customers in the CILC-1(T) rate class would see the largest per-customer benefits from approval of FIPUG's proposal to shift the allocation of costs: their bills would go down by an average of approximately $34,000 per year.

5. Applying the gradualism policy to the total customer bill, including clauses, is a more reasonable and realistic approach, because the base component may only represent as little as 28% of a large commercial or industrial customer's bill. Thus, limiting the move toward

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[3] The staff in the PEF rate case also rejected FIPUG's argument that the 1.5 times limitation is to be applied by rate schedule instead of by rate class (Staff Recommendation in Docket No. 090079-EI, pages 304-06), but FIPUG appears to be reviving that argument on Reconsideration of FPL's rate case order. FIPUG asks the Commission apply the 1.5 times limit to rate schedules rather than rate classes as FIPUG references Schedule E-13a rather than Schedule E-8. Schedule E8 shows total operating revenue increase by rate **class**, including increases in service charges & unbilled revenue, whereas Schedule E-13a shows increases in base revenue only by **rate schedule**. As the staff recommended in the PEF case, the Commission should reject this attempt by FIPUG in order to ensure FPL retains the flexibility to preserve the rate design goals of optional rate schedules, such as time-of-use rates, that are based on a revenue neutral calculation of the standard firm rate.

The PEF interim rate increase addressed by FIPUG is also not on point because the Commission rule on interim increases specifies that the increase is allocated in an equal percentage to all classes, so the Commission had no discretion in that instance. *See* Rule 25-6.0435(2), Florida Administrative Code (2009).

parity to only the base component would drastically curtail the effectiveness of the Commission's policy of moving toward rate parity, for those classes that presently deviate most from parity (*i.e.,* small business customer and residential classes). As FIPUG's own motion points out, "rate cases do not occur every year but rather occur sporadically". (FIPUG Motion for Reconsideration, page 5). Applying gradualism to only the base rate portion of the bill would render the likelihood of ever achieving full parity almost nil.

6. FPL's revenue requirements approved in the rate case will not change as a result of the Commission approving or denying FIPUG's Motion for Reconsideration. Nevertheless, FPL believes the Commission's approach to apportioning the base rate increase in FPL's rate case is fair, reasonable and equitable, and balances the interests of the various customer classes. It helps ensure that residential customers realize some benefit in moving toward full parity and helps minimize the additional subsidization that would result from approval of FIPUG's position.

WHEREFORE, for the foregoing reasons, FPL respectfully requests the Commission to deny FIPUG's Motion for Reconsideration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically this 8th day of April, 2010, to the following:

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