

Diamond Williams

080677-EI

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**Sent:** Tuesday, October 19, 2010 4:09 PM  
**To:** Filings@psc.state.fl.us  
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**Subject:** e-filing, Dkt. Nos. 080677-EI & 090130-EI  
**Attachments:** October 19.2010 letter to Commissioners w. copies to parties of record.pdf

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket Nos. 080677-EI and 090130-EI

In re: Petition for rate increase by Florida Power & Light Company.

In re: 2009 depreciation and dismantlement study by Florida Power & Light Company.

c. Document being filed by the Office of Public Counsel on behalf of named "Intervenor Parties".

d. There are a total of 3 pages.

e. The document attached for electronic filing is the October 19, 2010 letter to Commissioners(See attached file: October 19,2010 letter to Commissioners w. copies to parties of record.pdf)

Thank you for your attention and cooperation to this request.

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10/19/2010

DOCUMENT NUMBER DATE  
08753 OCT 19 2010  
FPSC-COMMISSION CLERK

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**LARRY CRETUL**  
*Speaker of the House of Representatives*



October 19, 2010

Honorable Lisa Polak Edgar  
Honorable Nathan A. Skop  
Honorable Art Graham  
Honorable Ronald A. Brise  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0864

Re: Docket Nos. 080677-EI and 090130-EI

Dear Commissioners:

I write this letter on behalf of the Attorney General of the State of Florida, the Florida Retail Federation, the Florida Industrial Power Users Group, the Federal Executive Agencies, the South Florida Hospital and Healthcare Association, and the Office of Public Counsel, all of whom I will refer to as the Intervenor Parties.

All of the Intervenor Parties were parties in consolidated Docket Nos. 080677-EI and 090130-EI, in which the Commission considered Florida Power & Light Company's ("FPL") application for an increase in base rates and its companion depreciation study. On March 17, 2010, the Commission issued Order No. PSC-10-0153-FOF-EI ("Final Order"), in which it ruled on the matters pending in the consolidated dockets. Among other things, in its Final Order the Commission determined the fair and reasonable range for FPL's rate of return on equity capital ("ROE") to be 9% to 11%, established FPL's annual revenue requirements by applying the midpoint of the 10% ROE, authorized FPL to increase its base rates so as to generate \$75.5 million of additional revenue annually, and directed FPL to amortize \$894 million of depreciation reserve surplus over four years. FPL and FIPUG filed motions for reconsideration of the Final Order, which are still pending before the Commission.

Following the issuance of the Final Order, the Intervenor Parties and FPL began discussing the possibility of a stipulation and settlement that would not only resolve the pending motions for reconsideration, but would also provide certainty and stability with respect to FPL's rates while preserving the core provisions of the Final Order during calendar years 2010, 2011, and 2012. Following lengthy negotiations, on August 20, 2010, FPL submitted to the Commission a signed

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Settlement Agreement among and between FPL, Associated Industries of Florida, and the Intervenor Parties, as well as an Agreed Motion for Approval of the Settlement Agreement. The Settlement Agreement has been awaiting the Commission's consideration and vote since that time.

Following the filing of the Settlement Agreement, the Commission Staff served expedited data requests on FPL and the Intervenor Parties, with the view of submitting its recommendation in time to schedule the Settlement Agreement for the decision conference of September 28, 2010. Staff obtained a deferral of the matter beyond the September 28 agenda conference to enable Staff to incorporate additional information in its recommendation. Staff submitted its written recommendation on October 4, 2010, in anticipation of a vote on October 12, 2010. In its written analysis, the Staff recommends that the Commission approve the Settlement Agreement. On a closely related note, the Staff has also opened a new docket, Docket No. 100410-EI, to review FPL's earnings for calendar year 2010.

On October 5, 2010, the Intervenor Parties filed their Joint Petition to assign the disposition of the proposed Settlement Agreement to the full Commission. Section 350.01(6), Florida Statutes, requires the Commission to rule on such a request within 15 days of its filing. However, on October 12, the Commission deferred its consideration of the Settlement Agreement without ruling on the Intervenor Parties' Joint Petition to assign the matter to the full Commission. The recently published agenda for the Commission's October 26, 2010 agenda conference indicates the Settlement Agreement and, presumably, the pending Joint Petition to assign it to the full Commission will be taken up at that agenda conference. We further understand that the most recent deferral was related to the Amended Petition for Writ of Prohibition that FPL filed with the First District Court of Appeal on September 20, 2010.

The Intervenor Parties urge the Commission to grant their Joint Petition to assign these matters to the full Commission and then to vote on the Settlement Agreement on October 26, 2010. If approved, the proposed Settlement Agreement will affect all of FPL's 4.5 million customers for more than two calendar years. Accordingly, it is a matter of statewide significance; in fact, it was the magnitude of the Settlement Agreement that led the Intervenor Parties to request the full Commission to decide the matter. The Intervenor Parties and the customers they represent are entitled to a ruling on the Settlement Agreement for which their representatives have devoted months of negotiations, and which is ripe for disposition; otherwise, the certainty and stability that were prime objectives of the negotiators will have been diminished by the Commission's inaction.

Further, key aspects of the proposed Settlement Agreement are time sensitive. First, the Settlement Agreement provides that the term of the Agreement begins when the Commission enters its order approving its terms. Even more importantly, under the proposed Settlement Agreement, the amount of depreciation reserve surplus that FPL may amortize is (subject to stipulated maximum amounts) a function of its actual earned rate of return on equity for each of calendar years 2010, 2011, and 2012. A ruling on the proposed Settlement Agreement at a point in time that provides sufficient time for the parties to implement this provision for calendar year

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2010 is crucial to the realization of the respective benefits and obligations that the parties negotiated.

Consistent with their Joint Petition to Assign the Settlement Agreement to the Full Commission, the Intervenor Parties would support a ruling on the proposed Settlement Agreement by all sitting Commissioners. Therefore, we respectfully ask the Commissioners to take up this important matter without further delay.

For the Intervenor Parties,

  
Joseph A. McGlothlin  
Associate Public Counsel

JAM/bsr

cc: Parties of record in Docket Nos. 080677-EI and 090130-EI  
Curt Kiser, General Counsel  
Lisa Bennett, Staff Counsel