



Keefe, Anchors
Gordon & Moyle

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March 7, 2011

VIA HAND DELIVERY

Ms. Ann Cole, Director
Division of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: In re: Review of Florida Power & Light Company's Earnings, Docket No.
100410-EI

Florida Industrial Power Users Group
v. Florida Public Service Commission, Case No. _____

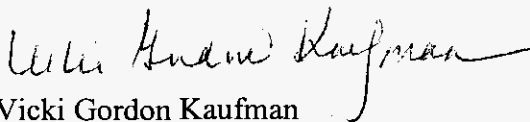
Dear Ms. Cole:

Enclosed for filing in the above docket is the original copy of The Florida Industrial Power Users Group Notice of Administrative Appeal.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter.

Thank you for your assistance with this filing.

Sincerely,


Vicki Gordon Kaufman

- COM _____
- APA _____
- ECR _____
- GCL _____
- RAD _____
- SSC _____
- ADM _____
- OPC _____
- CLK _____

VGK/bjd

Enclosures

cc: All Parties of Record
Jon Wheeler, Clerk of Court, First District Court of Appeal

mm.
850.681.3828
850.681.8788 fax
118 N. Gadsden Street
Tallahassee, Florida 32301

DOCUMENT NUMBER - DATE
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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FLORIDA INDUSTRIAL POWER USERS GROUP,

Appellant,

Docket No. 100410-EI

v.

Case No. _____

FLORIDA PUBLIC SERVICE COMMISSION
_____ /

NOTICE OF ADMINISTRATIVE APPEAL

NOTICE IS GIVEN THAT, pursuant to rule 9.110, Florida Rules of Appellate Procedure, the Florida Industrial Power Users Group (FIPUG), Appellant, appeals to the Florida First District Court of Appeal the order of the Florida Public Service Commission, Order No. PSC-11-0103-FOF-EI, rendered on February 7, 2011.

The nature of the Order is an administrative order which fails to comply with the requirements of Chapter 120, Florida Statutes, in that it fails to provide a point of entry for affected parties. A conformed copy of the Order is attached.

Respectfully submitted,



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Attorneys for the Florida Industrial Power Users Group

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of The Florida Industrial Power Users Group's Notice of Administrative Appeal has been furnished by Hand Delivery (*) or Electronic Mail (**) and by U.S. Mail this 7th day of March, 2011 to the following:

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Jon Wheeler (**)
Clerk of Court
First District Court of Appeal
2000 Drayton Drive
Tallahassee, Florida 32399-0950

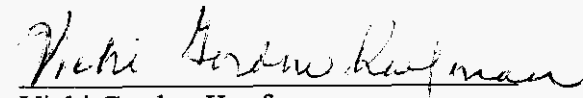
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Vicki Gordon Kaufman

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Florida Power & Light
Company's earnings.

DOCKET NO. 100410-EI
ORDER NO. PSC-11-0103-FOF-EI
ISSUED: February 7, 2011

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman
LISA POLAK EDGAR
RONALD A. BRISÉ
EDUARDO BALBIS
JULIE I. BROWN

ORDER DECLINING TO INITIATE EARNINGS REVIEW

BY THE COMMISSION:

Rule 25-6.1353, Florida Administrative Code (F.A.C.), requires investor-owned electric utilities, not subject to an earnings cap, to file an annual Forecasted ESR each year by March 1 of the forecasted year. By Order No. PSC-05-0902-S-EI,¹ we approved a stipulation by Florida Power & Light Company (FPL or Company) and parties to FPL's 2005 rate proceeding by making FPL's rates subject to an earnings cap and revenue sharing mechanism, and thus no return on equity (ROE) was set. By Order No. PSC-10-0153-FOF-EI,² issued March 17, 2010 (Final Order), FPL's current Commission-authorized rates were established and an ROE of 10% was set. Reconsideration Motions were filed with respect to the Final Order, but were resolved through approval of a joint Stipulation and Settlement by the parties (Stipulation) at our December 14, 2010, Agenda Conference, which ratified the ROE established in the Final Order.

On September 14, 2010, FPL submitted its May and June 2010 Earnings Surveillance Reports (ESR) as required by Rule 25-6.1352, F.A.C. Per these reports, FPL's actual achieved returns on equity (ROE) were 11.28 percent and 11.43 percent for May and June 2010, respectively. These returns exceed the top of FPL's currently authorized ROE range of 9.00 percent to 11.00 percent, with a 10.00 percent midpoint. Subsequent to the original October 4, 2010, filing date of our staff's recommendation, FPL filed its 2010 Forecasted ESR on December 17, 2010.

¹Order No. PSC-05-0902-S-EI, issued September 14, 2005, in Docket Nos. 050188-EI, In re: Petition for rate increase by Florida Power & Light Company, and 050188-EI, In re: 2005 comprehensive depreciation study by Florida Power & Light Company.

²Order No. PSC-10-0153-FOF-EI, issued March 17, 2010 (Final Order), in Docket Nos. 080677-EI, In re: Petition for increase in rates by Florida Power & Light Company and 090130-EI, In re: 2009 depreciation and dismantlement study by Florida Power & Light Company.

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Our decision on staff's October recommendation was delaying because this and other FPL dockets were stayed by the First District Court of Appeal pending its consideration of a Petition for Writ of Prohibition filed by FPL in September 2010. The court acknowledged FPL's voluntary dismissal of its petition by order dated January 4, 2011, and we considered staff's recommendation at our January 11, 2011 Agenda Conference.

This order addresses our decision declining to initiate an investigation regarding FPL's potential overearnings at this time. We have jurisdiction over this matter pursuant to Chapter 366, Florida Statutes (F.S.), including Sections 366.041, 366.06, 366.07, and 366.071, F.S.

FPL filed its May and June 2010 ESRs on September 14, 2010. For May and June 2010, the Company reported achieved ROEs of 11.28 percent and 11.43 percent, respectively. In a publicly noticed meeting held on September 22, 2010, Commission staff met with FPL and the parties to Docket No. 080677-EI to discuss the Company's potential overearnings. In response to our staff's questions, FPL asserted that the Company would not be overearning if weather conditions had been normal. Weather normalization adjustments, however, are appropriate for purposes of setting rates in a rate case, not for purposes of evaluating actual earnings.

Subsequent to the original October 4, 2010 filing date of staff's recommendation, FPL filed its ESRs for July, August, September and October 2010 as well as its 2010 Forecasted ESR.³ The reported actual earned ROEs were 11.68 percent (7/10), 11.79 percent (8/10), 11.34 percent (9/10), and 11.16 percent (10/10). In addition, FPL has forecasted that it will earn an ROE of 11.00 percent for the year ending December 31, 2010.

At our January 11, 2011 Agenda Conference, both FPL and the Office of Public Counsel (OPC) argued that the terms of the Stipulation, previously approved by us, are intended to alleviate the issue of potential overearnings. The parties contend that Paragraph 7 of the Stipulation discusses the mechanism the Company is expected to use to maintain earnings within the range of 9.00 percent to 11.00 percent during the term of the Stipulation, and that, as claimed by FPL in its September 29, 2010 letter, this mechanism will be able to mitigate the total amount of the identified potential overearnings. Pursuant to the Final Order, FPL is required to amortize the depreciation reserve surplus of approximately \$894.6 million over a period of four years.⁴ This equates to an annual amortization of approximately \$224 million. FPL has indicated that it has been recording some amount of amortization of the depreciation reserve surplus,⁵ and contends that, if necessary, reversal of this amortization will be sufficient to offset the identified overearnings to bring the achieved ROE to no greater than 11.00 percent as intended by Paragraph 7.

Upon consideration of the circumstances and the arguments presented at the January 11, 2011 Agenda Conference by FPL and OPC, we believe it is appropriate and in the public interest to decline to initiate an investigation of FPL's 2010 earnings. Of great significance to our

³ ESR filing dates: July 2010 – October 18, 2010; August 2010 – November 12, 2010; September 2010 – November 12, 2010; October 2010 – December 13, 2010; and Forecasted 2010 – December 17, 2010.

⁴ Final Order at page 86.

⁵ Florida Power & Light Company, Quarterly Report (Form 10-Q), at page 38 (August 6, 2010).

decision was the parties' arguments that the terms of the Stipulation would prevent the Company from earning more than the 11 percent top of the range. We note that our decision herein is unique to the circumstances of this case, and shall not set precedent for earnings reviews or the use of rate cap letters in future proceedings of this Commission.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that we decline to initiate a review of Florida Power & Light Company's earnings at this time. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 7th day of February, 2011.



ANN COLE
Commission Clerk

(S E A L)

JSC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.