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110009-EI

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Sent: Monday, April 18, 2011 4:52 PM
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Subject: Docket No. 110009-EI: Nuclear Cost Recovery Clause
Attachments: FIPUG Response to Kundalkar Motion to Quash Subpoena and Notice of Joinder 4.18.11.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:

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b. This filing is made in Docket No. 110009-EI.

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

d. The total pages in the document are 4 pages.

e. The attached document is Florida Industrial Power Users Group's Response to Mr. Rajiv Kundalkar's Motion to Quash Subpoena and Notices of Deposition and Notice of Joinder.

DOCUMENT NUMBER-DATE
 02636 APR 18 =
 FPSC-COMMISSION CLERK

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear Cost Recovery
Clause.

DOCKET NOS: 110009-EI
FILED: April 18, 2011

**THE FLORIDA INDUSTRIAL POWER USERS GROUP'S
RESPONSE TO MR. RAJIV KUNDALKAR'S
MOTION TO QUASH SUBPOENA
AND NOTICES OF DEPOSITION AND NOTICE OF JOINDER**

The Florida Industrial Power Users Group (FIPUG) opposes the Motion to Quash Subpoena and Notices of Deposition filed by counsel for non-party witness Rajiv Kundakar and joins the Office of Public Counsel in its opposition to Mr. Kundalkar's motion.

Put simply, the Motion to Quash Subpoena and Notices of Deposition should be denied. Should the Commission grant the Motion to Quash the Subpoena, accepting the argument that Mr. Kundalkar is now a private citizen, and does not want to be deposed, the ruling would hamstring the ability of a litigant, such FIPUG or the Office of Public Counsel, to present its case by compelling attendance of witnesses. The ability of a litigant to present its case by compelling witnesses is a fundamental tenet of jurisprudence.

Quashing the subpoena in question because a non-party does not want to testify runs afoul of section 120.569, Florida Statutes, which governs the handling of cases involving disputed issues of fact. Specifically, in section 120.569(2)(f),¹ the Legislature expressly

¹ 120.569(2)(f) The presiding officer has the power to swear witnesses and take their testimony under oath, to issue subpoenas, and to effect discovery on the written request of any party by any means available to the courts and in the manner provided in the Florida Rules of Civil Procedure, including the imposition of sanctions, except contempt. However, no presiding officer has the authority to issue any subpoena or order directing discovery to any member or employee of the Legislature when the subpoena or order commands the production of documents or materials or compels testimony relating to the legislative duties of the member or employee. Any subpoena or order directing discovery directed to a member or an employee of the Legislature shall show on its face that the testimony sought does not relate to legislative duties.

recognizes the ability for a party to obtain discovery. The only express limitation on discovery efforts exists when a party seeks discovery from an employee or member of the Legislature regarding legislative matters. Tellingly, the statute indicates members of the Legislature or legislative employees are subject to discovery and compelled testimony so long as the matter does not involve legislative matters. This provision of section 120.569(2)(f) clearly shows that the Legislature knows how to limit discovery. A search of the statutes will not reveal any similar legislative provision to suggest a non-party witness with relevant information does not have to respond to a subpoena merely because he or she does not want to provide testimony. To allow a non-party witness to decide whether or not to testify, based on the convenience, whims or desires of such a witness, would wrongfully shove Lady Justice down a treacherous path.

Furthermore, FIPUG joins and adopts the arguments set forth by the Office of Public Counsel in its Response in Opposition to Mr. Kundalkar's Motion to Quash Subpoena. For the reasons set forth above, the Motion to Quash Subpoena and Notices of Deposition should be denied.

s/ Jon C. Moyle, Jr.

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a copy of the foregoing Florida Industrial Power Users Group's Response to Mr. Rajiv Kundalkar's Motion to Quash Subpoena and Notices of Deposition and Notice of Joinder has been furnished by electronic mail and/or U.S. Mail on this 18th day of April, 2011, to the following:

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