

**Diamond Williams**

100358-EI

**From:** Patrick K. Wiggins [patrick@wigglaw.com]  
**Sent:** Wednesday, June 01, 2011 4:04 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** Jennifer Crawford  
**Subject:** Electronic Filing --- Docket No. 100358-EI AFFIRM Petition on Proposed Agency Action  
**Attachments:** AFFIRM Petition on PAA DKT# 100358-EI.pdf; ATT210365.htm

a. Person responsible for this electronic filing:

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b. Docket No. 100358-E

re: Investigation into the design of Commercial Time-of-Use rates by Florida Power & Light, pursuant to Order No. PSC-10-0153-FOF-EI

c. Document is being filed on behalf of Association for Fairness in Ratemaking (AFFIRM)

d. There are a total of 11 pages in the attached document.

e. The attached document is AFFIRM's Petition on Proposed Agency Action.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the design of  
Commercial Time-of-Use rates by Florida  
Power & Light, pursuant to Order No.  
PSC-10-0153-FOF-EI.

DOCKET NO. 100358-EI

FILED: June 1, 2011

**PETITION ON PROPOSED AGENCY ACTION**

Petitioner, the Association for Fairness in Ratemaking (AFFIRM), by and through its undersigned counsel, pursuant to section 120.56, Fla. Stat., and rules 25-22.029 and 28-106.201, F.A.C., files this protest to the Florida Public Service Commission (Commission) Order Number PSC-11-0216-PAA-EI, issued May 11, 2011. In the PAA Order the Commission proposes to deny AFFIRM members and other commercial customers relief from electric rates that are neither fair, nor just, nor reasonable. In support of its petition, AFFIRM states as follows:

1. The name and address of the agency affected and the agency's file number is:

Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850  
Docket No. 100358-EI

2. The name, address, and telephone number of the Petitioner are as follows:

Association For Fairness In Rate Making  
Attn: Dan Moore  
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Alpharetta, Georgia 30009.  
Telephone (770) 751-7133  
Telecopier (770) 751-1728  
[dmoore@esgconsult.com](mailto:dmoore@esgconsult.com)

3. All pleadings, orders and correspondence should be directed to Petitioner's representatives as follows:

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4. Notice of Order. AFFIRM obtained a copy of the PAA Order from the Commission's website on May 23, 2011, the date on which the order was posted on the website.

5. Statement of Substantial Interests. AFFIRM is a coalition of quick-serve restaurants that have substantially similar electrical usage characteristics. The Members of AFFIRM are the corporations and the corporations' franchisees that own and operate over 500 business locations served by Florida Power & Light Company ("FPL") under the following brand names: Waffle House, Wendy's, Arby's, and YUM! Brands, doing business as Pizza Hut, Kentucky Fried Chicken, Taco Bell, Long John Silver's, and A&W. These members are thus commercial electric customers of FPL and purchase electricity from FPL pursuant to FPL rate schedules. AFFIRM's members require adequate, reasonably priced electricity in order to conduct their businesses consistently with the needs of their customers and ownership.

6. By this PAA Order the Commission would determine that “there is not enough evidence at this time that would support a new TOU rate for Florida Power & Light Company’s commercial customers” and thus “...decline to require FPL to file a new commercial TOU rate.” (PAA Order at p. 10) Next, the Commission would order FPL to “...further investigate whether fuel TOU factors based on marginal costs and/or summer and winter differentiation would benefit customers and provide system benefits and report back in testimony filed in the 2011 fuel proceeding.” (Id.) These proposed decisions deny AFFIRM’s members and other commercial customers the fair, just, and reasonable rates to which they are entitled under statute.

7. AFFIRM’S substantial interests are of sufficient immediacy to entitle it to participate in the proceeding and are the type of interests that the proceeding is designed to protect. To participate as a party in this proceeding, an intervenor must demonstrate that it will suffer a sufficiently immediate injury in fact that is of the type the proceeding is designed to protect. *See Ameristeel Corp. v. Clark*, 691 So. 2d 473 (Fla. 1997); *Agrico Chemical Co. v. Department of Environmental Regulation*, 406 So.2d 478 (Fla. 2d DCA 1981), *rev. denied*, 415 So. 2d 1359 (Fla. 1982). The purpose of this proceeding is to determine the merits of FPL’s time of use base rates and time of use fuel cost recovery rates; the substantial interests of AFFIRM is to ensure that the base rates and fuel rates paid by its members are fair, just and reasonable. Thus, the protection of AFFIRM’s substantial interests coincides with the purpose of the proceeding.

8. Associational Standing. AFFIRM has standing as an association to represent its members’ substantial interests. All or most of its members will be substantially affected by the Florida Public Service Commission’s decisions; the association was

formed for the purpose of protecting its members' interests in rate proceedings; and the relief requested (intervention) is of a type appropriate for an association to obtain on behalf of its members. See Florida Home Builders Ass'n v. Dep't of Labor and Employment Security, 412 So. 2d 351, 353-54 (Fla. 1982).

9. Statement of Material Facts In Dispute. At this time, the disputed issues of material facts, which AFFIRM contends warrants reversal and/or modification of the agency's proposed action, are listed on Exhibit 1 attached hereto.

10. Statement of Ultimate Facts Alleged. The ultimate facts alleged are as follows:

FPL's medium sized business customers are heterogeneous in nature and the menu and application of available rates to such customers results in an unfair, unjust and unreasonable burden of costs for the following reasons:

- a) the available rates cannot be justified by correlation to cost causation, resulting in the unjustified cross-subsidization of some customers by other customers;
- b) business customers served under FPL's rates pay demand charges that are set unjustifiably at a rate that does not recover all demand related costs, and the deficiency in recovery of demand related costs results in an excess recovery of demand related costs through base energy charges;
- c) business customers served under FPL's time of use rates pay demand charges that are unfair and unreasonable because the determination of each customer's contribution to FPL's monthly system peak is often based on individual customer peak loads that have not contributed to FPL's monthly system peak loads because the customer peak loads have occurred outside of the time periods when FPL has experienced, or is expected to experience, a monthly system peak load;
- d) business customers served under FPL's time of use fuel cost recovery rates pay costs that are unfair and unreasonable because (i) fuel cost recovery rates use on-peak and off-peak time periods even though there is no demonstrated relationship between such time periods and FPL's incurrence of fuel costs, (ii) fuel cost recovery rates use the same fuel cost recovery factor for the on-peak hours during both the defined summer and winter months, even though FPL's observed fuel costs are substantially higher in the summer months than in the winter months, and (iii) fuel cost recovery rates use the same fuel cost recovery factor for the off-peak hours during both the defined summer and winter months, even though

FPL's observed fuel costs are substantially higher in the summer months than in the winter months; and

- e) the time of use rates made available to business customers by FPL provide pricing incentives that are adverse to the objective of helping FPL to improve operating efficiency and contrary to the express national energy policy of offering multiple component time of use rates that reflect for each time period the utility's costs of generating or acquiring the next increment of electric energy.

11. Statement of Specific Statutes Involved. At this time the statutes involved are identified as §§366.01, 366.04, 366.041, 366.05, 366.06, and 366.07, Florida Statutes. These sections are involved because they prohibit rates that are unfair, unreasonable, and unjustly discriminatory.

12. Statement of Relief Sought. Petitioner seeks a final order from the Commission directing FPL to: (a) redesign its menu of time of use rates available to medium sized business customers in a revenue neutral manner so that demand related charges in all months of the year are placed on each customer based on the monthly contributions that such customer's load makes to FPL's monthly system peak, using a methodology that measure the customers' monthly contributions to the monthly system peak during the hours in each month in which FPL's monthly system peak load have been observed to occur; and (b) provide a structure for time of use fuel rates under which the rate charged by FPL varies during different time periods (daily, monthly and seasonally) and reflects the variance in FPL's costs of fuel and purchased power per kWh of energy generated or acquired by FPL.

13. By Order Number PSC-11-0216-PAA-EI, a petition for formal proceeding shall be filed with the Office of the Commission Clerk no later than close of business on June 1, 2011. This petition has been timely filed.

For the reasons given above, AFFIRM hereby protest Order Number PSC-11-

0216-PAA-EI as provided above and petitions the Commission to conduct a formal evidentiary hearing under the provisions of section 120.57 (1), Florida Statutes.

Respectfully submitted this 1<sup>st</sup> day of June 2011.

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By: s/ Patrick K. Wiggins

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### **Material Facts in Dispute**

1. Whether the measurement of monthly billing demand for each customer in each month should be a fair and reasonable estimation of that customer's monthly contribution to the FPL system peak occurring during such month, and if so, should the measurement of monthly billing demand be constrained to those hours of each day when FPL is likely to experience a monthly system peak demand.
2. Whether the cost of service allocation methodology used for ratemaking purposes by FPL to allocate demand related costs among customer classes utilizes FPL's one hour system peak demand in each month and the corresponding coincident one hour peak demands in each month for each customer class.
3. Whether the methodology used for ratemaking purposes by FPL to allocate demand related costs within a customer class should be consistent with the methodology used by FPL to allocate demand related system costs to each customer class.
4. Whether the medium sized business class, consisting of commercial, industrial, governmental and other customers with a demand of 20 kW to 500 kW, is sufficiently homogeneous such that the application of a single base rate to approximately 97% of all customers does not result in an undue discrimination whereby some customers cross-subsidize other customers within the same class.
5. Whether the medium sized business class is sufficiently homogeneous to justify subjecting each individual customer to a monthly billing demand based on its individual peak demand irrespective of the correlation in timing between the individual peak demand and the system peak demand.
6. Whether it is an objective of the Commission to structure rates in a manner that results in a correlation between the prices paid by customers and the costs caused by those same customers, i.e., if two customers use the same amount of energy, but customer A has a pattern of energy usage that is less expensive for FPL to serve than the load pattern of Customer B, should Customer A pay less than Customer B?
7. Whether it is an objective of the Commission to structure rates in a manner that will tend to equalize rates to all members of a customer class by causing high load factor customers (that are relatively less expensive to serve) to pay

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*the same cost per kWh as low load factor customers (that are relatively more expensive to serve)?*

8. Whether it is an objective of the Commission to structure rates in a manner that will provide incentives for customers to use energy in a manner that will both reduce costs to customers and result in greater cost efficiency for FPL, and if so, should rates be structured in a manner that will provide such incentives to as many customers as possible?
9. Whether there is a justification for FPL to have three differently structured time of use rates for medium sized business customers, rather than having a single time of use rate for such customers that correlates periodic prices to periodic cost causation on a daily, monthly and seasonal basis?
10. Whether FPL's forecasted monthly system peaks for integrated resource planning are based on a single system peak in each defined summer month or on the average demand occurring during the defined nine hour peak period during each defined summer month.
11. Whether FPL's forecasted monthly system peaks for integrated resource planning are based on a single system peak in each defined winter month or on the average demand occurring during the two separately defined four hour peak periods during each defined winter month.
12. Whether it is an appropriate ratemaking technique to determine a monthly billing demand for any customer based on such customer's monthly peak demand if the customer's monthly peak demand occurs outside of the hourly periods in which FPL has experienced its system peak demands for at least the last fifteen years.
13. Whether there is any economic significance to a "relatively flat" system load curve, and if so, the means by which the "flatness" of such curve is (a) measured, (b) optimized, and (c) correlated to FPL's cost in order to justify the determination of a nine hour period peak, versus a seven hour, five hour, three hour or single hour peak period?
14. Whether FPL or this Commission have examined the load and cost data during FPL's "long and relatively flat peak period" during the defined summer months to determine whether a system cost differential exists between the three hour period from HE 1600 to HE 1800 and each of the three hour periods from HE 1300 to HE 1500 and from HE 1900 to HE 2100.

15. Whether the FPL concept of “flatness in load shape” should apply to the determination of peak periods in the defined winter months in the same manner as FPL applies such concept to the determination of peak periods in the defined summer months?
16. Whether the defined peak period of HE 700 to HE 1000 in the months of November, December and March should be deemed peak hours in light of the fact that FPL has not, within the past fifteen years, had a monthly system peak in the morning hours during such months.
17. Whether the defined peak period of HE 1900 to HE 2000 in the defined winter months should be deemed peak hours in light of the fact that FPL has not, during the past fifteen years, had a monthly system peak in HE 1900 or HE 2000 during the defined winter months.
18. Whether there is a statistically significant correlation during the defined on-peak and off-peak hours in both summer and winter between FPL’s base energy prices and the operating costs that are recovered through base rates, and whether the correlation between prices and related costs could be improved through rates consisting of more than two parts.
19. Whether there is a statistically significant correlation during the defined on-peak and off-peak hours in both summer and winter between FPL’s prices for fuel cost recovery and periodic fuel costs, whether the correlation between periodic fuel prices and periodic costs could be improved through rates consisting of more than two parts.
20. Whether the hourly fuel costs projected by FPL for both the on-peak and off-peak hours during the defined summer months are on average higher than the corresponding fuel cost recovery factors, and whether that results in a fuel cost under-recovery during the defined summer months that must be balanced by a fuel cost over-recovery during the defined winter months, and whether the setting of fuel cost recovery prices at a level lower than related fuel costs provides an incentive for increased energy consumption during the defined summer months, contrary to the objective of economic efficiency.
21. Whether the hourly fuel costs projected by FPL for both the on-peak and off-peak hours during the defined winter months are on average lower than the corresponding fuel cost recovery factors, and whether that results in a fuel cost over-recovery during the defined winter months that results from a fuel cost under-recovery during the defined summer months, and whether the setting of fuel cost recovery prices at a level higher than related fuel costs

provides an incentive for decreased energy consumption during the defined winter months, contrary to the objective of economic efficiency.

22. Whether the application of the same fuel cost recovery factors to on-peak hours and off-peak hours in both the defined summer and winter periods is fair and reasonable given the disparity in observed fuel costs between the defined summer and winter periods
23. Whether the application of the same fuel cost recovery factors to on-peak hours and off-peak hours in both the defined summer and winter periods is unduly discriminatory to customers who have greater energy consumption during the defined winter months as a percentage of total consumption than FPL system energy sales as a percentage of total energy sales, given the disparity in observed fuel costs between the defined summer and winter periods
24. Whether the application of different fuel cost recovery rates to on-peak and off-peak hours is fair and reasonable and non-discriminatory in light of the fact that the determination of such on-peak and off-peak hours has been made for base rate purposes and that there has been no demonstrated correlation between FPL's hourly fuel costs and the fuel cost recovery rates during the defined on-peak and off-peak periods.

## CERTIFICATE OF SERVICE

**I hereby certify** that I have served a true and correct copy of the preceding Petition on Proposed Agency Action was furnished to the following via U.S. Mail and/or electronically on or before this 1<sup>st</sup> day of June, 2011:

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