

Eric Fryson

From: Kim Hancock [khancock@moylelaw.com]
Sent: Monday, October 01, 2012 4:32 PM
To: Filings@psc.state.fl.us
Cc: Michael Lawson; mwalls@carltonfields.com; bgamba@carltonfields.com; mbernier@carltonfields.com; karen.white@tyndall.af.mil; jwb@bbrslaw.com; ataylor@bbrslaw.com; kelly.jr@leg.state.fl.us; rehwinkel.charles@leg.state.fl.us; sayler.erik@leg.state.fl.us; mcglothlin.joseph@leg.state.fl.us; john.burnett@pgnmail.com; jessica.cano@fpl.com; bryan.anderson@fpl.com; jwhitlock@enviroattorney.com; gadavis@enviroattorney.com; Vicki Kaufman; Jon Moyle
Subject: Docket No. 120009-EI
Attachments: FIPUG Post-Hearing Brief 10.1.12.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:

Jon C. Moyle, Jr.
Moyle Law Firm, P.A.
The Perkins House
118 North Gadsden Street
Tallahassee, FL 32301
(850) 681-3828
jmoyle@moylelaw.com

- b. This filing is made in Docket No. 120009-EI.
c. The document is filed on behalf of Florida Industrial Power Users Group.
d. The total pages in the document are 10 pages.
e. The attached document is FLORIDA INDUSTRIAL POWER USERS GROUP'S POST-HEARING STATEMENT OF ISSUES AND POSITIONS AND POST-HEARING BRIEF.

Kim Hancock
khancock@moylelaw.com



The Perkins House
118 North Gadsden Street
Tallahassee, Florida 32301
850-681-3828 (Voice)
850-681-8788 (Fax)
www.moylelaw.com

DOCUMENT NUMBER-DATE

06609 OCT-1 2012

FPSC-COMMISSION CLERK

The information contained in this e-mail is confidential and may be subject to the attorney client privilege or may constitute privileged work product. The information is intended only for the use of the individual or entity to whom it is addressed. If you are not the intended recipient, or the agent or employee responsible to deliver it to the intended recipient, you are hereby notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. If you receive this e-mail in error, please notify us by telephone or return e-mail immediately. Thank you.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Nuclear Power Plant
Cost Recovery Clause

Docket No. 120009-EI
Filed: October 1, 2012

**THE FLORIDA INDUSTRIAL POWER USERS GROUP'S
POST-HEARING STATEMENT OF ISSUES
AND POSITIONS AND POST-HEARING BRIEF**

The Florida Industrial Power Users Group (FIPUG), by and through its undersigned counsel, files this Post-Hearing Statement of Issues and Positions and Post-Hearing Brief.

BASIC POSITION AND SUMMARY

FIPUG supports the development of cost effective, reasonable and prudent energy sources to serve Florida consumers. FPL and PEF have the burden to demonstrate that the nuclear projects that are the subject of this hearing are the most reasonable and cost-effective way to serve ratepayer needs. The Commission must bear in mind that at the end of the day, it is the consumers who bear the large cost burden of these projects.

Progress Energy Florida

As to the Levy Nuclear Project, so long as PEF's filing is consistent with the parties' settlement, FIPUG supports PEF's position on these issues.

Regarding PEF's Extended Power Uprate (EPU) at Crystal River 3 (CR3), no further costs for this project should be imposed upon ratepayers. CR3, the nuclear unit to which the uprate is applicable, has been out of service since September 2009. It is unclear if CR3 will ever come back in service. Because the EPU project is an adjunct to CR3, no more costs related to it should be borne by ratepayers unless and until a decision is made to repair the unit. To make the point by way of an analogy, you would not buy new tires for an inoperable car unless and until

DOCUMENT NUMBER-DATE

06609 OCT-1 2012

FPSC-COMMISSION CLERK

you decided to repair the car. Thus, the Commission should defer all issues related to the uprate. Alternatively, should the Commission opt not to defer all issues related to the uprate, it should deny recovery for all uprate expenditure that could have been abated or deferred following the March 2011 second delamination event. Harkening back to the automobile analogy, the Commission should not allow recovery for tires after the car has had not one, but two major problems develop with the car's engine that prevents it from operating.

Florida Power & Light

As it relates to FPL, this Commission should require the company to establish the long-term feasibility of the distinct nuclear uprate projects, the St. Lucie Extended Power Uprate project and the Turkey Point Extended Power Uprate project, separately and on a stand-alone basis. Aggregating the financial information from both projects for the purposes of informing this Commission, the interveners, and the public is confusing and runs the risk of obfuscating the advantages and disadvantages of each project. The Commission should order that the long-term feasibility of each project be considered and reported separately.

Additionally, given the delays and projected cost overruns associated with the Turkey Point Extended Power Uprate project, the Commission should cap the amount of money that FPL can recover for this project. Alternatively, it should reject FPL's contention that cost increases and delays for the Turkey Point project can be traced back exclusively to seismic events in Japan and Virginia. and Nuclear Regulatory Commission (NRC) staffing issues. The Commission should find that some portion of the delays resulted from certain engineering work being performed more slowly than anticipated, management challenges FPL encountered in administering the project, and were not caused by acts of God. For each day of delay

attributable, directly or indirectly to FPL, the Commission should reduce by \$1 million the amount that FPL is able to recover from its ratepayers for these nuclear uprate projects.

ISSUES AND POSITIONS

Generic Legal Issue

Issue 1: Does Section 366.93, Florida Statutes, authorize the Commission to disallow recovery of all, or a portion of, the carrying costs prescribed by Section 366.93(2)(b), Florida Statutes?

FIPUG: *No position at this time.*

Progress Energy Florida, Inc. Issues

PEF – Legal/Policy

Issue 2: DEFERRED

Issue 3: Does the Commission have the authority to defer all determinations of prudence and reasonableness for the Crystal River Unit 3 Uprate project (and, thus, defer cost recovery in 2013) until a final decision to repair or retire has been implemented? If yes, should the Commission exercise this authority?

FIPUG: *Yes, the Commission has authority to defer issues related to the CR3 uprate. Given the unique circumstances of this, it should do so.*

PEF – Levy Units 1 & 2 Project

Issue 4: Do PEF's activities since January 2011 related to Levy Units 1 & 2 qualify as "siting, design, licensing, and construction" of a nuclear power plant as contemplated by Section 366.93, F.S.?

FIPUG: *So long as PEF's filing is consistent with the parties' settlement, FIPUG supports the company's position.*

Issue 5: Should the Commission approve what PEF has submitted as its 2012 annual detailed analysis of the long-term feasibility of completing the Levy Units 1 & 2 project, as provided for in Rule 25-6.0423, F.A.C.? If not, what action, if any, should the Commission take?

FIPUG: *So long as PEF's filing is consistent with the parties' settlement, FIPUG supports the company's position.*

Issue 6: What is the current total estimated all-inclusive cost (including AFUDC and sunk costs) of the proposed Levy Units 1 & 2 nuclear project?

FIPUG: *Given the scope and size of this undertaking, this information is critical to provide transparency to those who are paying for this enormous project. Further, the Commission must consider whether the costs make sense in view of the magnitude of the expenditures. This information is in the possession of PEF and should be provided to the Commission and ratepayers.*

Issue 7: What is the current estimated planned commercial operation date of the planned Levy Units 1 & 2 nuclear facility?

FIPUG: *Given the scope and size of this undertaking, this information is critical to provide transparency to those who are paying for this enormous project. Further, the Commission must consider whether the estimated planned commercial operation date make sense in view of the magnitude of the expenditures. This information is in the possession of PEF and should be provided to the Commission and ratepayers.*

Issue 8: Should the Commission find that, for 2011, PEF's project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Levy Units 1 & 2 project? If not, what action, if any, should the Commission take?

FIPUG: *So long as PEF's filing is consistent with the parties' settlement, FIPUG supports the company's position.*

Issue 9: What system and jurisdictional amounts should the Commission approve as PEF's final 2011 prudently incurred costs and final true-up amounts for the Levy Units 1 & 2 project?

FIPUG: *So long as PEF's filing is consistent with the parties' settlement, FIPUG supports the company's position.*

Issue 10: What system and jurisdictional amounts should the Commission approve as reasonably estimated 2012 costs and estimated true-up amounts for PEF's Levy Units 1 & 2 project?

FIPUG: *So long as PEF's filing is consistent with the parties' settlement, FIPUG supports the company's position.*

Issue 11: What system and jurisdictional amounts should the Commission approve as reasonably projected 2013 costs for PEF's Levy Units 1 & 2 project?

FIPUG: *This is a fall out issue.*

PEF – Crystal River Unit 3 Uprate Project

Issue 12: DEFERRED

Issue 13: Should the Commission find that, for 2011, PEF's project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Crystal River Unit 3 Uprate project? If not, what action, if any, should the Commission take?

FIPUG: *No. Given the great uncertainty, especially after the Duke/PEF merger, as to whether Crystal River 3 will be repaired or retired, the Commission should defer all prudence and reasonableness determinations and all cost recovery until it knows whether Crystal River 3 will be repaired or retired.*

Issue 14: Were all of the actual Crystal River Unit 3 Uprate project expenditures prudently incurred or expended in 2011 in the absence of a final decision to repair or retire Crystal River Unit 3 in 2011?

FIPUG: *No. Until a final decision has been made to repair Crystal River 3 (if that is the final decision), it is imprudent to spend money on an uprate that may never occur. The Commission should defer all prudence and reasonableness determinations and all cost recovery until it knows whether Crystal River 3 will be repaired or retired.*

DISCUSSION OF ISSUES 12, 13 and 14

PEF should not continue to recover fully for monies it has spent, and continues to spend, related to the Crystal River Unit 3 Uprate project given the uncertainty attendant to whether the Crystal River 3 nuclear power plant will ever again become operational. PEF, through its parent company, Duke Energy Corporation, at some point in the future, will decide whether to repair or retire the Crystal River 3 nuclear unit. (Tr. 343, 651). The Uprate project has no value if the Crystal River 3 Unit is not repaired in that it is dependent on and integrally related to the nuclear plant operating.

PEF, which has the burden of proof in these proceedings, failed to show that continued expenditures after the second delamination event in March of 2011, or that continued expenditures after the third delamination event that occurred in July 2011, were prudent. Put simply, continuing to spend money at this point in time on the proposed Uprate project is not reasonable given the facts and circumstances that presently exist. Should the Commission allow PEF to recover its 2011 expenditures after the second and third delamination events, it will send the wrong message, particularly if Duke Energy Corporation eventually decides to retire the Crystal River 3 nuclear plant. Should a decision to retire the plant ultimately be made, if PEF is allowed to continue spending and recovering ratepayer funds for Uprate project expense, the refrain "throwing good money after bad" will likely be heard frequently from many quarters. The Commission should not allow the recovery of Uprate monies following the second and third delaminations of the Crystal River 3 nuclear power plant.

FIPUG: *This is a fall out issue.*

Issue 16: DEFERRED

Issue 17: What system and jurisdictional amounts should the Commission approve as reasonably estimated 2012 costs and estimated true-up amounts for PEF's Crystal River Unit 3 Uprate project?

FIPUG: *This is a fall out issue. *

Issue 18: What system and jurisdictional amounts should the Commission approve as reasonably projected 2013 costs for PEF's Crystal River Unit 3 Uprate project?

FIPUG: *This is a fall out issue. *

PEF – Final Fall-out Issue

Issue 19: What is the total jurisdictional amount to be included in establishing PEF's 2013 Capacity Cost Recovery Clause factor?

FIPUG: *This is a fall out issue.*

Florida Power & Light Company Issues

FPL – Turkey Point Units 6 & 7 Project

Issue 20: Do FPL's activities since January 2011 related to Turkey Point Units 6 & 7 qualify as "siting, design, licensing, and construction" of a nuclear power plant as contemplated by Section 366.93, F.S.?

FIPUG: *No position at this time.*

Issue 21: Should the Commission approve what FPL has submitted as its 2012 annual detailed analyses of the long-term feasibility of completing the Turkey Point Units 6 & 7 project, as provided for in Rule 25-6.0423, F.A.C.? If not, what action, if any, should the Commission take?

FIPUG: *No position at this time.*

Issue 22: What is the current total estimated all-inclusive cost (including AFUDC and sunk costs) of the proposed Turkey Point Units 6 & 7 nuclear project?

FIPUG: *Given the scope and size of this undertaking, this information is critical to provide transparency to those who are paying for this enormous project. Further, the Commission must consider whether the costs make sense in view of the magnitude of the expenditures. This information is in the possession of FPL and should be provided to the Commission and ratepayers.*

Issue 23: What is the current estimated planned commercial operation date of the planned Turkey Point Units 6 & 7 nuclear facility?

FIPUG: *Given the scope and size of this undertaking, this information is critical to provide transparency to those who are paying for this enormous project. Further, the Commission must consider whether the commercial operation date makes sense in view of the magnitude of the expenditures. This information is in the possession of FPL and should be provided to the Commission and ratepayers.*

Issue 24: Should the Commission find that FPL's 2011 project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Turkey Point Units 6 & 7 project?

FIPUG: *No position at this time.*

Issue 25: What system and jurisdictional amounts should the Commission approve as FPL's final 2011 prudently incurred costs and final true-up amounts for the Turkey Point Units 6 & 7 project?

FIPUG: *This is a fall out issue.*

Issue 26: What system and jurisdictional amounts should the Commission approve as reasonably estimated 2012 costs and estimated true-up amounts for FPL's Turkey Point Units 6 & 7 project?

FIPUG: *This is a fall out issue.*

Issue 27: What system and jurisdictional amounts should the Commission approve as reasonably projected 2013 costs for FPL's Turkey Point Units 6 & 7 project?

FIPUG: *This is a fall out issue.*

FPL – St. Lucie Units 1&2 and Turkey Point Units 3&4 Extended Power Uprate Project

Issue 28: Should the Commission approve what FPL has submitted as its 2012 annual detailed analyses of the long-term feasibility of completing FPL's Extended Power Uprate project, as provided for in Rule 25-6.0423, F.A.C.? If not, what action, if any, should the Commission take?

FIPUG: *The Commission should not approve the detailed analyses of the long-term feasibility of completing FPL's Extended Power Uprate project because FPL did not sufficiently separate the Turkey Point Uprate project from the St. Lucie Uprate project. The distinct projects should be evaluated for long-term feasibility separately, and the Commission should so direct FPL. *

Issue 29: Should the Commission find that FPL's 2011 project management, contracting, accounting and cost oversight controls were reasonable and prudent for FPL's Extended Power Uprate project?

FIPUG: *No. See FIPUG briefing below. *

Issue 29A: Should the Commission find that in the previous year (2011) and the current year to date (2012), FPL managed the Extended Power Uprate activities in a reasonable and prudent manner? If not, what action should the Commission take?

FIPUG: *No. See FIPUG briefing below.*

Issue 30: What system and jurisdictional amounts should the Commission approve as FPL's final 2011 prudently incurred costs and final true-up amounts for FPL's Extended Power Uprate project?

FIPUG: *Considerably less than sought by FPL. See FIPUG briefing below.*

Issue 31: What system and jurisdictional amounts should the Commission approve as reasonably estimated 2012 costs and estimated true-up amounts for FPL's Extended Power Uprate project?

FIPUG: *Considerably less than sought by FPL. See FIPUG briefing below.*

Issue 32: What system and jurisdictional amounts should the Commission approve as reasonably projected 2013 costs for FPL's Extended Power Uprate project?

FIPUG: *Considerably less than sought by FPL. See FIPUG briefing below.*

DISCUSSION OF ISSUES 28-32

The Commission should order that FPL separately evaluate and report the long-term feasibility of the St. Lucie Extended Power Uprate Project and the Turkey Point Extended Power Uprate Project. Furthermore, a downward adjustment should be made to FPL's request for approval of funds for the Turkey Point Extended Power Uprate Project.

The Commission should require that FPL consider, report and prove the long-term feasibility of each of these multi-million dollar uprate projects separately, rather than in a combined fashion. The two projects are materially different, as even a cursory review of FPL exhibits displayed during the opening summary of testimony of FPL witness Jones reveals; the major differences in the two projects is a point acknowledged by FPL witness Jones. (Tr. 1088-1089). One project, Turkey Point, is located in the southern portion of Dade County, near the Florida Keys. The other project, St. Lucie, is located four counties to the north, in St. Lucie County. The projects are staffed by different personnel and, as discovered in this year's proceeding, have different financial issues.

Specifically, the Turkey Point Extended Power Uprate Project is confronting projected cost overruns of more than \$500 million. It is hard to imagine that cost overruns of this magnitude cannot have a material impact upon the project. Failing to evaluate the impact of these projected cost overruns on the long-term feasibility of the Turkey Point Extended Power Uprate Project, on a stand-alone basis, and instead conveniently combining the Turkey Point Extended Power Uprate Project's long-term feasibility analysis with the St. Lucie Extended Power Uprate Project's long-term feasibility analysis, deftly sidesteps logical reasoning and should not be adopted.

Analogous reasoning helps make the point. A business has two restaurants, Restaurant A and Restaurant B. Restaurant A provides a net profit on invested capital of 25% every year while Restaurant B results in a net loss every year on invested capital of -10%. Assuming all other things being equal, the combined business has a combined overall annual return of 15% per

year on invested capital. If the business owner was merely informed every year that he or she made a 15% return on invested capital, the business owner might be lulled into continuing business as usual. However, a skilled business owner, if informed with the separate business operations of each operation, rather than receiving aggregate data and analysis, but instead receiving disaggregated financial information for each restaurant, would likely be able to focus on the underperforming business and either discontinue it or work to improve it. The same holds true with respect to the long-term feasibility analysis of the differing nuclear uprate project for which FPL seeks recovery. Each project should be evaluated on a stand-alone basis, and not combined for the purposes of undertaking the long-term feasibility evaluation.

Finally, FPL projects a dramatic increase, over \$500 million, in the year to year projected cost comparison of the Turkey Point Extended Power Uprate Project. FPL apparently blames this increase in significant part on the earthquake in Fukushima, Japan, certain seismic events in the Mid-Atlantic states, and NRC staff being reassigned, refocused or tasked with other projects. (Tr. 1006). FPL also had management issues with one of its key contractors working on the uprate projects and the engineering work was taking longer than originally anticipated. (Tr. 1014, 1093). FPL did not accept any responsibility for one dollar of cost increase being attributable to anything it did or failed to do; there is nobody to blame for the cost overruns and the project delays. (Tr. 1112-1115). The Commission should not accept this position advanced by FPL to justify the delays and increased costs.

FPL's expert witness estimated that the daily amount of money spent by FPL on its uprate projects was in excess of \$1 million per day. (Tr. 1169-70). Surely not all of the delays were caused by seismic events and a shift in workload at the NRC. The Commission, after its independent review of the record, should determine the number of delay days attributable to FPL, and reduce by at least \$1 million per day the monies FPL is able to recover from its ratepayers. Alternatively, as suggested by the Office of Public Counsel, the Commission should cap the amount of monies that FPL can recover for its Turkey Point Uprate project.

FPL – Final Fall-out Issue

Issue 33: What is the total jurisdictional amount to be included in establishing FPL's 2013 Capacity Cost Recovery Clause factor?

FIPUG: *This is a fall out issue.*

s/ Jon C. Moyle, Jr.

Jon C. Moyle, Jr.

Vicki Gordon Kaufman

Moyle Law Firm, P.A.

118 North Gadsden Street

Tallahassee, Florida 32301

Telephone: (850) 681-3828

Facsimile: (850) 681-8788

jmoyle@moylelaw.com

vkaufman@moylelaw.com

Attorneys for Florida Industrial Power Users Group

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of FIPUG's Post-Hearing Statement of Issues and Positions and Post-Hearing Brief, was served by Electronic Mail and United States Mail this 1st day of October, 2012, to the following:

Michael Lawson
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

J. Michael Walls
Blaise N. Gamba
Matthew Bernier
Carlton Fields Law Firm
Post Office Box 3239
Tampa, Florida 33601-3239

Karen S. White
AFLSA/JACL-ULFSC
139 Barnes Drive, Suite 1
Tyndall AFB, Florida 32403-5319

James W. Brew
F. Alvin Taylor
Brickfield, Burchette, Ritts & Stone, P.C.
1025 Thomas Jefferson Street, NW
Eighth Floor, West Tower
Washington, DC 20007-5201

J. R. Kelly
Charles Rehwinkel
Joseph McGlothlin
Erik L. Saylor
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399

John T. Burnett
Progress Energy Service Company, LLC
Post Office Box 14042
St. Petersburg, Florida 33733-4042

Bryan S. Anderson
Jessica A. Cano
Florida Power & Light Co.
700 Universe Boulevard
Juno Beach, Florida 33408-0420

Gary A. Davis
James S. Whitlock
Gary A. Davis & Associates
Post Office Box 649
Hot Springs, NC 28743

s/ Jon C. Moyle, Jr.
Jon C. Moyle, Jr.