

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Fuel and purchased power cost recovery
Clause with generating performance
Incentive factor.

Docket No. 140001-EI

Filed: October 27, 2014

**THE FLORIDA INDUSTRIAL POWER USERS GROUP'S
PREHEARING STATEMENT REGARDING FPL'S PETITION TO RECOVER OIL
AND GAS EXPLORATION AND PRODUCTION COSTS VIA THE FUEL CLAUSE**

The Florida Industrial Power Users Group (FIPUG), pursuant to Order No. PSC-14-0439-PCO-EI, files its Prehearing Statement.

A. APPEARANCES:

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B. WITNESSES AND EXHIBITS:

FIPUG witnesses and pre-filed exhibits:

Jeff Pollock is FIPUG's witness in this proceeding. He addresses issues 1-5 in his testimony.

<u>Witness</u>	<u>Exhibits</u>	<u>Title</u>
Jeff Pollock	JP-1	FPL Base Production Cost/Benefit Analysis with Escalated Production and Transportation Costs
Jeff Pollock	JP-2	FPL Comparison of Projected Natural Gas Prices

Jeff Pollock	JP-3	FPL Base Production Cost/Benefit Analysis Gas Price Forecast
Jeff Pollock	JP-4	NorthWestern Energy Press Release

Witnesses and exhibits listed by other parties.

C. STATEMENT OF BASIC POSITION:

FIPUG opposes FPL’s efforts to have ratepayers fund oil and gas exploration and production ventures in Oklahoma. FPL’s proposal places the risk of future natural gas market prices squarely on the backs of ratepayers. Ironically, FPL has avoided this very same risk for years, as fuel costs are passed through annually to ratepayers in this proceeding. FPL’s ratepayers do not want to accept this natural gas fuel cost risk, and it should not be forced upon them. FPL’s request to increase its rate base by up to \$750 million dollars per year for oil and gas exploration and production costs, and to earn a return on those monies, will help FPL annually bolster its rate base and unquestionably benefits FPL’s shareholders. Potential benefits to FPL’s ratepayers are uncertain and speculative.

The question FPL presents, namely, whether FPL should be able to enter the oil and gas exploration and production business using up to \$750 million dollars per year of ratepayer monies, has significant public policy ramifications. When confronted with significant public policy questions such like this one, the Commission should defer to the Legislature for guidance. Put simply, as a branch of the Legislature, the PSC should leave the question of whether a regulated Florida utility is empowered to venture into the risky oil and gas exploration and production business to the Legislature. As OPC points out in its Motion to Dismiss for Lack of Subject Matter Jurisdiction, there is no indication that the Florida Legislature contemplated ratepayer dollars being used to fund oil and gas exploration and production in Oklahoma. The Commission should not venture into the Legislature’s public policy arena unless and until the Legislature expressly authorizes Florida utilities to engage in the exploration and production of natural gas outside of Florida.

Finally, FIPUG entered into a Stipulation and Settlement Agreement (“Agreement”) with FPL which called for a base rate freeze through December of 2016. The Agreement stated in pertinent part that: “It is the intent of the Parties in this Paragraph 6 that FPL not be allowed to recover through cost recovery clauses increases in the magnitude of costs of types or categories (including but not limited to, for example, investment in and maintenance of transmission assets) that have been and traditionally, historically and ordinarily would be recovered in base rates.” The type of costs FPL seeks to recover, capital and operational expense associated with oil and gas exploration and production, are the type of costs which are more appropriately characterized as base rate costs, if recoverable, and thus precluded by the terms of the parties’ Agreement.

For the reasons set forth above, the Commission should deny FPL’s Petition.

D. STATEMENT OF ISSUES AND POSITIONS:

I. FUEL ISSUES

COMPANY-SPECIFIC FUEL ADJUSTMENT ISSUES

Florida Power & Light Company

ISSUE 1: Should the Commission approve FPL's request to recover the amounts it would pay to its subsidiary for gas obtained from the PetroQuest joint venture through the fuel cost recovery clause on the basis and in the manner proposed by FPL in the June 25 Petition?

(In conjunction with this compromise on the wording, FPL and OPC to stipulate to allowances of 200 words for their respective position statements on Issue 1 in the post-hearing briefs)

FIPUG: No. The costs FPL seeks to recover should not be recoverable through the fuel clause as a matter of law or Commission policy.

ISSUE 2: If the Commission answers Issue 1 in the negative, what standard should the Commission apply to a request by FPL to recover the price that FPL pays to its subsidiary/affiliate for gas obtained through the joint venture with PetroQuest?

FIPUG: The Commission should apply its policy regarding affiliate transactions to ensure that ratepayers are not charged more than market prices for gas obtained through the proposed joint venture with PetroQuest.

ISSUE 3: What amount, if any, associated with the transactions proposed in FPL's June 25 Petition should be included for recovery through FPL's 2015 fuel cost recovery factor?

FIPUG: No amount should be recovered for the FPL-PetroQuest Oklahoma oil and gas exploration and production project. FPL acknowledges that its affiliated corporate interests find the PetroQuest deal quite attractive and acceptable. Conversely, consumer interests (Office of Public Counsel, FIPUG, Florida Retail Federation and PCS Phosphate) do not find the PetroQuest oil and gas deal attractive and acceptable. Thus, rather than forcing a deal upon ratepayers that ratepayers find unwanted and speculative, the Commission should permit FPL's non-regulated corporate interests to profit, possibly, from the announced PetroQuest deal.

ISSUE 4: Do FPL's proposed guidelines for future capital investments in natural gas exploration and drilling joint ventures satisfy the Commission's criteria for consideration in the fuel cost recovery clause proceeding??

FIPUG: No.

ISSUE 5: If the Commission answers Issue 4 in the affirmative, should the Commission approve FPL's proposed criteria?

FIPUG: No. Consistent with section 120.54, Florida Statutes, the Commission should engage in rulemaking to adopt any policy statements regarding the exploration and production of oil and natural gas.

ISSUE 6: Is FPL contractually precluded by paragraph 6 of the Stipulation and Settlement Agreement dated December 12, 2012 and approved by the Commission in Order No. PSC-13-0023-S-EI from seeking to increase rates as it proposes?

FIPUG: Yes. The parties to the December 12, 2013 Stipulation and Settlement Agreement negotiated a resolution to a litigated rate case that provided rate stability and predictability for the duration of the Settlement. Language was included in the Agreement to prevent "end runs" around the Agreement, and the associated rate stability and predictability. FPL's petition seeks to recover up to \$750 million dollars per year in oil and gas exploration and production costs through the fuel clause. These type costs, if they were to be recovered, are more analogous to base rate type expenditures that would be "ordinarily" recovered in base rates. Accordingly, the following provision contained within the Agreement prevents the recovery of these costs through the fuel clause, at least until the term of the Settlement Agreement expires: "It is the intent of the Parties in this Paragraph 6 that FPL not be allowed to recover through cost recovery clauses increases in the magnitude of costs of types or categories (including but not limited to, for example, investment in and maintenance of transmission assets) that have been and traditionally, historically and ordinarily would be recovered in base rates."

ISSUE 7: If the Commission concludes that FPL's petition has merit, should the Commission engage in rulemaking pursuant to section 120.54, Florida Statutes, and adopt rules addressing gas reserve guidelines and operations rather than adopting the Gas Reserves Guidelines as proposed by FPL?

FIPUG: Yes. Florida Statutes provides that statements of policy should be adopted through rulemaking. Rulemaking affords affected parties notice and the opportunity to participate in the development of any oil and gas exploration and production policy that would be applied prospectively. Such wide-ranging policy pronouncements should be put in place through rulemaking. FPL's "guidelines" are tantamount to proposed rules and should be considered in an appropriately noticed proceeding in accord with chapter 120, Florida Statutes.

ISSUE 8: What effect, if any, does Commission's decision on Issue 3 have on the fuel cost recovery factor and GPIF targets/ranges for the period January 2015 through December 2015?

FIPUG: As the Commission should not permit recovery of oil and gas exploration and production costs to be recovered through the fuel clause, the Commission's decision to disallow such recovery should have no effect on the fuel cost recovery factor.

ISSUE 9: Should this Docket be closed?

FIPUG: Yes.

E. STIPULATED ISSUES:

None at this time.

F. PENDING MOTIONS:

Office of Public Counsel's Motion to Dismiss FPL's Petition for Lack of Subject Matter Jurisdiction. (FIPUG joins in the motion and supports it.).

G. STATEMENT OF PARTY'S PENDING REQUESTS OR CLAIMS FOR CONFIDENTIALITY:

None.

H. OBJECTIONS TO QUALIFICATION OF WITNESSES AS AN EXPERT:

Yes, unless the witness in question affirmatively states the subject matter area(s) in which he or she claims expertise, and voir dire, if requested, is permitted.

I. STATEMENT OF COMPLIANCE WITH ORDER ESTABLISHING PROCEDURE:

There are no requirements of the Order Establishing Procedure with which the Florida Industrial Power Users Group cannot comply at this time.

/s/ Jon. C. Moyle

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of The Florida Industrial Power Users Group's Prehearing Statement has been furnished by Electronic Mail this 27th day of October, 2014, to the following:

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